

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN) 2021-CP-22-00806

THOMAS M. REOWN,)
INDIVIDUALLY AND AS)
PARENT AND GUARDIAN OF)
K.R., A MINOR AGED 11)
YEARS,)

Plaintiffs,)

Transcript of Record

vs.)

October 10-11, 2022

LIEUTENANT JOSHUA SMITH)
AND THE SALVATION ARMY)
OF THE CAROLINAS,)

Defendants.)

B E F O R E:

Honorable Walton J. McLeod
Georgetown County Courthouse
Georgetown, South Carolina

A P P E A R A N C E S:

Thomas S. Tisdale, Esquire
Attorney for Plaintiff

Wesley T. Moran, Esquire
G. Mark Phillips, Esquire
Attorneys for Defendant

Kay H. Richardson
Circuit Court Reporter

1	<u>I N D E X</u>	
2	<u>OCTOBER 10, 2022 - DAY 1</u>	<u>Pg.</u>
3	By the Court	5
4	Motions	6
5	By the Court	36
6	Voir Dire	37
7	By the Court	48
8	Jury Selection	50
9	By the Court	55
10	Opening by Tisdale	63
11	Opening by Moran	67
12	Janet Reown	
13	Direct by Tisdale	74
14	Cross by Moran	88
15	Tamika Smalls	
16	Direct by Tisdale	98
17	Cross by Moran	101
18	Redirect by Tisdale	104
19	Recross by Moran	104
20	<u>OCTOBER 11, 2022 - DAY 2</u>	
21	By the Court	106
22	Lt. Joshua Smith	
23	Direct by Tisdale	108
24	(Plaintiffs' 3 published - audio not transcribed)	118
25	Cross by Moran	127

1	<u>I N D E X</u>	
2		<u>Pg.</u>
3	Lt. Joshua Smith	
4	Redirect by Tisdale	147
5	Recross by Moran	148
6	By the Court	149
7	Thomas Reown	
8	Direct by Tisdale	150
9	Cross by Moran	161
10	(Defendants' 4 Published - audio not transcribed)	169
11	Kaiden Reown	
12	Direct by Tisdale	178
13	(Plaintiffs' 5 published - audio not transcribed)	186
14	Cross by Moran	187
15	By the Court	190
16	Motions	191
17	Ruling of the Court	201
18	By the Court	204
19	Certificate of Court Reporter	206
20		
21		
22		
23		
24		
25		

1	<u>E X H I B I T S</u>			
2	<u>No.</u>		<u>ID</u>	<u>EV</u>
3	P1	Receipt		80
4	P2	Transcript		116
5	P3	Audio of call 7/9/21 4:26		118
6	P4	Transcript of recording 7/9/21 4:26		126
7	P5	Video by Kaiden		185
8	D1	1 photo		135
9	D2	1 Photo		135
10	D3	Audio of call 7/9/21 4:30		142
11	D4	Video (Facebook Live)		169
12	D5	Medical Record (Kaiden) 7/15/21		175
13	C1	Note from Jury	56	
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 OCTOBER 10, 2022 - DAY 1

2 ON THE RECORD - 11:22 A.M.

3 BY THE COURT:

4 THE COURT: The clerk was nice enough to go ahead and
5 give the attorneys essentially a strike sheet. We told the
6 jury to come back at 1:30 in the jury assembly room. The
7 purpose of us meeting here was just to have the opportunity to
8 talk in the courtroom essentially. We had a Webex hearing
9 Friday afternoon. It was sort of, through no fault of
10 anyone's, the previous hearings had been postponed during the
11 weather from the hurricane, so we did -- we did the best we
12 could on Friday, but it was a lot to take in at one time and I
13 wanted to have an opportunity to address those arguments here
14 today.

15 With regard to the negligence, the negligence infliction
16 of emotional stress and defamation causes of action currently
17 pending, we did -- I did great the motion to amend the answer
18 to allow the pleading of charitable immunity statute. I don't
19 have the order in front of me, but the gist of it was that --
20 well, Lieutenant Smith was named in it. There was any sort of
21 gotcha asserting of charitable immunity. I believe that the
22 pleadings refer to the Salvation Army as a charitable entity.
23 So, that -- that motion was granted, and I think the amended
24 answer has already been filed.

25 So, I think we'll just start with -- so, the defendants

1 moved for summary judgment on the basis of negligence. The
2 primary reason, I believe was the *Erickson* case. And I hate
3 to make you go back through stuff again, but I'd like to hear
4 again why, legally, a summary judgment ruling at this stage
5 would be appropriate on the ground -- on the cause of action,
6 the plaintiffs' cause of action for negligence.

7 MR. MORAN: Thank you, Your Honor, and I'd be glad to
8 address that or may I address it from here?

9 THE COURT: Certainly, yes.

10 MR. MORAN: Thank you. May it please the -- may it
11 please the Court?

12 THE COURT: Yes, sir.

13 MOTIONS:

14 MR. MORAN: So, Your Honor, on that point, the *Erickson*
15 case has held that where a negligence claim is dependent on a
16 false statement being made, a slander or a libel, then it
17 can't be brought as a negligence claim. It has to be brought
18 as a defamation claim, and here, if you refer ---

19 THE COURT: So, the sole negligence in the *Erickson* case
20 has to do with a publication of an alleged defamatory
21 statement?

22 MR. MORAN: That's correct, Your Honor, and they're
23 claiming that the plaintiff in that case is a -- the plaintiff
24 in that case is claiming that the defendant did not properly
25 investigate the statement to confirm it was true before it was

1 published. Now, if you compare that to what we have going on

2 ---

3 THE COURT: Published in that case, in *Erickson* was --
4 what did published mean in *Erickson*?

5 MR. MORAN: Yes, Your Honor. Published meant published
6 in a newspaper in *Erickson*.

7 THE COURT: Okay.

8 MR. MORAN: Here, Your Honor, the publish -- the
9 publishing is to the police, whether it's -- whether it's
10 written, whether it's -- it's verbal, it goes to the police.
11 But, Your Honor, the point there is that here, the plaintiffs
12 are essentially claiming the same thing, is that Lieutenant
13 Smith should've investigated the statement before publishing
14 it. He should have called the store first to check. They
15 said you have a duty to call the store first to check. But,
16 Your Honor, that's not a negligence claim. The crux of it, as
17 plaintiffs even state in their opposition, that's a defamation
18 claim, and *Erickson* and the other cases that follow *Erickson*
19 make that clear, and it's not limited to the newspaper or
20 journalistic context. If you look at the two District of
21 South Carolina cases that also follow *Erickson* and quote to
22 it, there, Your Honor, that's in the individual context.

23 THE COURT: Which case are you referring to?

24 MR. MORAN: It's the *Bassford* case, Your Honor.

25 THE COURT: Hold on one second.

1 MR. TISDALE: How do you spell that?

2 MR. MORAN: B-A-S-S-F-O-R-D v. Bassford, B-A-S-S-F-O-R-D.

3 THE COURT: Who is the plaintiff?

4 MR. MORAN: *Bassford*.

5 THE COURT: It's *Bassford v. Bassford*?

6 MR. MORAN: Yes.

7 THE COURT: And if you wouldn't mind, would you tell me
8 the cite for that case, please?

9 MR. MORAN: Yes, Your Honor, bear with me one second; I
10 beg your indulgence?

11 THE COURT: Sure.

12 MR. MORAN: I got it right here.

13 THE COURT: 2021 Westlaw ---

14 THE LAW CLERK: 5358976

15 MR. MORAN: That's correct, 8976.

16 THE COURT: Okay.

17 MR. MORAN: And the other case that's similar ---

18 THE COURT: Well, let me -- let's do one at a time. I'm
19 sorry.

20 MR. MORAN: Yes, Your Honor, I apologize.

21 THE COURT: 8976. All right. All right. So, I'm
22 looking at *Patricia Bassford v. Scott Bassford*, this is a U.S.
23 District Court case from about 11 months ago.

24 MR. MORAN: That's correct, Your Honor.

25 THE COURT: All right. Tell me why -- what *Bassford*

1 stands for and how it is persuasive?

2 MR. MORAN: Yes, Your Honor. In *Bassford*, the plaintiff
3 there is claiming that the defendant negligently defamed the
4 plaintiff. And, Your Honor, I can't recall whether that was a
5 publication on social media, or whether it was a publication
6 -- otherwise just a verbal publication; one or the other for
7 either *Bassford* or *McGlothlin*, but essentially, what they're
8 saying is that the defendant did not investigate the statement
9 before publishing it, and therefore, they negligently defamed
10 the plaintiff. And, Your Honor, the pincite for that holding
11 is -- is the fourth page.

12 THE COURT: Okay. So, just agrees with *Erickson*?

13 MR. MORAN: That's correct.

14 THE COURT: All right.

15 MR. MORAN: Your Honor. The import of it agreeing with
16 *Erickson* is that *Erickson* isn't limited to the newspaper or
17 journalistic context; it applies to the individual context as
18 well.

19 THE COURT: And *Bassford* this financial statement, I
20 believe.

21 MR. MORAN: That's correct, Your Honor. And then the
22 *McGlothlin v. Hennelly* must've been a social media post.

23 THE COURT: Okay. Now, the end of *McGlothlin* -- I see
24 what you're referring to -- in addition to his defamation
25 causes of action, *McGlothlin* alleges the same facts and issues

1 in the form of a negligence claim for his third cause of
2 action. Quote, A claim that a statement constitutes libel or
3 slander must be brought in a defamation cause of action which
4 is grounded in and affected by the both common and
5 constitutional law, and it just cites to *Erickson*.

6 MR. MORAN: That's correct, Your Honor.

7 THE COURT: And that -- in layman's terms, that means
8 what to you?

9 MR. MORAN: Yes, Your Honor. So, here there's no
10 independent negligence claim absent defamation. The
11 negligence is absolutely dependent on the false statement
12 being made. So, it can't be brought as a negligence claim; it
13 has to be brought as a defamation claim. And the reason for
14 that, Your Honor, is because defamation has certain
15 protections like the qualified privilege. In other
16 constitutional protections in the first amendment context, it
17 deals with newspapers, but here the qualified privilege, and
18 you can't get around the protections of the qualified
19 privilege by trying to shoehorn a defamation claim into a
20 negligence claim. It has to be brought as libel and slander,
21 which is asserted through defamation.

22 THE COURT: Okay. Mr. Tisdale?

23 MR. TISDALE: Your Honor, I -- I don't know exactly what
24 to say in response to that. I mean we've got claims for
25 negligence and for defamation, and the rules, as I see it, is

1 -- is on Plaintiffs' memorandum and our opposition, page 6 and
2 7, the scintilla rule, that it's pretty clear. And it says
3 that -- just a couple of points there, we said to prevail in
4 an action founded on negligence, the plaintiff must establish
5 three essential elements; duty, which we've done; breach of
6 that duty, which we've done; and damage. And I mean, it's up
7 to a jury, I propose, up to the Court and the jury to decide
8 what needs to be submitted to the jury once the evidence is
9 taken, but we are given an opportunity, certainly, at this
10 stage, to present evidence. And, and it doesn't take much
11 evidence to overcome a summary judgment motion in this case,
12 on this point. And so, I believe that the proper thing for
13 the Court to do is to let everything go to the jury, I mean,
14 go -- be presented in evidence, and then Your Honor decide
15 whether or not there's evidence to support it to go to the
16 jury, but this is not a right time, I don't think, and it's
17 prejudicial to us to be trying to get a decision right now
18 before any evidence is taken.

19 THE COURT: All right. Okay. Mr. Moran?

20 MR MORAN: Thank you, Your Honor.

21 THE COURT: Excuse me.

22 MR. MORAN: A quick point. This is -- this the time to
23 decide it, because, Your Honor, this is a purely legal issue;
24 it doesn't regard the evidence at all; it's purely legal. And
25 the only thing that they're claiming here is that he didn't

1 investigate the libelous or slanderous statement before he
2 made it. It fits squarely within *Erickson*, and so we have to
3 clean some of these claims up before we take it to the jury,
4 Your Honor; and here it's squarely within the holding and it
5 should be dismissed. It's the whole point of Rule 56.

6 THE COURT: This is kind of a broad question, but do you
7 believe a negligence and a defamation case can exist -- co-
8 exist?

9 MR MORAN: I do, Your Honor, but only when there is an
10 independent reason for the negligence action; here there
11 isn't. The reason for the negligence action is because of the
12 defamation. You can't have a negligence action without the,
13 the slanderous or libelous statement is what I'm saying. If
14 there was a way to have the negligence action without that --
15 let's say, if I could give you a hypothetical that I owed a
16 duty to -- I'm trying to think, but I have a couple here, Your
17 Honor, but ---

18 THE COURT: Take your time.

19 MR MORAN: If I owed an independent duty to do something
20 else, Your Honor, but it can't be that the duty is to
21 investigate to make sure the statement is true, and that's the
22 whole point of *Erickson*.

23 THE COURT: *Erickson* is a little confusing, and by that I
24 mean, and I read from *Erickson*, we affirm the ruling in
25 Circuit Court. A claim that a statement constitutes libel for

1 slander -- in this case here, we've got slander -- must be
2 brought in a defamation cause of action, which is grounded in
3 and affected by both common and constitutional law. Again, in
4 affirming the dismissal of the negligence action, we do not
5 intend to limit evidence appellant may present by her damages.
6 This defamation case was brought -- brought, argued, charged,
7 and resolved in part on a negligence theory. Therefore, the
8 types of damages generally available to a plaintiff to prove
9 negligence are available to the appellant.

10 MR MORAN: And if I may, Your Honor?

11 THE COURT: If you could clarify that paragraph.

12 MR MORAN: I understand that the Supreme Court there is
13 -- is not providing much analysis from the Circuit Court, but
14 it does uphold the Circuit Court opinion, and what that does,
15 it makes it very clear that there the plaintiff alleged that
16 the newspaper was negligent, because it failed to follow its
17 prepublication procedures, and did not properly investigate
18 the alleged defamatory statement before publishing it.

19 THE COURT: Are there any policies and procedures in this
20 case? I mean, I haven't heard about them.

21 MR. MORAN: So, Your Honor, there is testimony on the
22 record that the policy is, if you're suspecting a theft, to
23 call the police; that is policy.

24 THE COURT: Okay.

25 MR. MORAN: But that still is not what's at issue here.

1 THE COURT: Well, I mean, I only brought that up as -- I
2 kind of gathered the point you were making was that if someone
3 doesn't follow the policies and procedures, like any other
4 negligence case, that's usually a hook for negligence, but
5 that's -- you're saying that's not present in the record in
6 this case?

7 MR. MORAN: Well -- and I see what you're saying there,
8 Your Honor, but the policies and procedures for the newspaper
9 are to make sure that its journalists properly investigate.

10 THE COURT: Yeah.

11 MR. MORAN: And here, the plaintiffs' claim is based off
12 the failure to properly investigate the statement. And again,
13 not to sound like a broken record, here the plaintiffs' claim
14 in this case is the failure to properly investigate the
15 defamatory statement. The failure to properly investigate
16 whether they were they were stealing.

17 THE COURT: Uh-huh, (affirmative response).

18 MR. TISDALE: Your Honor, it could always be decided
19 after the evidence is heard.

20 THE COURT: That's true. That's true. I mean, we're --
21 I'm just getting the benefit now of having y'all in the
22 courtroom to be able to argue this instead of a computer. All
23 right. Let's -- anything else on negligence for the moment?

24 MR. MORAN: Your Honor, only that they make it clear on
25 page 3 and 8 of their opposition, the negligence and the

1 defamation are completely tied together, and I'm happy to
2 quote that for you, if you like, Your Honor?

3 THE COURT: I don't have it in front of me, so why don't
4 -- well, let's see here, go ahead, where are you -- this is on
5 opposition memo page what?

6 MR. MORAN: It's page 3 and 8 of the plaintiffs'
7 opposition, Your Honor. And on page 3, the opposition states
8 Lieutenant Smith proceeded to negligently report to the
9 Georgetown County Sheriff's Office that two black individuals
10 had committed grand larceny and stolen furniture from the
11 Salvation Army.

12 THE COURT: The use of negligence -- the use of the
13 general term negligence or negligence or negligently is not
14 improper as it's a description, not a cause of action.

15 MR. MORAN: You're right, Your Honor, but there again,
16 the negligence is solely based on their being a defamatory
17 statement, and the statement there is that two black
18 individuals committed grand larceny and stolen furniture. You
19 can't have the negligence claim without the defamation, and
20 that's why it has to be brought as defamation, not negligence.

21 MR. TISDALE: Your Honor, we did not have to bring a
22 defamation claim. We could've just brought a negligence
23 claim, but the point is, the two are together; the evidence is
24 the same as he says, and Your Honor can decide what's
25 submitted to the jury and what's not.

1 MR. MORAN: And, Your Honor, if I may ---

2 MR. TISDALE: If there's a question. If there's a
3 question.

4 THE COURT: Okay.

5 MR. MORAN: Mr. Tisdale is wrong on that point. If his
6 negligence is going to be based on a false statement, it has
7 to be brought as a defamation claim.

8 MR. TISDALE: It doesn't. We don't have to bring a
9 defamation claim.

10 THE COURT: Okay. All right. I understand what you're
11 saying. Okay. Let's -- all right. Let's pivot a little bit
12 to negligent infliction of emotional distress.

13 MR. TISDALE: All right.

14 THE COURT: And, as with any -- well, I'll let you
15 resummarize your argument before I speak.

16 MR. MORAN: Yes, Your Honor. Essentially here, the claim
17 was brought by plaintiff, Kaiden Reown, and for watching his
18 father be questioned by the police. Here the Supreme Court
19 has been clear on negligent infliction of emotional distress,
20 that one has to experience a loved one suffer severe injury or
21 a death. That hasn't happened here, and it must be dismissed.

22 MR. TISDALE: Excuse me a minute, I'm very sorry. What
23 did you say at the end of what you just said?

24 MR. MORAN: The Supreme Court has been clear that the
25 plaintiff bringing the claim has to witness the loved one

1 experience severe injury or death. Mr. Reown did not
2 experience any severe injury or death. So, therefore, Kaiden
3 did not witness and experience any severe injury or death.
4 It's limited to bystander cases, Your Honor.

5 THE COURT: Right, the zone of danger type stuff.

6 MR. MORAN: That's exactly right.

7 THE COURT: Which even if -- Mr. Tisdale, what is the --
8 I'm looking at element one here.

9 MR. TISDALE: Yes, sir.

10 THE COURT: You have five elements?

11 MR. TISDALE: Yes, sir.

12 THE COURT: Negligence of a defendant must cause death or
13 serious physical injury to another. That's kind of -- that's
14 a tough one here. How do you fit that one through.

15 MR. TISDALE: Read it one more time, Your Honor?

16 THE COURT: Well, the first element of negligence ---

17 MR. TISDALE: Yes, sir.

18 THE COURT: --- infliction of emotional distress is the
19 negligence of the defendant, Salvation Army ---

20 MR. TISDALE: Yes.

21 THE COURT: --- must cause death or serious physical
22 injury to another. I mean, there's no collision, there's no
23 physical injury here, there's no ---

24 MR. TISDALE: Well, there's emotional injury, and that's
25 what it is, emotional distress. That's what the cause of

1 action is, emotional distress, and that testimony is gonna be
2 that there was extreme emotional distress.

3 MR. MORAN: Your Honor, there is no physical injury. Mr.
4 Reown didn't experience any physical injury.

5 MR. TISDALE: Well, I think emotional distress is pretty
6 physical.

7 THE COURT: Well, you're referring to the manifestations,
8 if they produce physical manifestations. I don't know if --
9 is there testimony -- and I don't believe -- I recall in the
10 deposition of the plaintiff where he mentioned that his son
11 was traumatized, but ---

12 MR. MORAN: Your Honor, I'm happy to address that
13 element, but we don't even need to get there, because Mr.
14 Reown himself, in order for this claim to stand, being Thomas,
15 the father, would have had to have been physically injured or
16 would have had to have died.

17 THE COURT: Because it -- was it on behalf of both
18 plaintiffs or just one ---

19 MR. MORAN: No, it's on behalf of just Kaiden, the minor
20 son.

21 THE COURT: Okay.

22 MR. MORAN: And Mr. Reown did not experience any physical
23 injury or death.

24 MR. TISDALE: Your Honor, I tell you what, I would say
25 the same thing I said about the other one, Your Honor can sort

1 this out when all the evidence is in, and we'll see what's the
2 truth and what's not, and you dismiss it or don't dismiss it.

3 THE COURT: I hear you, and you are essentially asking me
4 just wait until a directed verdict analysis before I address
5 it.

6 MR. TISDALE: That's right. I mean, what are we talking
7 here; we think we know what the evidence is gonna be, but as
8 you know, those things unfold in different ways.

9 THE COURT: Well, listen, we do have evidence. We
10 haven't had -- but we've got deposition testimony here.

11 MR. TISDALE: I understand. I certainly understand, Your
12 Honor.

13 MR. MORAN: Your Honor, we'd rather not kick the can down
14 the road.

15 THE COURT: We're not flying in the blind.

16 MR. TISDALE: That's right. That's correct.

17 THE COURT: And the minor has the negligent infliction
18 claim for what he perceived happened with his father?

19 MR. MORAN: That's correct, Your Honor. The claim is
20 only being brought on behalf of the minor for what he
21 witnessed happening to his father.

22 MR. TISDALE: Your Honor, I might be able to save some
23 time. With regard to Thomas Reown, we withdraw the claim.

24 THE COURT: For negligent infliction of emotional
25 distress?

1 MR. TISDALE: Exactly, infliction of emotional distress.
2 That's what we argued.

3 THE COURT: You're saying it wasn't pled at all?

4 MR. MORAN: Yes, Your Honor.

5 THE COURT: Okay. So, the only -- well, I'm -- the only
6 -- the only thing that's pending before me is a negligent
7 infliction of emotional distress claim ---

8 MR. TISDALE: The distress.

9 THE COURT: --- on behalf of the minor for what he saw
10 happened to his father?

11 MR. TISDALE: Now, the minor, we don't -- we're not
12 willing, but we are on Thomas, the other plaintiff.

13 THE COURT: Okay.

14 MR. TISDALE: Because I think the facts are there.

15 THE COURT: Okay. And the reality is during -- and I
16 know this from the deposition, that the stop was initiated,
17 they were not arrested ---

18 MR. MORAN: Correct, Your Honor.

19 THE COURT: They were not detained.

20 MR. TISDALE: They were detained.

21 THE COURT: Well, I use the word detained, and let me
22 just say they were not -- they were not put in investigative
23 detention; they were not handcuffed.

24 MR. TISDALE: They were not -- they were not charged with
25 a crime.

1 THE COURT: Yeah.

2 MR. TISDALE: They were not arrested; they were detained.
3 They were told by the sheriff's department, stay here until we
4 get this straightened out.

5 MR. MORAN: They were able to walk around freely the
6 whole time; they were able to use their phones; they were
7 never touched; they were never put in the back of the car,
8 Your Honor.

9 THE COURT: And that's on camera as well?

10 MR. MORAN: Yes, Your Honor.

11 THE COURT: We'll come back to that.

12 All right. Anything else on negligent infliction for the
13 moment?

14 MR. MORAN: Just, again, Your Honor, the father would've
15 had to experience some sort of physical injury or death.

16 MR. TISDALE: I said we were willing to withdraw his
17 claim.

18 THE COURT: No, no, no. He's saying, if I'm not
19 mistaken, that the son would have to witness the father
20 experience death or serious physical injury.

21 MR. MORAN: Correct, Your Honor.

22 MR. TISDALE: There was no death.

23 THE COURT: Well, we agree on that.

24 MR. MORAN: There was no serious physical injury.

25 THE COURT: There was no serious physical injury.

1 MR. MORAN: It's reserved for cases, Your Honor, where
2 I'm standing with my wife or a loved one and they get hit by
3 car and it's negligent, and I see that happen.

4 MR. TISDALE: I shouldn't even say what I'm getting ready
5 to say, but I attended the first emotional distress case in
6 South Carolina. I can't remember the name of it, but it set
7 the law for the first time.

8 THE COURT: Well, I think emotional distress is clearly
9 part of negligence, but we're ---

10 MR. TISDALE: Exactly. And it doesn't have to be
11 somebody getting physically run over by a car.

12 THE COURT: Right, but on a bystander recovery zone of
13 danger claim, I think the defendants' point is that on a
14 negligence cause of action, emotional damages is part of
15 actual damages.

16 MR. TISDALE: Right.

17 THE COURT: But on a negligent infliction of emotional
18 distress, I think what you're trying to say, Mr. Moran, is
19 it's a very fact specific inquiry.

20 MR. TISDALE: And it is different from plain old
21 negligence.

22 THE COURT: Yeah.

23 MR. TISDALE: Certainly.

24 THE COURT: Okay. Lastly, so we've got the defamation
25 case?

1 MR. MORAN: Yes, Your Honor.

2 THE COURT: And, you know, as y'all have told me, the
3 facts really were not in dispute. No one disputes that anyone
4 said or did not say something; is that correct?

5 MR. MORAN: That's correct, Your Honor.

6 THE COURT: We know the general timeline. We know a
7 report was made to law enforcement. Was there a 911 call,
8 too?

9 MR. MORAN: Yes, Your Honor.

10 THE COURT: Is that how it was reported?

11 MR. MORAN: Yes, Your Honor. It was a call to the
12 sheriff's department. It wasn't the emergency line; it was
13 the regular sheriff's number, but dispatcher.

14 THE COURT: Okay.

15 MR. MORAN: Direct to the dispatcher.

16 THE COURT: Okay. So, one of the issues that we
17 discussed was qualified privilege and abuse of qualified
18 privilege.

19 MR. MORAN: Yes, Your Honor.

20 THE COURT: If I recall, the defense argued that -- that
21 the facts here fit within a qualified privilege, and that
22 while generally the abuse of privilege is in question for the
23 fact finder, you argued that the facts here were so clear that
24 it could be decided as a matter of law. Is that accurate?

25 MR. MORAN: And not only so clear, Your Honor, but the

1 Supreme Court affirmatively states that when the facts are not
2 in dispute, it is -- it is the duty of the Court to decide
3 whether the privilege was abused or not.

4 THE COURT: And that case you're referring to?

5 MR. MORAN: Is *Woodward*, Your Honor.

6 THE COURT: Okay.

7 MR. TISDALE: That was my case.

8 MR. MORAN: *Woodward v. South Carolina Farm Bureau*
9 *Insurance Company*.

10 MR. TISDALE: Right, Dr. Woodward.

11 MR. MORAN: And, Your Honor, there are plenty of other
12 cases that have held that as well, including a 2016 South
13 Carolina Supreme -- South Carolina Court of Appeals case
14 *Harris v. Tietex International, Ltd.* The cite for that is 417
15 S.C. 533.

16 THE COURT: Okay. Obviously, the plaintiffs believe the
17 abuse?

18 MR. TISDALE: The abuse, Your Honor?

19 THE COURT: The abuse of privilege, excuse me.

20 MR. TISDALE: Yeah.

21 THE COURT: Is -- obviously, you argued ---

22 MR. TISDALE: I think it's absolutely clear it's an abuse
23 of privilege.

24 THE COURT: Well, for the Court or for the jury?

25 MR. TISDALE: It can be either one that you decide; it

1 depends on what you're thinking, Your Honor.

2 MR. MORAN: When the facts are undisputed, Your Honor,
3 it's not one or the other.

4 THE COURT: Uh-huh, (affirmative response).

5 MR. TISDALE: Well, it can be, because that's what the
6 case says, *Swinton* ---

7 MR. MORAN: No, *Swinton* does not.

8 MR. TISDALE: We'll talk about that later. Judge?

9 THE COURT: Sir?

10 MR. TISDALE: Well, I -- I probably ought not to say
11 anything at this point, and I won't unless Your Honor has an
12 inquiry.

13 THE COURT: Okay. Okay.

14 MR. TISDALE: It is generally, though, a jury question,
15 Your Honor.

16 THE COURT: In other words, I can make this
17 determination.

18 MR. TISDALE: --- case says it's usually for the jury.

19 THE COURT: Generally, I understand that.

20 MR. TISDALE: Generally. Generally.

21 THE COURT: Could I ask y'all a quick question real
22 quick?

23 MR. MORAN: Yes, Your Honor.

24 MR. TISDALE: You may.

25 (REPORTER'S NOTE: Bench conference is held off the record

1 outside the presence of but outside the hearing of the jury.)

2 THE COURT: All right. Let me take a few minutes. I'll
3 be right back.

4 MR. MORAN: Thank you, Your Honor.

5 **RECESS - 11:53 A.M.**

6 *****OFF THE RECORD*****

7 **ON THE RECORD - 12:13 P.M.**

8 THE COURT: I appreciate y'all's patience.

9 All right. What we have here, I think, is I'm making
10 some rulings that I think clarify a few issues, and in a
11 sense, they're really more legal issue rulings. The Court
12 grants summary judgment on the negligent infliction of
13 emotional distress claim. I don't believe there's any --
14 there's nothing in the record to support death or serious
15 physical injury observed in the zone of danger here.

16 MR. TISDALE: That's true.

17 THE COURT: I respectfully disagree with the argument
18 otherwise, but I grant summary judgment on negligent
19 infliction of emotional distress.

20 That said -- well, actually, I'll come back to that.

21 Also, I'm gonna grant summary judgment on negligence.
22 Under the specific inquiry here about the allegations here
23 that lead -- the negligence essentially is based on the
24 defamatory remark, how it was made, and the conditions on how
25 it was made. I think that's in line with *Erickson*. *Erickson*

1 was a case where negligence was dismissed, but the defamation
2 case went forward. You know, we can agree to disagree on a
3 few issues but, essentially, I'm denying summary judgment on
4 defamation. Summary judgment -- excuse me -- defamation will
5 proceed forward. While there is a case -- we discussed
6 emotional damages. You know, if damages get to the jury,
7 then, you know, the damages available under most of these
8 other causes of action would essentially be available anyway.

9 We will -- obviously, I did consider your arguments --
10 when I say your, I mean the defendants' arguments -- on
11 summary judgment for defamation. I think under the
12 circumstances, I'd like to hear the evidence. It's tough,
13 particularly on the instances where some -- oftentimes the
14 general rule is an issue for the jury. I read the testimony,
15 but I think I need to be able to see it with my own eyes, hear
16 it with my own ears to really be able to affirmatively grant
17 such relief at this stage.

18 To be clear, and I'm not trying to create confusion here,
19 but the circumstances clearly present qualified privilege. As
20 the jury is oftentimes, generally, the fact finder for whether
21 there's been an abuse, I still retain the right to address
22 that in my own way at directed verdict, but my intent is to
23 hear that evidence live, here in this courtroom in trial over
24 the next day or two, but I, I say that just to try to
25 alleviate confusion that privilege is gonna be a big deal in

1 this case, in this trial, and y'all need to hit your
2 respective marks so that when we address this again at the
3 directed verdict stage, we're gonna have a robust conversation
4 about it, I suspect.

5 So, back to negligence. I do think we tried to talk
6 about several hypotheticals, I think if this had been a
7 situation where something happened at the scene to spawn a
8 separate independent negligence cause of action, it would be a
9 different situation. There's just nothing in the record to
10 indicate that, and I don't think that portion -- I don't think
11 those allegations need to go to the fact finder.

12 With that said -- so, summary judgment is granted in
13 part, denied in part. We'll pick our jury at 1:30. If --
14 well, the jury is coming back to the jury assembly room, and
15 my hope is that we can just bring the panel up here and sit
16 them out there in the gallery and we can go through voir dire.

17 MR. TISDALE: We'll select it downstairs, Your Honor?

18 THE CLERK: No, they'll come up.

19 THE COURT: We'll come up here.

20 MR. TISDALE: Come up here at 1:30?

21 THE COURT: I asked the jury to assemble in the jury
22 assembly room at 1:30. So, once they have everybody there,
23 they can bring the panel up here. You've got your strike
24 sheets already, four and four; four strikes a piece, using the
25 left side numbers.

1 MR. TISDALE: Got it. I just wanted to be clear, Your
2 Honor, we do that downstairs, strike the jury?

3 THE COURT: Negative. Negative. I'm gonna bring that
4 jury to this courtroom.

5 MR. TISDALE: The whole panel up here?

6 THE COURT: Yes, sir. I told them to show up in the
7 assembly room just so we could get them all in one place, and
8 then we'll bring them up together.

9 MR. TISDALE: So, we'll come here at 1:30?

10 THE COURT: Yes, sir.

11 MR. TISDALE: Thank you.

12 THE COURT: Mr. Moran?

13 MR. MORAN: Your Honor, just a point of clarification.

14 THE COURT: I'll try.

15 MR. MORAN: Is Your Honor making a ruling with respect as
16 to whether a qualified privilege exists, and the only issue is
17 abuse, or are both open issues right now, Your Honor?

18 THE COURT: Well, that's why -- I don't appreciate the
19 request for clarification, because it's somewhat unclear. The
20 record will reflect and I'm saying that with a smile. Based
21 on the record, the undisputed facts about how the report was
22 made from Lieutenant Smith to law enforcement, I believe
23 qualified privilege exists. I am not ruling on if there is an
24 abuse there. I will wait until further proceeding to address
25 that and figure out if the fact finder or the Court needs to

1 make that decision. Okay?

2 MR. TISDALE: That's fine. Your Honor, we think that's
3 the law.

4 THE COURT: Does that help?

5 MR. MORAN: Yes, Your Honor; thank you.

6 THE COURT: Thank you both for your arguments. I
7 appreciate it. It helped a lot.

8 MR. MORAN: Your Honor, I apologize; one more point. So,
9 we have a couple evidentiary issues with motion in limine
10 number 1 that was filed by the defendants.

11 THE COURT: Okay. And that had to do with ---

12 MR. MORAN: Yes, Your Honor, the allegation or argument
13 related to Lieutenant Smith's actions being racially
14 motivated.

15 THE COURT: Well, I have an initial thought, but why
16 don't you give me your argument.

17 MR. MORAN: Yes, Your Honor. There's nothing in the
18 record to suggest that anything Lieutenant Smith did was
19 racially motivated, any suggestion that it was is -- is
20 completely prejudicial and substantially outweighs any
21 probative value.

22 THE COURT: Okay.

23 MR. MORAN: And highly speculative.

24 THE COURT: Mr. Tisdale?

25 MR. TISDALE: Your Honor, very simply, it's a matter of

1 what evidence is presented or not presented, and Your Honor
2 can certainly rule on it at the appropriate time.

3 THE COURT: This is what I would -- I don't want to --
4 the witnesses have to say what they're gonna say.

5 MR. TISDALE: That's right.

6 THE COURT: However -- however, you know, the point of
7 testimony is not to, inure sympathy or passion or
8 capriciousness, or the point is not to try to fire up the jury
9 at any time, by anything the lawyers say or what the witnesses
10 say. Now, to the extent that if someone is asked the question
11 in testimony about, you know, why they were pulled over, you
12 know, I think they're entitled to their opinion, but they're
13 not entitled to continue to make the same cumulative,
14 repetitive point, to the point that it inflames the jury.

15 So, I say that to you, Mr. Tisdale, because it's gonna be
16 your witness and I would just -- I would just walk carefully.

17 MR. TISDALE: I agree with Your Honor. Whatever the
18 facts are, the facts are.

19 THE COURT: Well, whatever the facts are, but how you
20 present them can become an issue. So ---

21 MR. TISDALE: Right.

22 THE COURT: --- the point is not to elicit testimony that
23 inflames the tensions of the room.

24 MR. TISDALE: Your Honor, I understand completely, and I
25 agree.

1 THE COURT: Mr. Moran, you know, I did read this on
2 Friday. I will look -- in the break here, I'll look into this
3 some more, and if this does come up, I'll try to have some ---

4 MR. TISDALE: I don't plan to try to incite the jury.

5 THE COURT: Of course, I know you don't.

6 Any other pretrial?

7 MR. MORAN: Yes, Your Honor, related to some pieces of
8 evidence. I mean, one example of the -- the racially charged
9 language, things like that, you know, one exhibit we're aware
10 of that plaintiffs are trying to enter is -- it's a GAB News
11 Article ---

12 THE COURT: This is something -- I thought y'all agreed
13 to everything.

14 MR. TISDALE: We did.

15 MR. MORAN: Your Honor, after -- after -- we observed our
16 rights to object how it was being used, and after looking at
17 it again, there's no way in which this can be used. It's -
18 may I approach, Your Honor?

19 MR. TISDALE: We didn't have anything to do with
20 publishing it.

21 MR. MORAN: It was just comments from people that don't
22 have any knowledge, Your Honor.

23 THE COURT: Okay.

24 MR. MORAN: Complete hearsay.

25 THE COURT: Okay. They're out-of-court statements. So,

1 it's not -- this isn't the article, this is just a social
2 media face page?

3 MR. MORAN: That's correct, Your Honor.

4 MR. PHILLIPS: I don't know if they want to put it in,
5 but that's the caution we've got.

6 THE COURT: Well, if Mr. Tisdale decides to put it in,
7 we'll address it then.

8 MR. PHILLIPS: Understood, Your Honor.

9 THE COURT: But obviously, I'm looking at it. It's -- I
10 don't think that these 14 people are here to testify about the
11 statement they made on social media, so I would ---

12 MR. TISDALE: Your Honor, I'm not making a decision about
13 it now, but I think the question you just said is probably
14 correct.

15 THE COURT: Okay.

16 MR. MORAN: All right. So, abundance of caution.
17 Thank you, Your Honor.

18 THE COURT: The time for abundance of caution is now.

19 MR. MORAN: You never know.

20 THE COURT: I think voir dire was pretty -- I mean, I
21 don't recall any complicated voir dire.

22 MR. TISDALE: Certainly, none from us.

23 MR. PHILLIPS: It's pretty vanilla, Judge, on both sides,
24 I believe.

25 THE COURT: Let's see here. So, we'll pick them --

1 hopefully, we'll have a jury by 2:15 at the latest. Have
2 y'all talked about opening statements or y'all just gonna make
3 them or do y'all have any presentation you want to do?

4 MR. TISDALE: Your Honor, I was planning on making an
5 opening statement.

6 THE COURT: I'm sorry, I wasn't clear about that. I just
7 asked that sometimes lawyers like to have pictures or ---

8 MR. MORAN: No laser show.

9 THE COURT: Okay. So -- so, y'all just gonna stand and
10 talk.

11 MR. MORAN: It will be old school.

12 MR. TISDALE: If that's agreeable?

13 THE COURT: Yes, sir. That's what we're here for.

14 MR. TISDALE: All right.

15 THE COURT: We'll get through maybe two witnesses today.
16 We'll see. Do you know who your first witness is?

17 MR. TISDALE: It'll be ---

18 THE COURT: You don't have to show me your cards, but I'm
19 just ---

20 MR. TISDALE: It will be very simply taking things kind of
21 in sequence. Ms. Janet Reown.

22 THE COURT: Okay.

23 MR. TISDALE: She's the one who bought the furniture and
24 paid for it.

25 THE COURT: All right.

1 MR. TISDALE: And she'll be, I think, relatively short,
2 unless they get her on cross examination for a while.

3 MR. MORAN: Sounds good.

4 THE COURT: Okay. Well, let's -- we'll just try to,
5 after your first witness, we'll see where we are, and if we
6 think we can get another one in today, we will; if not,
7 tomorrow morning, you're driving from Charleston, right?

8 MR. PHILLIPS: Actually I'm spending the night at Moran's
9 house, so that's fine.

10 THE COURT: Okay. Is they charging you rent?

11 MR. PHILLIPS: I like sleeping in, though, Judge, and
12 returning phone calls and all that, so ---

13 MR. TISDALE: We're driving from Charleston.

14 THE COURT: All right. Is 9:30 suitable?

15 MR. MORAN: Sure.

16 MR. TISDALE: Very suitable.

17 THE COURT: Okay. I don't want to make anybody get a
18 speeding ticket on the way to court. All right. So, anything
19 else preparatory stuff we need to address, anything?

20 MR. MORAN: No, Your Honor.

21 MR. PHILLIPS: We're good.

22 THE COURT: Mr. Tisdale, anything else for now?

23 MR. TISDALE: We'll probably decide, Your Honor, this
24 afternoon.

25 THE COURT: All right. We'll be in recess until 1:30.

1 Thank you.

2 MR. TISDALE: Thank you.

3 **RECESS - 12:25 P.M.**

4 *******OFF THE RECORD*******

5 **ON THE RECORD - 1:40 P.M.**

6 BY THE COURT:

7 THE COURT: All right. It's 1:42, so I started us a
8 little bit later than I said. But I hope everyone had a
9 chance to refresh themselves and get some food. The jury is
10 ready to be brought up, so I think they're gonna bring the
11 entire panel from this morning up here. Both the attorneys
12 have been provided their random strike sheets, correct?

13 MR. MORAN: Yes, sir.

14 MR. TISDALE: Yes, Your Honor.

15 THE COURT: I've got Defendants' proposed voir dire and
16 Plaintiffs' voir dire. It's my understanding that neither of
17 y'all have any objections to the other's voir dire, correct?

18 MR. MORAN: No objection.

19 MR. TISDALE: No objection, Your Honor.

20 THE COURT: If something comes up -- okay, so don't put a
21 book there -- if something comes up during voir dire before we
22 pick the jury, just let me know and if it's something that
23 gets my attention, I'll probably call y'all up anyway. So --
24 and I'm just gonna -- my only summary of the case I'll provide
25 is just the fact that this case arises out of the plaintiffs'

1 claim for damages resulting from a defamatory statement made
2 by the defendants. And I'll let y'all fill in the gaps once
3 we start the case.

4 Anything else before we bring the jury up?

5 MR. TISDALE: Nothing here, Your Honor.

6 THE COURT: All right. Anything else?

7 MR. MORAN: Nothing, Your Honor.

8 THE COURT: All right. Let's bring up the panel, please.

9 (REPORTER'S NOTE: Jury venire enters courtroom @ 1:44 p.m.)

10 VOIR DIRE:

11 THE COURT: All right. I believe the jury is here

12 Well, ladies and gentlemen, welcome back. I hope y'all
13 had a nice lunch, had a chance to relax a little bit before
14 you got back to the courthouse. We're prepared to select the
15 jury for our trial for the week. The case of Thomas M. Reown,
16 individually and as parent and guardian of Kaiden Reown versus
17 Lieutenant Joshua Smith and the Salvation Army of the
18 Carolinas. This is a lawsuit that arises out of alleged
19 defamatory statements made by the defendant and the plaintiff
20 alleges damages as a result of this alleged defamatory
21 statement.

22 I have several questions I'm gonna ask you as we go
23 through the jury selection process here. But before I do
24 that, I'd like to give the attorneys of record the opportunity
25 to stand up and introduce themselves and their clients to you

1 at this time.

2 Mr. Tisdale?

3 MR. TISDALE: Thank you very much, Your Honor.

4 Ladies and gentlemen, my name is Thomas Tisdale. Most
5 everybody that knows me calls me Tom. I represent the Reown
6 family, and they are sitting right here in front of you on
7 this side, and I will begin with the youngest one, Kaiden, who
8 is a plaintiff in this case.

9 Stand up, Kaiden, so they can see you.

10 He's age 12. His sister -- I mean, Aunt Amber, I think I
11 got the relationship right. His father Thomas Reown. And who
12 will be a witness in the case is Thomas's mother, Kaiden's
13 grandmother, Janet Reown.

14 And as the Judge said, the case is about the defamation
15 of their character that we -- that I will describe more fully
16 when the Judge allows me to make an opening statement.

17 Thank you.

18 Thank you, Your Honor.

19 THE COURT: Thank you.

20 MR. MORAN: Good afternoon, ladies and gentlemen. My
21 name is Wes Moran, and I'm joined here by my clients,
22 Lieutenant Smith and Tamika Smalls. I represent the Salvation
23 Army in addition to these two individuals. I work for the law
24 firm Nelson, Mullins, and I'm joined here by my colleagues,
25 Mark Phillips and Janice Morreale.

1 I likewise will give an opening statement in a minute. I
2 look forward to talking with y'all throughout the trial.

3 Thank you.

4 THE COURT: All right. Now, is any member of this jury
5 panel related by blood or marriage or have a close personal,
6 social, or business relationship with any of the parties who
7 were just introduced to you just now? If so, please stand.

8 Okay. Now, in the back, ma'am, furthest inside, what is
9 your jury number?

10 JUROR 190: 190.

11 THE COURT: Okay. 190. And you have a relationship,
12 personal, business, or otherwise with who?

13 JUROR 190: Both sides.

14 THE COURT: Both sides. What is the nature of that
15 relationship? How do you -- how do you know them?

16 JUROR 190: My ex-husband used to work with Ms. Reown,
17 and I also used to work with Mr. (indicating).

18 THE COURT: Okay. And the fact that you know parties on
19 both sides, do you think that would affect your ability to be
20 fair and impartial in hearing this case?

21 JUROR 190: No, sir.

22 THE COURT: Okay.

23 All right. Thank you. You may be seated.

24 Yes, ma'am. Your juror number?

25 JUROR 146: 146.

1 THE COURT: Okay. Thank you. And tell me what is your
2 relationship with the parties?

3 JUROR 146: I've known Ms. Janet and her son for years.
4 I'm very close to Ms. Janet.

5 THE COURT: You're very -- okay. And the fact that
6 you're very close to Ms. Reown, Ms. Janet as you referred to
7 her, do you think that would affect your ability to be fair
8 and impartial in this case?

9 JUROR 146: Yes, sir.

10 THE COURT: All right. You may be seated.
11 Yes, sir, in the back.

12 JUROR 218: 218.

13 THE COURT: 218.

14 JUROR 218: Yes, sir.

15 THE COURT: And what is your relationship with the
16 parties?

17 JUROR 218: I used to work with Mr. Thomas Reown, and Ms.
18 Janet's husband, I know him pretty good, too.

19 THE COURT: Okay. And the fact that you used to work
20 with Thomas Reown and you know Ms. Janet Reown, would that
21 affect your ability to be fair and impartial during the case?

22 JUROR 218: No, sir.

23 THE COURT: Okay.

24 Yes, sir?

25 JUROR 90: Juror 90.

1 THE COURT: Number 90, 9-0?

2 JUROR 90: Yes.

3 THE COURT: Okay.

4 JUROR 90: And I know Thomas, we went to school together
5 for a long time, so we've been good friends for a long time.

6 THE COURT: Okay. And the fact that y'all are good
7 friends and have been so for a long time, would that affect
8 your ability to be fair and impartial in hearing this case?

9 JUROR 90: Yes.

10 THE COURT: All right. Thank you, sir.

11 Yes, ma'am?

12 JUROR 223: 223.

13 THE COURT: Okay.

14 JUROR 223: Janet Reown and I used to work together at
15 St. James-Santee, and she was a patient of mine for many
16 years.

17 THE COURT: Y'all worked together ---

18 JUROR 223: We worked together in a previous job of mine,
19 but prior to that, we had a professional relationship as
20 health care provider.

21 THE COURT: Okay. And you were the provider.

22 JUROR 223: Correct.

23 THE COURT: And the fact that she is a former patient of
24 yours, and that you knew her from work, would that affect your
25 ability to be fair and impartial?

1 JUROR 223: It would not.

2 THE COURT: All right.

3 All right. Thank you, ma'am.

4 Does anyone have any -- and I said all the people who
5 just introduced, but just to be clear, does anyone have any
6 business, personal relationship, friendship with the lawyers
7 involved in this case?

8 (REPORTER'S NOTE: No response.)

9 THE COURT: Does any member of the jury panel have any
10 connection as a customer or employee or any other relationship
11 with the Salvation Army? If so, please stand.

12 (REPORTER'S NOTE: No response.)

13 THE COURT: Has any member of this jury panel ever made a
14 claim for defamation or other damages resulting from a police
15 report?

16 (REPORTER'S NOTE: No response.)

17 THE COURT: Let's see. Now, the case, as I generally put
18 out earlier, arises out of an alleged defamatory statement
19 that the defendant, Joshua Smith, of the Salvation Army
20 allegedly made to the Georgetown County Sheriff's Department
21 when he reported that the plaintiffs were stealing furniture
22 from the Salvation Army Store located in the Litchfield area
23 of Pawley's Island, South Carolina. Has any member of this
24 panel read or heard anything about this case before coming
25 into this courtroom today?

1 THE COURT: Okay. Yes, sir. You had already -- you had
2 heard something about it?

3 JUROR 90: Yes.

4 THE COURT: And where did you hear something about it?

5 JUROR 90: Like I said, me and him are good friends. We
6 used to socialized on Facebook.

7 THE COURT: Okay. All right. And obviously you answered
8 a question earlier, but I think that's okay for now. Thank
9 you.

10 Have you or any member of your family or household ever
11 been a plaintiff in a civil lawsuit before? So, any member of
12 this jury panel been a plaintiff in a civil lawsuit before?
13 If so, please stand.

14 Yes, ma'am. Your juror number?

15 JUROR 146: 146.

16 THE COURT: So, you've been a plaintiff in a civil case
17 before?

18 JUROR 146: Yes. That was years ago.

19 THE COURT: Years ago? And is that -- did the case go to
20 trial or did it resolve through another way?

21 JUROR 146: I -- it went to trial.

22 THE COURT: Okay. All right.

23 All right. Thank you.

24 Along those same lines, has any member of you or your
25 family or household ever been a defendant in a civil or

1 criminal lawsuit before?

2 Yes, ma'am? Your juror number?

3 JUROR 56: 56.

4 THE COURT: You've been a defendant before?

5 JUROR 56: Uh-huh, (affirmative response).

6 THE COURT: Okay. And that was a case that went to a
7 trial or ---

8 JUROR 56: No trial.

9 THE COURT: Okay. How long ago was that?

10 JUROR 56: It was first in 2013, and we were in court
11 actually in the last year.

12 THE COURT: Okay. The fact that you've been a defendant
13 in a case before, do you think that would affect your ability
14 to be fair and impartial serving on a juror -- as a juror in
15 this case?

16 JUROR 56: Yes.

17 THE COURT: Okay.

18 All right. Any member of this jury panel ever serve as a
19 witness in a civil or criminal case before?

20 (REPORTER'S NOTE: No response.)

21 THE COURT: Has any member of this jury pool, or a member
22 of your family or household ever been reported to the police
23 or arrested for a crime that you or they did not commit?

24 (REPORTER'S NOTE: No response.)

25 THE COURT: Has any member of this jury panel, or a

1 member of their family or household ever been employed as a
2 police officer or in law enforcement?

3 Yes, ma'am? Hi.

4 JUROR 20: Hi. Number 20.

5 THE COURT: Okay.

6 JUROR 20: My husband is a retired police officer from
7 Washington Metropolitan in Washington D.C., and my brother is
8 a retired police officer.

9 THE COURT: And the fact that you have a brother and a
10 husband who are both retired police officers, would that
11 affect your ability to be fair and impartial in hearing this
12 case?

13 JUROR 20: Yes, I think so.

14 THE COURT: Thank you.

15 Yes, ma'am?

16 JUROR 25: Juror 25.

17 THE COURT: 25, all right.

18 JUROR 25: My dad worked for the sheriff's department for
19 many years.

20 THE COURT: Okay. And the fact that your father worked
21 for the -- would this be the Georgetown County -- okay, the
22 fact that your father worked for the Georgetown County
23 Sheriff's Department for a period of years, do you think that
24 would affect your ability to be fair and impartial in hearing
25 this case?

1 JUROR 25: No.

2 THE COURT: You do not? Okay.

3 Yes, sir.

4 JUROR 102: 102, juror number. I've worked for here in
5 the City of Georgetown for 17 years.

6 THE COURT: As?

7 JUROR 102: City police department.

8 THE COURT: And the fact, Juror Number 102, that you were
9 a member of the Georgetown City Police Department for seven
10 years?

11 JUROR 102: 17.

12 THE COURT: 17 years, excuse me. Would that affect your
13 ability to be fair and impartial?

14 JUROR 102: No, sir.

15 THE COURT: All right.

16 Okay. Yes, sir, in the back corner.

17 JUROR 90: Juror Number 90.

18 THE COURT: Number 90?

19 JUROR 90: My mother retired through Georgetown County.
20 She worked for the sheriff's department about 17 years.

21 THE COURT: The fact that your mother worked for the
22 sheriff's department for 17 years, would that affect your
23 ability to be fair and impartial?

24 JUROR 90: No, ma'am -- no, sir.

25 THE COURT: All right. No offense taken.

1 Yes, ma'am?

2 JUROR 55: Number 55, my brother is Johnathon Guiles or
3 Judge Johnathon Guiles; and I'm related to Judge Pyatt; and
4 Kevin Waites.

5 THE COURT: If I heard correctly, is that the local
6 magistrate?

7 JUROR 55: Yes.

8 THE COURT: Okay. So, the fact that you're related to
9 the local magistrate and who else?

10 JUROR 55: Judge Guiles, Johnathon Guiles, Kevin Waites,
11 and Judge Pyatt.

12 THE COURT: Okay. And to be clear, I'm -- I live about
13 150 miles away, so I don't know the local folks quite as well.
14 So, the fact that you're related to these people who are
15 involved in law enforcement or the court system, would that
16 affect your ability in any way to be fair and impartial in
17 hearing this case?

18 JUROR 55: Yes.

19 THE COURT: Okay. And you're Juror number what?

20 JUROR 55: 55. Oh, and Jackson Williams.

21 THE COURT: Has any member of this jury panel formed or
22 expressed an opinion about any issue or matter involved in
23 this case already?

24 (REPORTER'S NOTE: No response.)

25 THE COURT: Is any member of this jury panel aware of any

1 bias or prejudice toward either the plaintiff or the
2 defendants in this case?

3 (REPORTER'S NOTE: No response.)

4 THE COURT: Is there any member of this jury panel that
5 has a religious or moral opposition to serving on a jury and
6 sitting in judgment of your neighbor?

7 (REPORTER'S NOTE: No response.)

8 THE COURT: Does any member of the jury panel know of any
9 reason whatsoever why he or she should not serve as a juror in
10 this case with particular emphasis being placed on your
11 ability to be fair and impartial to both the plaintiffs and
12 the defendants?

13 (REPORTER'S NOTE: No response.)

14 BY THE COURT:

15 THE COURT: Any issues with voir dire, Mr. Tisdale?

16 MR. TISDALE: No, Your Honor.

17 THE COURT: Mr. Moran, any issues with voir dire?

18 MR. MORAN: One matter, Your Honor.

19 THE COURT: Come on up.

20 (REPORTER'S NOTE: Bench conference is held off the record in
21 the presence of but outside the hearing of the jury.)

22 THE COURT: Folks, I'm gonna step out for just one
23 minute. Please remain in your seats because that noise is a
24 little bit too much for me, so I got step out real quick. We
25 will not be long, I promise.

1 RECESS - 2:02 P.M.

2 *****OFF THE RECORD*****

3 ON THE RECORD - 2:05 P.M.

4 THE COURT: All right. And I -- Counsel, I've
5 communicated to the clerk what I told y'all.

6 Are we ready to select?

7 Counsel, are y'all ready to proceed?

8 MR. TISDALE: Ready to select, Your Honor.

9 THE COURT: Madam Clerk?

10 All right. Ladies and gentlemen, we're just doing a
11 little bit of administration work up here, but we will get
12 started here momentarily. Okay? Appreciate your patience.

13 Just to be clear, we agreed no alternate, right?

14 MR. PHILLIPS: No alternates, correct.

15 MR. MORAN: That's right.

16 THE COURT: Mr. Tisdale?

17 MR. TISDALE: What was the question, Your Honor?

18 THE COURT: We don't need an alternate, correct.

19 MR. TISDALE: We decided earlier that I didn't think we
20 did, but I hope it doesn't turn out differently.

21 THE COURT: I'm sure it'll be fine, but I just want to
22 make sure that we confirmed that.

23 JURY SELECTION:

24 THE COURT: Madam Clerk, ready when you are; yes, ma'am.

25 THE CLERK: Okay. We're gonna use the numbers on the

1 left from 1 through 20.

2 And each of you have four strikes. Okay?

3 MR. TISDALE: Thank you.

4 THE CLERK: All right. I am going to start with the
5 plaintiff.

6 MR. TISDALE: Madam Clerk, the plaintiff will strike
7 Juror Number 12.

8 THE COURT: Defendant?

9 MR. MORAN: Defendants will strike Juror Number 20.

10 THE CLERK: Plaintiff?

11 MR. TISDALE: The plaintiff will strike Juror Number 16.

12 THE CLERK: Defendant?

13 MR. MORAN: Defendants will strike Juror Number 9.

14 THE CLERK: Plaintiff?

15 MR. TISDALE: Plaintiffs strike, Your Honor, will be
16 Juror Number 1.

17 THE CLERK: Defendant?

18 MR. MORAN: Defendants will strike Juror Number 6.

19 THE CLERK: Plaintiff?

20 MR. TISDALE: Plaintiff, Madam Clerk, will strike Juror
21 Number 3.

22 THE CLERK: Defendant?

23 MR. MORAN: Defendants will strike Juror Number 13.

24 THE CLERK: Okay. Let me see if I got this right. For
25 confirmation, so the plaintiff, you struck numbers 1, 3, 12,

1 and 16; is that correct?

2 MR. TISDALE: Correct.

3 THE CLERK: Okay.

4 And the defendant, you struck Numbers 6, 9, 13, and 20;
5 is that correct?

6 MR. MORAN: That's correct, yes.

7 THE CLERK: Okay. Okay. So, as I call the following
8 names, bring your belongings and then you come and take a seat
9 in the jury box. Okay?

10 Juror Number 223, Marie Taylor.

11 Juror Number 169, Sharon Newton.

12 Juror Number 215, Elizabeth Smith.

13 Juror Number 185, Deborah Plantz.

14 Juror Number 25, Teri Britt.

15 Juror Number 178, Eric Parker.

16 Juror Number 7, Felicia Avant.

17 Juror Number 78, Sara Edmonds.

18 Juror Number 177, Sonya -- I'll let you tell me your last
19 name.

20 JUROR 177: Papanikolaou.

21 THE CLERK: Okey-doke.

22 MS. Pinckney: No, we struck her.

23 MR. TISDALE: I think that's a mistake, Your Honor.

24 THE CLERK: Okay. Well, that's why I was asking for the
25 confirmation.

1 THE COURT: Hold on. Time out.

2 MR. MORAN: Your Honor, my record indicates that juror
3 should be seated.

4 MR. TISDALE: Your Honor, that was the second strike we
5 took.

6 THE CLERK: Okay. These -- this is what I confirmed for
7 the plaintiff that you had stricken Juror Number 1, Number 3,
8 Number 12, and Number 16. That's what I had and I was asking
9 for confirmation.

10 MR. TISDALE: Well, this is Number 16.

11 THE COURT: Okay. Y'all approach real quick and let's
12 take a look and see.

13 (REPORTER'S NOTE: Bench conference is held off the record in
14 the presence of but outside the hearing of the jury.)

15 THE COURT: We may have a paper issue up here. So, what
16 I'm actually gonna ask you to do is go back to your seats.
17 That doesn't mean you won't get picked again, but for now --
18 ar.

19 All right, ladies and gentlemen, what we're gonna do is
20 take about ten minutes to -- only ten minutes. It's 2:20.
21 Y'all have been sitting now for about 40 minutes. So, why we
22 just take ten minutes. If y'all need to use the restroom,
23 step out, feel free to do so. The lawyers and I will be ready
24 to go at 2:30. I appreciate your patience. I'll see you back
25 in your seats where you are now in ten minutes.

1 Thank you.

2 **RECESS - 2:20 P.M.**

3 *****OFF THE RECORD*****

4 **ON THE RECORD - 2:36 P.M.**

5 THE COURT: Are we ready to proceed, counsel?

6 MR. TISDALE: Yes, sir.

7 MR. MORAN: Yes, Your Honor.

8 THE COURT: All right. Madam Clerk?

9 THE CLERK: All right. We gonna try this again.
10 Plaintiff?

11 MR. TISDALE: The plaintiff, Madam Clerk, the plaintiff
12 strikes Juror Number 12.

13 THE CLERK: Defendant?

14 MR. MORAN: Defendants strike Juror Number 19.

15 THE CLERK: Plaintiff?

16 MR. TISDALE: Madam Clerk, Plaintiff strikes Juror Number
17 15.

18 THE CLERK: Defendant?

19 MR. MORAN: Defendants strike Juror Number 14.

20 THE CLERK: Plaintiff?

21 MR. TISDALE: Madam Clerk, Plaintiff will strike Juror
22 Number 1.

23 THE CLERK: Defendant?

24 MR. MORAN: Defendants strike Juror Number 6.

25 THE CLERK: Plaintiff?

1 MR. TISDALE: Madam Clerk, Plaintiff strikes Juror Number
2 3.

3 THE CLERK: Defendant?

4 MR. MORAN: Defendants strike Juror Number 2.

5 THE CLERK: Okay. For confirmation, the plaintiff struck
6 Numbers 1, 3, 12, and 15; is that correct?

7 MR. TISDALE: Correct.

8 THE CLERK: All right. The defendant struck Numbers 2,
9 6, 14, and 19; is that correct?

10 MR. MORAN: That's correct.

11 THE CLERK: Okay. When I call your name, jurors, come
12 and take a seat in the jury box.

13 Juror Number 169, Sharon Newton.

14 Juror Number 215, Elizabeth Smith.

15 Juror Number 185, Deborah Plantz.

16 Juror Number 25, Teri Britt.

17 Juror Number 165, John -- John Nargi, Nargi.

18 JUROR 165: Nargi.

19 THE CLERK: Juror Number 178, Eric Parker.

20 Juror Number 7, Felicia Avant.

21 Juror Number 53, Aelisha Cooper.

22 Juror Number 80, Barry Elliott.

23 Juror Number 166, Cynthia Neal.

24 Juror Number 228, Octavia Trappier.

25 And Juror Number 56, Cara Crompton.

1 THE COURT: All right. Counsel, any issues with the jury
2 selection before I move on.

3 MR. TISDALE: We have no objection to anything, Your
4 Honor.

5 MR. MORAN: No, Your Honor.

6 BY THE COURT:

7 THE COURT: All right. Well, to some of you, welcome
8 back.

9 Ladies and gentlemen, you've been chosen to be the jury
10 for our trial. Thank you in advance for your willingness to
11 serve. Your willingness to be here is how we dispose of cases
12 in both the criminal and civil justice system, so thank you in
13 advance for the work you're gonna put in.

14 My first order of business is actually gonna be to send
15 you to your jury room where I'll allow you guys to talk to one
16 another and chose a foreperson. When you have done that, send
17 a note through the bailiff, let me know that you have chosen a
18 foreman and we will have you back in here shortly thereafter.

19 All right? Thank you.

20 (REPORTER'S NOTE: Jury exits courtroom @ 2:40 p.m.)

21 THE COURT: Madam Clerk, Counsel, I think the jury -- the
22 balance is free to go at this point, are they not?

23 THE CLERK: The rest of them?

24 THE COURT: Yeah.

25 THE CLERK: Oh, yeah, yeah, not unless y'all got another

1 trial.

2 THE COURT: I'm not aware of one.

3 THE CLERK: All right, then.

4 THE COURT: All right. Ladies and gentlemen, the
5 remaining jury, thank you for being here. You're free to go.
6 You're welcome to stay, but I appreciate your willingness to
7 be here today.

8 Have a nice day.

9 (REPORTER'S NOTE: Remaining Jury Venire released and exits
10 the courtroom @ 2:45 p.m. The following takes place outside
11 the presence of the jury.)

12 THE COURT: Madam Court Reporter, our foreperson will be
13 Juror Number 7, Felicia Avant.

14 Do you need that for a Court's exhibit?

15 THE COURT REPORTER: Yes, sir.

16 THE COURT: Okay. That'll be Court's 1.

17 COURT'S EXHIBIT NUMBER 1

18 MARKED FOR IDENTIFICATION

19 THE COURT: Okay. So, we've got a forelady. Are y'all
20 ready to proceed with opening statements?

21 MR. TISDALE: Be glad to, Your Honor.

22 THE COURT: Mr. Moran? Are you ready to proceed with
23 opening statements?

24 MR. MORAN: Yes, Your Honor, we're ready.

25 THE COURT: All right. So, when I bring them back in ---

1 MR. TISDALE: Do you have any time limit on how long we
2 -- I mean, I don't try to go long, but ---

3 THE COURT: No more than three hours.

4 MR. TISDALE: That'll cover it.

5 THE COURT: Okay. I would think that the issues are what
6 they are and y'all can discuss them in a pretty -- tell what
7 you're gonna show and then go from there. Y'all know how to
8 do that.

9 So, I'll bring them in, I'm gonna have them sworn in.
10 I'll give a short introductory charge about the process of how
11 the trial works, and then I'll turn it over to y'all.

12 Anything else before I bring them in?

13 MR. TISDALE: No, sir.

14 MR. MORAN: No, Your Honor.

15 THE COURT: All right. Let's go.

16 (REPORTER'S NOTE: Jury enters courtroom @ 2:48 p.m.)

17 THE COURT: All right. Ladies and gentlemen, welcome
18 back.

19 Juror Number 7, Ms. Avant. Thank you for agreeing to
20 serve as the foreperson. Appreciate it very much.

21 We're about to begin the trial of the case of Thomas
22 Reown versus Lt. Joshua Smith and the Salvation Army of the
23 Carolinas. Before we begin the process, I have some
24 introductory remarks I need to give you. Plus, at this time
25 -- excuse me. Please be seated. I didn't mean to leave y'all

1 standing.

2 First thing I'm gonna do is have the clerk of court swear
3 you in.

4 (REPORTER'S NOTE: Jury is duly sworn.)

5 CLERK: Thank you. Please be seated.

6 THE COURT: All right. Ladies and gentlemen, before we
7 begin this trial, and I tell you that this trial probably will
8 be different from what you might expect. Many people do not
9 have the chance to attend actual court sessions as you are
10 doing now. You may think from watching television or movies,
11 reading books, or reading books that trials are always full of
12 high drama, intense action, and riveting circumstances. While
13 all these things may be true at times, this trial is not for
14 entertainment. This courtroom is a place of honor dedicated
15 to the protection and preservation of citizens' rights through
16 what many have called the greatest justice system ever
17 created. The attorneys appearing before you are advocates for
18 the parties they represent. But, first and foremost, they are
19 officers of the Court, sworn to uphold the integrity and
20 fairness of our judicial system. You should expect them to be
21 professional, competent, and ethical in the representation of
22 their client's interests. Remember, you've taken an oath to
23 try this case and to reach a fair and impartial verdict.
24 You are also expected to be professional, reasonable, and
25 ethical. Thank you for taking on this important

1 responsibility.

2 Now, the first thing that will occur is that the attorney
3 for the plaintiff, the plaintiff is the person who has brought
4 this action or suit. His attorney will make an opening
5 statement, which will be followed by a similar statement by
6 the attorney for the defendants. These opening statements are
7 not arguments; those arguments will come at the conclusion of
8 the case. The purpose of opening statements is for each party
9 to outline his or her claims, and the evidence which they
10 intend to present in support of these claims. Following the
11 opening statements, each side will present its evidence with
12 the plaintiff once again going first.

13 The evidence may take many forms. It may be testimony,
14 documents, models, photographs, or the like. You should pay
15 close attention to all of the evidence which is presented by
16 each party. You, the jury, are the sole finders of the facts
17 in this case, and no one else will be permitted to weigh the
18 evidence and render a verdict upon the evidence.

19 After all the evidence has been presented, the attorneys
20 will make their closing arguments. Unlike the opening
21 statements, the final remarks will be true arguments; that is
22 each side will emphasize certain portions of the evidence and
23 try to persuade you to agree with their version of the facts.
24 Keep in mind that the opening statements, as well as the
25 closing arguments of the attorneys, do not represent evidence

1 in this case. Give the attorneys your undivided attention,
2 but keep in mind that what they say is not evidence.

3 After all the arguments are finished, I'll explain to you
4 the law which applies to this case. You will then retire to
5 the jury room to consider the facts and the law. And once you
6 have done so, you will return a verdict in favor of one side
7 or the other.

8 During the course of the trial, the plaintiff has the
9 burden of proving his claims. The plaintiff must meet this
10 burden by the greater weight or preponderance of the evidence.
11 Now, what do we mean by greater weight? It can be illustrated
12 by imagining a traditional set of scales. When the case
13 begins, the scales are even. After all the evidence has been
14 presented, if the scales should remain evenly balanced, or if
15 they should tip even slightly in favor of the defendant, the
16 plaintiff would have failed to meet his burden of proof, and
17 your verdict would be for the defendant. If on the other
18 hand, the scales should tip even slightly in favor of the
19 plaintiff, then he will have met his burden of proof, and your
20 verdict would be for the plaintiff.

21 Now, although I'm the only person that can tell you what
22 the law is, you're the only ones that can determine the facts.
23 I do not have the right to indicate how I may feel about the
24 evidence presented, and throughout this trial, my intention
25 will be to act impartially toward each party.

1 Now, from time to time, an attorney will object to some
2 bit of testimony or evidence which the other side is seeking
3 to present. As in sports, business, or any other structured
4 activity, there are certain rules that both sides must obey in
5 presenting evidence. These rules have a definite purpose.
6 They ensure that the information you receive is the most
7 trustworthy and reliable evidence available. An objection is
8 the procedure that is used for an attorney to call a possible
9 violation of the rules to my attention as the Judge of this
10 court. For this reason, you should not hold an attorney's
11 objection against his or her client, nor should you conclude
12 from my ruling on the objection that I favor one side or the
13 other.

14 Finally, I'd ask that you pay close attention to all the
15 evidence presented to you. It is you, the jury, who will
16 determine the facts in this case. As a result, you will have
17 to evaluate the credibility, which means believability of each
18 witness who testifies in this matter. All the evidence in
19 this case will come from this witness stand. It's important
20 you keep focused on the evidence.

21 If during the trial someone needs a break for any reason,
22 just raise your hand and get my attention, and we'll make sure
23 that we take a break. I ordinarily try not to go longer than
24 an hour and a half. It's 3 o'clock now. We're gonna start
25 openings here soon. Obviously, we won't finish the trial

1 today, and we'll try to find a good spot to break for the
2 afternoon.

3 I don't see anyone with any notes. If you do have a
4 notepad with you, please don't take any notes during the
5 trial. I want your complete and undivided attention to be on
6 the witness stand during the sworn testimony from the
7 witnesses who are called, as well as the dialog between the
8 witnesses and the attorneys.

9 Also, I didn't tell you when we took our first break, but
10 when we take breaks at the end of the day, or when you're in
11 the jury room before I've charged you on the law of the case,
12 you are not to discuss the case at any time with one another
13 or with your family members when you go home, or friends.
14 Don't discuss the case verbally, through email. Please don't
15 do any independent research of any of the parties involved in
16 this case. It's vitally important that the only thing or the
17 only evidence or research is from that witness stand from what
18 you hear in this trial. I'll remind you of that again and
19 again, but just please keep that in mind.

20 So, please give your complete and undivided attention to
21 the attorneys as they make their opening statements.

22 Mr. Tisdale?

23 MR. TISDALE: Thank you very much, Your Honor.

24 OPENING BY TISDALE:

25 MR. TISDALE: I want to first of all echo everything the

1 Judge has said about how we are going to conduct this trial.
2 My goal is to try to explain to you in a way that we can all
3 understand it, that the evidence in the case is what you
4 decide the case by, not what I say today, not what anybody
5 else says, but what the testimony is from the witness stand.

6 Now, one thing -- two things I want to tell you real
7 quick before I get into this, is that I forgot when I
8 introduced the people that I forgot to introduce Sarah
9 Pinckney, who is my paralegal who works with me, and you will
10 see her doing a lot of work during the course of the trial.
11 So, I just wanted to let you know who she is.

12 The second thing I want to let you know is, don't --
13 don't freak out when I tell you this, but I asked the Judge a
14 little while ago how long I would be allowed to speak, and he
15 said try to do it within three hours. So, I just wanted to
16 let you know that will not be the case. I'm gonna do it in
17 less than three hours. So, I didn't want you to be alarmed,
18 but I thought -- it was the first time I've had a judge to
19 tell me that I could talk as long as I wanted to, but it's
20 just a side thing that I wanted to share with you.

21 Now, what is the case about? I represent Kaiden, who is
22 12 years old, Kaiden Reown; and I represent his father, Thomas
23 Reown. And we've had to bring this lawsuit against the
24 Salvation Army for events that occurred on the 9th of July,
25 2021, so a little bit over a year ago. And what happened is

1 this, and this again is my saying it, not what the witnesses
2 are gonna say.

3 On that day, Ms. Janet Reown, the grandmother of Kaiden
4 and the mother of Thomas, went to the Salvation Army Store at
5 Litchfield. Now, I want to say at the beginning of this
6 thing, it is quite true that the Salvation Army has done a lot
7 of good for a lot of people, and we are not here to -- to say
8 anything about the Salvation Army, except for this event that
9 we are dealing with here today when these people were injured,
10 and the Salvation Army is a great organization. Mistakes
11 happen, difficulties arise, and that's what happened here,
12 mistakes happened.

13 So, what did happen? What did happen? On that day, in
14 the afternoon, Janet Reown went to the Salvation Army Store at
15 Litchfield, and she said she needed to buy some furniture, and
16 she bought two couches, two couches, furniture, for her house.
17 Now, she couldn't get it home; they were too large to fit into
18 her car. So, she asked the people at the Salvation Army could
19 someone pick it up for her, and they said yes, and they told
20 her where they should pick it up. And there was a loading
21 dock, place where they load stuff in and out of the store, in
22 the back of the store. Said just send whoever you're gonna
23 send, and they can pick it up, we'll have it ready for them to
24 pick up, and that occurred. Thomas Reown, with young Kaiden,
25 age 11 at the time, went and loaded the furniture at the

1 loading dock as they were told to do, and -- behind the store,
2 and they were taking it to where Janet Reown told them to take
3 it. So, it so happens and then I want you to be very careful
4 and listen to my witnesses about this now, not me. We have
5 learned that what happened is that there's an employee of the
6 Salvation Army who was not on site. In fact, he very seldom
7 came to the store, we're told, and but he had some sort of
8 camera in his house where he lived to allow him to see what
9 was happening in the store. This was about 4:00 in the
10 afternoon, but the manager was still in the store and would be
11 there for a while. And he saw on his camera two people
12 loading furniture on a truck -- in a vehicle -- on a truck, I
13 think, and those two people he described when he called the
14 Sheriff's Department, those two people were Thomas Reown and
15 Kaiden Reown; two black males, he described to the County
16 Sheriff, were stealing furniture from the Salvation Army. So,
17 we brought a claim as the Judge has described, for defamation
18 that false statement about committing a crime, accusing them
19 of committing a crime was made, and the law enforcement called
20 and told them to go arrest them. And the sheriff did what he
21 was supposed to do, went and pulled them over into a post
22 office. And we'll figure out exactly where the post office
23 was. Pulled them over, had three or four police cars there,
24 sheriffs' cars, and they were detained. They didn't ever put
25 handcuffs on them, thank the Lord, but they were detained

1 there for committing a crime of grand larceny, stealing
2 furniture from this store. I would submit to you, but you've
3 got to listen to the witnesses for the evidence, there's not
4 one shred of evidence that they ever have stolen anything.

5 So, we're here today to ask you to consider all of the
6 facts that are presented and determine whether or not they
7 were accused of committing a crime they did not commit. That
8 is what the law calls defamation. Their character, this young
9 man -- this is not an argument but a statement -- young man,
10 Kaiden, is going to carry this burden on his shoulders the
11 rest of his life. Pulled over by three or four or five
12 sheriffs' cars and said were you stealing; you've been accused
13 of stealing furniture from the store. They did not steal the
14 furniture from the store.

15 So, what I'm asking you to do is listen to the evidence
16 in this case. Listen, please listen to what the Judge says
17 explaining the law. As he said quite correctly and
18 eloquently, he is in charge of the law; you're in charge of
19 the facts of the case and what happened, and if you -- if you
20 agree with the facts as presented by the witnesses as I tried
21 to describe it truthfully and clearly, then you need to bring
22 back a verdict in favor of these two men in an amount that you
23 think adequately and reasonably compensates them for carrying
24 this burden of being accused of committing this crime that
25 they didn't commit. It's all over town, been in the

1 newspapers, been everywhere, been talked about on the streets.
2 How do they ever get over that? This young man has had to on
3 occasion has had to explain to the school principal what in
4 the world was he doing taking furniture from the Salvation
5 Army. So, that's where we are.

6 And so, I'm asking you simply to find the truth, apply
7 the truth, and do justice in this case. And I want to finally
8 say how much I also, in addition to the Judge, appreciate your
9 assuming this obligation to work out this dispute and a fair
10 resolution for these people who deserve truth and justice.

11 Thank you very much.

12 OPENING BY MORAN:

13 MR. MORAN: Good afternoon, ladies and gentlemen.

14 There was no arrest in this case. No one was ever put in
15 handcuffs. No one was ever put in the back of a police car.
16 No one was ever touched by the police officers. You heard
17 about a stop that Mr. Tisdale just referenced. You're going
18 to learn that that stop lasted around five minutes. During
19 the entirety of that stop, the plaintiffs were allowed to move
20 around freely; they were allowed to use their phones; they
21 were allowed to make calls; they were allowed to take videos.
22 That stop lasted five minutes while the police sorted out
23 whether they purchased the furniture that Mr. Tisdale has
24 referenced.

25 Now, you're gonna see some videos that were taken during

1 that stop, and what you're gonna see in those videos is the
2 plaintiff, Thomas Reown, laughing and joking with the police
3 for almost the entirety of the two-and-a-half-minute video.
4 In that video you're also going to hear Kaiden Reown joking
5 with the police officers. When the police sorted everything
6 out, they established that they did purchase the sofas; they
7 let them go.

8 So, ladies and gentlemen, the one question you'll have to
9 answer in this case was, was it reasonable for Lt. Smith over
10 here, to suspect that a theft was occurring at the Salvation
11 Army Store on July 9th, 2021, and then call that into the
12 police. Now, after you consider all the evidence in this
13 case, the answer to that question will be yes, it was
14 reasonable for him to do that.

15 Now, let's talk about some of the witnesses you're gonna
16 hear from. You're gonna hear from Lt. Smith. His testimony
17 may be the most important throughout the entire case. Now, I
18 say Lt. Smith; he's not a police officer; he's not in the
19 military; but he is a lieutenant. He's a lieutenant in the
20 Salvation Army. What you're gonna learn from him is that he
21 has dedicated his life to service. Salvation Army is a
22 church, whose mission it is to help people who need help the
23 most. Here in Georgetown County, somebody can't afford to pay
24 their utility bill, they can take that bill to Lt. Smith at
25 the Salvation Army, and the Salvation Army will pay it for

1 them. If somebody is down on their luck and cannot afford a
2 shirt, can't afford clothes or furniture, they can go to the
3 Salvation Army and get a voucher and get clothes and furniture
4 that are provided through the Salvation Army store. They get
5 it for free.

6 Now, I mentioned the store, the stores are a very
7 important part of the Salvation Army, and the store at issue
8 in this case is the store in Litchfield. Everyone here has
9 probably driven past a hundred times. You head north from
10 Georgetown and Murrells Inlet, it's on your right just past
11 the old Harris Teeter, just past the light at North
12 Litchfield. It's there in a little strip mall with a vet's
13 office. That's the store that Mr. Tisdale was just
14 referencing, and that store is important to Salvation Army
15 because people come, and they donate items to that store.
16 Those items are then resold at a reasonable price, and those
17 proceeds that are generated from the sale go to funding social
18 programs that the Salvation Army provides and charitable
19 programs that the Salvation Army provides to those that we
20 just talked about.

21 Now, ladies and gentlemen, you're going to learn
22 throughout this case that there has been a long history of
23 thefts that have occurred at that Salvation Army Store, and
24 we'll get to that more in just a minute. But I do want to ask
25 you to do is listen to Lt. Smith's testimony very carefully.

1 He's going to tell you exactly what he saw on July 9th, 2021,
2 through a security camera that he had installed at the store
3 because of that history of thefts. He's going to tell you
4 what he witnessed and why he believed there was a theft
5 occurring, and why he made the decision to call the police.

6 Now, you're going to also hear from another Salvation
7 Army store employee, Ms. Tamika Smalls. She's worked at the
8 Salvation Army for ten years. She's the manager of the store,
9 and she was the manager on duty on July 9th, 2021. Listen
10 carefully to what she has to say. And then, ladies and
11 gentlemen, you're also gonna hear from the Reowns in this
12 case.

13 Now, after hearing all the testimony collectively from
14 all those witnesses, after considering all the evidence that's
15 presented in this case, you're gonna be left with one
16 conclusion that Lt. Smith acted reasonably.

17 Let's talk about specifically why he acted reasonably.
18 Again, I mentioned there is a long history of thefts at the
19 store. What happens is -- you'll hear this from Lt. Smith and
20 Ms. Smalls -- people come and they donate items; maybe it's
21 right around closing time, or sometimes a little bit
22 afterwards, they donate furniture or clothes, anything; they
23 leave it there and sometimes it gets left out. What people do
24 is they come, and they take those items. Remember, those
25 items are either distributed through the Salvation Army Store

1 for free for those in need, or they're sold and the money
2 generated from those sales goes back into the community
3 through social programs. So, Lt. Smith was suspecting a theft
4 at the Salvation Army. He was trying to keep the money going
5 back to the community.

6 Now, you'll hear that on July 9th, 2021, Lt. Smith was at
7 home; it was his day off; it was a Friday, his one day off a
8 week. He preaches on Sunday at the Salvation Army Church,
9 Bible Study on Wednesday; but on Friday, he was at home with
10 his family and was getting ready to go pick up his kids from
11 childcare. It was after 4 o'clock, which is when the store
12 closes, and he gets a notification on his phone. It's a
13 notification from the security camera behind the store; it
14 alerts him that there's motion. So, given the history of
15 thefts, he logs on -- he pulls his phone out -- he can view it
16 right there on his phone. When he logs on, he sees it live,
17 and he sees two individuals he does not know loading furniture
18 into a vehicle he does not recognize. So, what does he do?
19 He looks to see if on the camera footage he can see any
20 Salvation Army Store employees there with the individuals; he
21 does not. He checks the other camera view, which points
22 towards the parking lot to see if he can see any employees
23 cars; they're not there; he can't see them. So, what does he
24 do then? There's a function on the app on his phone when you
25 push a button, it sounds an alarm that goes through the

1 security camera back there. He sounds that alarm and it plays
2 for two to three minutes. When he sounds that, Kaiden Reown
3 looks up. Lt. Smith sees him look up and knows he hears it.
4 Kaiden's father continued to load the furniture. So, what
5 does Lt. Smith do next? He speaks through the microphone on
6 his phone to project it through the camera there at the
7 Salvation Army Store out back. And he says, please stop
8 loading the furniture or the police will be called. He says
9 that three or four times, and when he does, again, Kaiden
10 looks up. Lt. Smith believes he hears him, so Lt. Smith
11 expects them to stop; they do not stop. They keep loading the
12 furniture, and only then does Lt. Smith call the police. We
13 talked about that stop and what happened. It lasted for about
14 five minutes. They were allowed to move around freely until
15 the cops sorted out that able -- they were able to determine
16 that they did purchase the furniture.

17 Now, what you're also gonna learn from this case is that
18 the only people that Lt. Smith reported the theft to were the
19 police. He made the initial call to report the theft. After
20 he made that initial call, he calls the store manager, Ms.
21 Smalls, to inform her of the situation, and then she tells him
22 that in fact earlier in the day Ms. Janet Reown had purchased
23 the sofas. So, Lt. Smith hangs up the phone and immediately
24 calls the police back. He calls the minute, 4:28 p.m., the
25 plaintiffs are being stopped. And he reports, I just called

1 in, I reported a theft, but those sofas were paid for. It was
2 a mishap on our part is what he says. It takes a couple of
3 minutes for the police to work it out, they get over to
4 dispatch, and everything is cleared up, and Thomas and Kaiden
5 are allowed to go.

6 Now, the public did become aware of the events that led
7 up to the stop and of the stop. Ladies and gentlemen, the
8 only people who published and told the public of those events
9 are the Reowns. They posted on their Facebook page about it,
10 on Instagram. They reached out to the news about it to get
11 some publicity.

12 Now, Lt. Smith called in to report what he thought was a
13 theft. The law gives him a right to do that. You, me, anyone
14 in here, can call the police to report what we think is a
15 crime, as long as we have the good faith belief that a crime
16 is occurring. So, after considering all the evidence in this
17 case, and considering the testimony of the witnesses, if you
18 determine that Lt. Smith had a good faith belief that a crime
19 was occurring at the Salvation Army Store on July 9th, 2021,
20 and you have to find for Lt. Smith and the Salvation Army in
21 this case.

22 Ladies and gentlemen, thank you for your time. I look
23 forward to talking with you more throughout this trial. Thank
24 you.

25 THE COURT: All right. The plaintiff ready to call their

1 first witness?

2 MR. TISDALE: We're ready, Your Honor.

3 THE COURT: All right. Proceed.

4 MR. TISDALE: Ms. Janet Reown, please? If you'll come up
5 to right here. They gonna give you an oath?

6 THE COURT: Would you like to go ahead and sit down? Go
7 ahead. All right. She can stay in her seat. All right. All
8 right.

9 CLERK: Place your left hand on the Bible and raise your
10 right hand.

11 JANET REOWN, HAVING BEEN DULY SWORN

12 TESTIFIES AS FOLLOWS:

13 CLERK: Thank you. Please be seated and then state and
14 spell your name for the record. State and spell your name for
15 the record.

16 MR. TISDALE: What's your name, Ms. Reown?

17 MS. REOWN: Janet Reown, spelling is J-A-N-E-T, Reown, R-
18 E-O-W-N.

19 DIRECT EXAMINATION OF JANET REOWN BY MR. TISDALE:

20 Q: Ms. Reown, I'm gonna be asking you some questions. Then
21 when I conclude, one of these gentlemen may have questions for
22 you. Can you hear me all right?

23 A: Yes. Yes, sir.

24 Q: Ms. Reown, you've stated your name as Janet Reown. Where
25 do you live?

1 A: 174 Savannah Street, Georgetown, South Carolina.
2 Q: All right. Speak into that microphone there so it'd be
3 sure to get everything you say down. Say that for us again?
4 A: 174 Savannah Street, Georgetown, South Carolina.
5 Q: How long have you lived in Georgetown?
6 A: I've been in Georgetown all of my life.
7 Q: All your life?
8 A: Yes.
9 Q: And are you employed?
10 A: I am presently employed with the Georgetown -- well, I'm
11 presently employed with Kelly Temporary Services.
12 Q: With what now?
13 A: Kelly Temporary Services.
14 Q: Temporary employment agency?
15 A: Working at the Georgetown School District.
16 Q: All right. Have you ever been employed in law
17 enforcement?
18 A: I have been employed in law enforcement. I worked 13
19 years with the Georgetown County Sheriff's Department.
20 Q: And is that the same department that detained Thomas and
21 Kaiden ---
22 A: It is the same.
23 Q: --- in this incident we ---
24 A: It is the same department.
25 Q: Same department. How long ago did you stop that work?

1 A: I worked there 13 years. So, I believe in '87 was ---
2 Q: A while back?
3 A: Yes, it's been a while back. I'm sorry with the dates.
4 Q: All right. Now, just tell us a little bit about your
5 family; how many children do you have?
6 A: I actually have three children. I have an older son,
7 which my mother raised, and do I need to give his name?
8 Q: You don't need to name him, but you can if you want to?
9 A: His name is Damien.
10 Q: All right.
11 A: And I have Thomas Reown.
12 Q: Is Thomas sitting in here in the courtroom with the pink
13 shirt?
14 A: Thomas is sitting -- with the pink shirt, and Amber Reown
15 with the striped.
16 Q: In the corner over there?
17 A: In the corner, that's my daughter.
18 Q: That's your daughter?
19 A: Yes, sir.
20 Q: How are you related to the young man, Kaiden, with the
21 striped shirt?
22 A: Kaiden Reown is my grandson.
23 Q: Thomas' son?
24 A: Thomas' son, yes.
25 Q: All right. Now, did you have occasion from time to time

1 to do business with the Salvation Army stores?

2 A: Oh, yes. I'm an avid person that goes to the Salvation
3 Army. Actually, I love going to the -- loved going to the
4 Salvation Army.

5 Q: You were an avid customer of that store?

6 A: Yes, sir.

7 Q: And before this day, the 7th of, I mean, July the 9th,
8 2021, had you had occasion to be to the store earlier, I mean
9 before -- at Litchfield?

10 A: Yes, I've been to that store many times.

11 Q: Did you know some of the people who worked in the store
12 and managed it and so forth?

13 A: I know Tamika.

14 Q: Is that Ms. Smalls over here?

15 A: Yeah, Ms. Smalls, I knew her.

16 Q: Maiden name Gardner?

17 A: I actually Tamika more as Tamika, and -- but I do know
18 now that she is a Gardner.

19 Q: Originally a Gardner, now Smalls?

20 A: Originally a Gardner, yes.

21 Q: All right. And on this day that we're talking about, did
22 you make a purchase at the store?

23 A: I did make a purchase at the store. I was at the store
24 earlier, and I made my purchase, and when I saw the couches.

25 Q: When you say earlier, what time about on that date were

1 you at the store to make your purchase?

2 A: I probably got to that store that day around 12:30, 1
3 o'clock, because I spent a lot of time that day.

4 Q: About mid-day?

5 A: Yes.

6 THE COURT: If I could interject here briefly and I -- if
7 you could let her finish her response. I'm just trying to
8 make sure the record is clear for our court reporter. I know
9 sometimes ---

10 MR. TISDALE: I -- I -- Your Honor, I certainly will, and
11 I'm sorry if I had been interrupting her.

12 BY MR. TISDALE:

13 Q: Ms. Reown, we were talking about your presence at the
14 store that day?

15 A: Yes, sir.

16 Q: Let's start over with that question. What time were you
17 at the store to make a purchase?

18 A: It might've been 12:30, 1 o'clock, when I actually got to
19 the store.

20 Q: All right. And did you make a purchase that day?

21 A: I did make a purchase that day.

22 Q: What did you buy?

23 A: I bought two brown couches.

24 Q: Two brown couches?

25 A: Yes.

1 Q: And did you pay for them on that day?

2 A: I did pay for the couches on that day.

3 Q: Do you recall what you paid for them; how much?

4 A: It was three hundred and -- I need to see ---

5 Q: I'm going to show you the receipt right now.

6 A: Yes, please.

7 Q: Is that the receipt for your purchase at the store?

8 A: Yes, sir; that is my receipt.

9 Q: On July the 9th, 2021?

10 A: Yes, sir. I bought other things along with that, that's
11 why I said \$300, but the couch -- one couch was 179.99 and the
12 other couch was 129.99.

13 Q: And that's with a few other articles on this?

14 A: With a few other articles that I bought as well.

15 Q: And the total you paid that day was how much?

16 A: \$303.23.

17 MR. TISDALE: Your Honor, I don't think there's any
18 objection to the exhibit, and I'd just like to have it marked
19 as exhibit number 1?

20 THE COURT: You want to go ahead and have it marked now?

21 MR. TISDALE: Am I allowed to mark it now?

22 THE COURT: Without objection, Plaintiffs' Exhibit 1.

23 MR. MORAN: No objection, Your Honor.

24 MR. TISDALE: No objection.

25 THE COURT: So, Plaintiffs' Exhibit 1 will be admitted

1 into evidence without objection.

2 PLAINTIFFS' EXHIBIT NUMBER 1

3 ADMITTED INTO EVIDENCE

4 MR. TISDALE: Your Honor, I had two copies; I want to -- I
5 will give that to you, if you like, just for your reference?

6 THE COURT: Okay.

7 MR. TISDALE: And I'd like to pass this to the jury to
8 look at?

9 THE COURT: That'd be fine; you can publish it.

10 MR. TISDALE: Madam Forewoman, I'm just going to ask
11 y'all to take a look at that, just so you'll know what it is.

12 BY MR. TISDALE:

13 Q: Now, Ms. Reown, ---

14 THE COURT: When y'all are done, you can just put it on
15 the front of the box and we'll get it back. Thank you.

16 BY MR. TISDALE:

17 Q: Ms. Reown, did you talk with Tamika Smalls that day?

18 A: Yes, I did talk with Tamika Smalls when I bought the
19 couch. She was very busy that day; she had a lot to do in the
20 back, but I was kind of -- I stayed at the store and, you
21 know, was just kind of looking around for other things.

22 That's how I ended up getting other stuff, and I had to wait
23 for my son to come. She told me that he needed to get there
24 before 4 o'clock.

25 Q: Wait a minute now. Say that again, you asked your son to

1 do what?

2 A: I -- I -- she told me that I needed to have him to be at
3 the store before 4 o'clock which was closing, and so I waited
4 in the store talking to different people that were there, and
5 just waited until my son was able to come.

6 Q: What was the reason for your son coming to the store?

7 A: Well, the couches were big, and I drive a Nissan Altima,
8 which they would not fit, and he has a truck, and he was off,
9 so I asked him to come and pick the couches up for me, and I
10 waited for him at the store.

11 Q: Did -- do you know if he in fact went to the store to pick
12 up the couches?

13 A: Yes, he did; I was there. I was at the store when he
14 came.

15 Q: All right. And was any direction given to you all by
16 anyone about where at the store to pick them up?

17 A: When we were in the store, because I was already in there,
18 and Tamika came out and she talked to my son, Thomas, and her
19 and Thomas talked about how to get the couches out of the
20 store. We waited in the store, because she was busy, and
21 there were several, several other people that was checking out
22 right at -- it was at 4 o'clock when they were checking out,
23 and when the last person left, which I remembered so well, he
24 bought a fishing rod. The last guy who walked out bought a
25 fishing rod, and I walked out behind him. Thomas and Kaiden

1 was in the store and they walked out, and they went to the
2 loading dock where they were instructed to do, and I drove my
3 car around to where they were and loaded -- while they were
4 loading up the couches.

5 Q: Did you watch them load the couches or not?

6 A: I did watch them load the couches.

7 Q: And how did they know where to go to load the couches?

8 A: Ms. Smalls told them where to go.

9 Q: Ms. Tamika Smalls?

10 A: Ms. Tamika Smalls told them where to go.

11 Q: All right. What happened after that?

12 A: Well, while they were loading the couches, we heard a
13 noise.

14 Q: You did?

15 A: We heard a noise; it was like noise like -- first, it was
16 like a siren noise, and we know we just walked out of the
17 store. We know that the employees were still in the store.
18 And so, when we heard the noise, then we heard something like
19 someone was talking, but we didn't know what it was or what it
20 said.

21 Q: What kind of sound was it?

22 A: It was -- it was muffled; it was very, very muffled. So,
23 we didn't know what it was, being that we had just left the
24 store. We had just left the inside of the store.

25 Q: All right. And where did you go?

1 A: Around just right around to the side, all the back of it.
2 And they loaded up the couches.
3 Q: They loaded up the couches?
4 A: We don't know what that noise was. We had no idea. We
5 just left the store; we just walked out the door.
6 Q: Was the noise you heard understandable ---
7 A: No.
8 Q: --- to be giving you any kind of signal ---
9 A: No.
10 Q: --- of what you might be communicating?
11 A: No. We just kind of -- when I heard it, I looked myself
12 and I was in my car. I was in my black car, and I heard the
13 noise, because my windows was down, and I heard the muffle,
14 but we didn't know what that was saying. We just waked out of
15 the store, so, you know, we would not think that it would have
16 anything to do with us.
17 Q: Where did you go if you left?
18 A: After I left, I went toward, going toward home. I got no
19 farther than the Sonic Restaurant ---
20 Q: The what?
21 A: The Sonic Restaurant, and that's when my son called me
22 and told me that the police stopped them and said that they
23 stealing furniture from the Salvation Army, and the police --
24 and Thomas asked me, because he didn't have the receipt; I had
25 the receipt. And so the, the police asked me -- I mean,

1 Thomas asked me to get the receipt, and by that time, I turned
2 around and got turned around to go back to the Salvation Army.
3 And I went back to the Salvation Army, and in the midst of
4 going back to the Salvation Army, Thomas said, Momma, they
5 called and said that they have -- that it wasn't stolen. And
6 when I got back to the Salvation Army, the -- Tamika Smalls
7 and the lady who, cashier, she was a white woman cashier, and
8 I don't have her name; I never got her name.

9 Q: That's all right.

10 A: She was -- they were coming out to go home, and that's
11 when I asked Tamika, why would you call the police on us and
12 say that we were stealing furniture, and she -- she told me,
13 she said I did not call; that was my boss, he called. He was
14 looking at a camera. And I told her then, I said, he needed
15 to call us. We need -- I need to talk to him, because this is
16 not right.

17 Q: Did she say who had called the police?

18 A: She said it was her manager, her boss.

19 Q: Did you know the name at that point?

20 A: No, I didn't.

21 Q: All right. So, what did you then do?

22 A: I went home.

23 Q: You went home?

24 A: Uh-huh, (affirmative response).

25 MR. TISDALE: All right. Bear with me just one second,

1 Your Honor.

2 Q: Now, Ms. Reown, there's been -- I have been told about a
3 lot of publication of this allegation of theft against your
4 son and grandson, and that I understand that it has appeared
5 in newspapers in Georgetown?

6 A: Yes.

7 Q: Have you had anything to do with spreading the word about
8 this unfortunate event?

9 A: At the beginning, the unfortunate event did not happen
10 until Lt. Smith called me on the phone.

11 Q: Okay. And what did Lt. Smith say to you?

12 A: He said to me, my manager told me to call you. And I
13 said yes, I said why did you call the police on us, and we
14 paid for our furniture? I was told I needed to catch the
15 thieves first; he called us thieves and he didn't even -- he
16 already knew that -- he already knew, he already knew that we
17 didn't steal the furniture, but he still called us thieves. I
18 needed to catch the thieves first, and I asked him why didn't
19 he call the store. He would've had a better chance calling
20 the store to find out if somebody was stealing quicker than he
21 would've called the police, but he didn't even call the store.
22 And when I asked him, I said you owe me an apology, and he
23 told me, I didn't call to apologize.

24 Q: Now, I'm sorry that this is upsetting to you, Ms. Reown,
25 and would you like a little water or something?

1 A: I'm fine.

2 Q: Are you all right? Ms. Reown, are you okay now?

3 A: I'm fine. I'm gonna be -- I'll be fine.

4 Q: Has anyone at the Salvation Army ever, to this day we're
5 standing here, apologized to your family ---

6 MR. MORAN: Objection, Your Honor.

7 BY MR. TISDALE:

8 Q: --- for accusing ---

9 THE COURT: Mr. Tisdale, Counsel has made an objection.

10 MR. MORAN: Your Honor, that's not relevant at all, and
11 it's prejudicial under 403.

12 MR. TISDALE: Not relevant?

13 THE COURT: Hold on a minute. Hold on.

14 The question was has anyone apologize?

15 MR. TISDALE: I asked her whether or not she had ever
16 gotten an apology from anybody at the Salvation Army for being
17 accused of stealing the furniture.

18 MR. MORAN: Your Honor, that's ---

19 THE COURT: Y'all approach, please.

20 (REPORTER'S NOTE: Bench conference is held off the record in
21 the presence of but outside the hearing of the jury.)

22 BY MR. TISDALE:

23 Q: Ms. Reown, setting aside the issue of any apology, what
24 else did, if anything, did the Salvation Army say to you
25 regarding this matter?

1 A: He started, oh, I'm sorry, Lt. Smith ---

2 Q: Aside from the thing about the apology now, let's leave
3 that aside.

4 A: Okay.

5 Q: Did they say anything else to you?

6 A: He talked to me about other people stealing from other
7 places, which we had nothing to do with.

8 Q: Did -- did your children, your son and grandson, steal
9 anything from the Salvation Army on this day?

10 A: They did not steal anything.

11 Q: Were they accused of stealing by the Salvation Army
12 representative ---

13 MR. MORAN: Objection, Your Honor.

14 THE COURT: What's the objection?

15 MR. MORAN: Hearsay and it's been asked and answered.

16 THE COURT: Your question was were they accused?

17 MR. TISDALE: Were they accused of stealing?

18 THE COURT: Well, it was reported; we know that.

19 MR. TISDALE: Exactly.

20 THE COURT: I didn't ---

21 MR. TISDALE: That's the only point I wanted to make.

22 THE COURT: The question was asked -- the objection was
23 asked and answered. You can ask the question, but I -- move
24 on.

25 MR. TISDALE: All right. I can ask the question?

1 THE COURT: Go ahead. Go ahead.

2 BY MR. TISDALE:

3 Q: Yeah. Ms. Reown, I just want to ask you this -- and I
4 think I remember now despite the interruption. Were your son
5 and grandson accused of stealing a couch that you had bought
6 and paid for from the Salvation Army loading dock?

7 A: Yes, they were when they were called thieves.

8 Q: Called thieves; were they thieves?

9 A: No.

10 MR. TISDALE: Your Honor, I would like to ask Ms. Reown
11 now to answer any questions other counsel has for her.

12 THE COURT: All right. When did we start. Okay. We've
13 got time.

14 All right. We can proceed. Cross examination.

15 Please answer any questions that Mr. Moran has. Thank
16 you.

17 MR. MORAN: Let me slide this back just a bit, Your
18 Honor.

19 THE COURT: Sure.

20 MR. MORAN: I tend to talk loud.

21 CROSS-EXAMINATION OF JANET REOWN BY MR. MORAN:

22 Q: Good afternoon, Ms. Reown. Now, you testified that you
23 were at the Sonic when Thomas called you to tell you he had
24 been pulled over; is that right?

25 A: That's correct.

1 Q: And did you turn around immediately to go back to the
2 Salvation Army Store?

3 A: I turned around immediately.

4 Q: And before you got back to the store, everything had been
5 cleared up with the police; is that right?

6 A: By the time I got close to the Salvation Army, my son
7 said that they called and said that it was -- that they didn't
8 steal anything.

9 Q: So, it was cleared up before you got back, correct?

10 A: Cleared up with me.

11 Q: And with the police?

12 A: Yes, but it was cleared up with me when I turned around
13 to go back to the Salvation Army.

14 Q: Now, you weren't with Lt. Smith on July 9th, 2021,
15 correct?

16 A: I don't even -- I have never seen Lt. Smith until today.

17 THE COURT: Just please allow the attorney to finish the
18 question before you respond. Thank you

19 A: Okay. I'm sorry.

20 BY MR. MORAN:

21 Q: And you don't know what thefts had occurred at the
22 Salvation Army Store in Litchfield prior to July 9th, 2021; is
23 that correct?

24 A: No, no.

25 Q: You did not see the events of July 9th, 2021 unfold on a

1 security camera; is that right?

2 A: That's correct.

3 Q: And you don't know how things appeared to Lt. Smith when
4 he was viewing them on the security camera; is that correct?

5 A: How would I know?

6 Q: You weren't there with Lt. Smith when he sounded the
7 security camera alarm and spoke into the camera microphone; is
8 that right?

9 A: I'm a little bit confused with the questions you're --
10 the question you are asking me, because Lt. Smith was home,
11 and we were at the Salvation Army.

12 Q: My point being, you didn't witness what Lt. Smith
13 witnessed from his point of view, correct?

14 A: How could I witness it and it wasn't a theft?

15 THE COURT: Rephrase your question, Counselor. I
16 understand what you're trying to ask, but I think you need to
17 break it up into one or two pieces.

18 MR. MORAN: Yes, Your Honor.

19 BY MR. MORAN:

20 Q: You weren't with Lt. Smith when he made the decision to
21 call the police; is that right?

22 A: No.

23 Q: You did not see what Lt. Smith saw on the security
24 camera, correct?

25 A: Yes, I did. I saw my son and grandson loading the

1 couches.

2 Q: I understand that, ma'am, but you did not see it through
3 footage on a security camera, correct?

4 A: No, because I was right there.

5 Q: Ms. Reown, you weren't with Thomas and Kaiden when they
6 were stopped on July 9th, 2021; is that right?

7 A: I was not with them, no.

8 Q: And everything you know about that stop came from what
9 Thomas and Kaiden told you; is that right?

10 A: And what I saw on the video.

11 Q: And what you saw on the video they broadcasted on social
12 media; is that right?

13 A: Yes, I didn't know we were keepers of the Salvation Army.

14 Q: And they did broadcast those videos on social media; is
15 that correct?

16 A: They did.

17 Q: You've seen that video that Thomas broadcasted on
18 Facebook live?

19 A: Of course, I did.

20 Q: And in that video, Thomas and Kaiden were joking with the
21 police officers; is that right?

22 A: Yes, because Thomas was trying to make sure Kaiden was
23 okay, because he was very upset.

24 Q: They were both walking around freely on that video; is
25 that correct?

1 A: They were walking around, but they still were there with
2 the police officers.

3 Q: And in that video, Kaiden was joking with the police,
4 too; is that right?

5 A: That's when his dad tried to make sure that everything
6 was okay and tried to calm him down so he could be all right.

7 Q: Ms. Reown, Kaiden himself joked with the police, correct?

8 A: Yes, after he got calmed down.

9 Q: And so, during that two-and-a-half-minute video, Kaiden
10 was calm, correct?

11 A: Yes, part of it, but the other part of it is when he was
12 crying, and he was afraid that his dad was going to get
13 arrested, and he was very scared. He was very scared. You
14 know what it's like when a black man gets stopped by the
15 police? It's not easy; we don't know.

16 MR. MORAN: Your Honor, I move to strike.

17 THE COURT: Well, I'm not gonna -- but -- ladies and
18 gentlemen, we're just gonna take a short break. Take them
19 back to the jury room. We've been going about an hour
20 anyway. So, go refresh yourselves, and I'll get you back in
21 here in a few minutes. Thank you.

22 Take a short break. Please don't discuss the case.

23 Thank you.

24 (REPORTER'S NOTE: Jury exits courtroom @ 3:44 p.m. The
25 following takes place outside the presence of the jury.)

1 THE COURT: Okay. There was an objection, a move to
2 strike, based on the witness's testimony, which was elicited
3 on cross-examination, which is a little bit different than
4 direct, in my opinion. Obviously, you know, emotions do run
5 high, and -- and I understand that, or at least I try to
6 understand that, but testimony in the trial can't be directed
7 -- can't be elicited from a witness or directed by a witness
8 at the jury, so that would -- I'll use the word -- inflame or
9 incite the jury outside the issues of the case, this
10 defamation case. So, I would just ask that further testimony
11 not go down that line, but I'm not striking it from the
12 record, but please try to insure the testimony doesn't focus
13 on that aspect. Okay? Does that make sense; am I making any
14 sense?

15 MR. PHILLIPS: Yes, Your Honor

16 THE COURT: And I'm trying not to talk in legal language
17 here entirely, but I understand emotions and tensions can be
18 very high right now, so that's -- you're a human being; I get
19 it.

20 But do you need a short break; do you need ---

21 A: No, I want to get this over with.

22 THE COURT: I know you do. I'm not trying to rush it, I
23 just want to make sure you don't need any water or anything
24 like that, right?

25 A: No. I take blood pressure medicine, so ---

1 MR. TISDALE: Would she like water?

2 THE COURT: Would you like some cold water?

3 A: No, no water, because I take blood pressure medicine.

4 THE COURT: Well, since I sent the jury away, I'm gonna
5 take a very short recess, but I offered it to somebody else,
6 but actually, you can take one ---

7 Let's take five. We'll get started about -- you know, if
8 you need to get up and move around, that's fine, just don't
9 discuss your testimony with anyone in the courtroom. Okay?
10 Does that make sense?

11 A: All right. Yeah. I'm coming back up here?

12 THE COURT: Well, you don't have to move; you can stay
13 there. I just say if you just want to stand up and just
14 stretch that's fine, but if anyone comes up here, you just
15 don't discuss your testimony. Okay?

16 A: Yes, sir.

17 MR. MORAN: We'll be back in five, Your Honor.

18 **RECESS - 3:47 P.M.**

19 *****OFF THE RECORD*****

20 **ON THE RECORD - 3:52 P.M.**

21 THE COURT: All right. Let's bring them back in, please.

22 Thank you.

23 (REPORTER'S NOTE: Jury enters courtroom @ 3:52 P.M.)

24 THE COURT: All right. Ladies and gentlemen, welcome
25 back. I hope you've had a chance to refresh yourselves. We

1 will just continue where we left off in the defendants' cross-
2 examination.

3 Go ahead, counsel.

4 CONTINUATION OF CROSS-EXAMINATION OF JANET REOWN BY MR. MORAN:

5 Q: Now, Ms. Reown, you recall testifying about a call that
6 you had with Lt. Smith on the evening of July 9th, 2021?

7 A: Repeat that, please?

8 Q: Do you recall testifying about a call that you had with
9 Lt. Smith on July 9th, 2021?

10 A: Yes, sir.

11 Q: At some point during that call, your son, Thomas, got on
12 the phone, correct?

13 A: That is correct.

14 Q: And when your son, Thomas, got on the phone, he started
15 yelling at Lt. Smith; is that right?

16 A: My son was talking loud to him because of his response to
17 me when I asked him to -- that he needed to apologize, and he
18 refused to do that. He said I did not call to apologize.

19 Q: So, Thomas was raising his voice at Lt. Smith; is that
20 correct?

21 A: Yeah, because he upset his mother.

22 Q: And he was using profanity with him, too; is that right?

23 A: Everybody uses profanity.

24 Q: But specifically on that call, your son used profanity?

25 A: He might've used profanity on that call.

1 COURT REPORTER: Ma'am, could I get you to slide over
2 that way just a little bit so I can see you. Thank you.

3 BY MR. MORAN:

4 Q: Now, Ms. Reown, Kaiden was anxious for a day or two after
5 July 9th, 2021, but by the next week, he was fine; is that
6 right?

7 A: He was fine. Just you have to realize also that his
8 grandmother is a therapist, and she worked with him to make
9 sure that he was okay, as well as his father did, not as a
10 therapist, as a father, to make sure that Kaiden was okay at
11 the time of the incident.

12 Q: And he is okay, correct?

13 A: He is better, but he does talk about it a little.

14 Q: Your son, Thomas, he's doing fine today, too; is that
15 right?

16 A: You would have to ask Thomas exactly how he's doing,
17 because I can't answer that.

18 Q: Ms. Reown, I do not have any further questions for you.
19 Thank you for your time.

20 THE COURT: Redirect?

21 MR. TISDALE: I don't have anything else. No, Your
22 Honor.

23 THE COURT: All right. The witness may step down. Thank
24 you.

25 Counsel, if y'all could just approach just for some

1 housekeeping real quick?

2 (REPORTER'S NOTE: Bench conference is held off the
3 record in the presence of but outside the hearing of the
4 jury.)

5 THE COURT: I will just say this is the finest noise
6 maker I've seen of any courthouse. I will leave it at that.
7 This is excellent; this thing works. All right.

8 And, ladies and gentlemen, just for your information,
9 when I bring the lawyers up here, I'm not trying to hide
10 anything from you. We're just trying to talk about scheduling
11 and witnesses; and just when we talk, it's best not to let
12 y'all hear what we're talking about, but we're -- just be
13 advised, we're always trying to be as efficient as possible
14 and very appreciative of your service.

15 All right. Next witness.

16 MR. TISDALE: Your Honor, may we call the next witness?

17 THE COURT: Yes, sir.

18 MR. TISDALE: Ms. Smalls, would you come up to the stand,
19 please.

20 Do you mind if I move this around a little bit?

21 TAMIKA SMALLS, HAVING BEEN DULY SWORN

22 TESTIFIES AS FOLLOWS:

23 CLERK: Thank you. Please be seated and then state and
24 spell your name for the record.

25 MS. SMALLS: Tamika Smalls. That's T-A-M-I-K-A; Smalls,

1 S-M-A-L-L-S.

2 DIRECT EXAMINATION OF TAMIKA SMALLS BY MR. TISDALE:

3 Q: Ms. Smalls, I think we met briefly before, but I'm Tom
4 Tisdale, and I represent the Reown family, and so I appreciate
5 your coming here to testify today. If you don't understand
6 anything I ask, just let me know, and I'll try to clarify.
7 Okay?

8 A: Okay.

9 Q: And you might want to speak a little closer into the mic.
10 Ms. Smalls, what is your position at the Salvation Army
11 Litchfield store?

12 A: Store manager.

13 Q: How long have you been manager?

14 A: Five years.

15 Q: How long have you worked for Salvation Army altogether?

16 A: Ten years.

17 Q: Ten years. Now, were you at the store on -- when this
18 incident occurred on July the 9th, 2021?

19 A: I was.

20 Q: I think that's the right date I gave; is that your
21 recollection of when this incident occurred?

22 A: Yes.

23 Q: All right. And do you recall Ms. Janet Reown coming in
24 that day to make a purchase of furniture?

25 A: I do.

1 Q: You do. And I can show you this, it's the court -- it's
2 Exhibit Number 1 in evidence. And I just ask you, is that --
3 is that document I just handed you the receipt that the people
4 at the store where you are manager gave Ms. Reown for buying
5 the furniture that day?

6 A: Yes.

7 Q: And does it reflect, or do you recall that she, along
8 with other smaller items, bought two couches?

9 A: Yes.

10 Q: All right. You can keep that in case somebody needs to
11 refer to it. Did -- did you have a conversation with anybody
12 in the Reown family that day about how they could pick up the
13 furniture and take it to wherever they wanted to, like their
14 house?

15 A: Yes.

16 Q: Who did you talk with?

17 A: Ms. Janet.

18 Q: Who?

19 A: Ms. Janet.

20 Q: Janet, who just testified?

21 A: Uh-huh, (affirmative response); yes.

22 Q: And what did you tell or anyone else really, as to what
23 they could do to pick up the furniture that they had
24 purchased?

25 A: She had mentioned that, you know, her son was coming from

1 Georgetown to pick up the sofas, and I said that's fine long
2 as he's there before 4 o'clock.

3 Q: Thomas?

4 A: Yes, Thomas.

5 Q: Okay.

6 A: Uh-huh, (affirmative response).

7 Q: And did in fact he come to pick up the couches?

8 A: He did.

9 Q: All right. And did -- did he -- do you remember his son,
10 Kaiden, being with him?

11 A: Yes.

12 Q: And did they take the couches away from the store?

13 A: They did.

14 Q: In their vehicle, their truck?

15 A: Yes.

16 Q: All right. And did -- do you remember when they left the
17 store with the couches?

18 A: I do.

19 Q: Okay. And after that, after they left with the couches,
20 did Mr. Smith call you to ask you for the first time whether
21 or not those couches had been purchased and paid for?

22 A: Yes; he did call.

23 Q: After they had paid for the couches and left the store
24 with the couches?

25 A: Yes.

1 Q: That was the first time that anybody had ever asked you
2 before calling the police on them that they had -- whether
3 they had paid for the couches; is that right?

4 A: Yes.

5 Q: Now, I'll ask you this question, Ms. -- Ms. Smalls. When
6 a -- when a customer comes to the store close to closing, as
7 in this case, say at 3:45 in the afternoon, would you stay
8 open while they load their car and leave with the furniture?

9 A: Yes.

10 Q: Thank you.

11 MR. TISDALE: Your Honor, I have no further questions.

12 THE COURT: All right. Cross-examination?

13 CROSS-EXAMINATION OF TAMIKA SMALLS BY MR. MORAN:

14 Q: Ms. Smalls, a lot of thefts have occurred at the
15 Litchfield Salvation Army Store; is that right?

16 A: That's correct.

17 Q: People takes all -- people take all types of things; is
18 that right?

19 A: Yes.

20 Q: They take furniture, correct?

21 A: Uh-huh, (affirmative response). Yes, furniture, clothes,
22 shoes, purses; you name it, they'll take it.

23 Q: And you've witnessed people take these items; is that
24 right?

25 A: Right.

1 Q: Where do they take them from at the store?

2 A: They'll take off the front porch, off the back porch, out
3 the trash can.

4 Q: When you say back porch, back loading dock?

5 A: Yes.

6 Q: Have the police been called to the store before?

7 A: Yeah, it has been. Uh-huh, (affirmative response).

8 Q: There's a vet that worked next door, and she's called the
9 police on several occasions?

10 A: Yes, she has called the police on several occasions after
11 hours.

12 THE COURT: Y'all try to ask the question and try not to
13 talk over each other, please.

14 MR. MORAN: Yes, Your Honor, my apologies.

15 BY MR. MORAN:

16 Q: Now, on July 9th, 2021, did you hear an alarm go off at
17 the store?

18 A: I heard a noise when we was doing paperwork, yes.

19 Q: And what time was that approximately?

20 A: Like about 4:10.

21 Q: And there weren't any customers left in the store at that
22 time, were there?

23 A: No, not at that time.

24 Q: You heard that alarm go off for two or three minutes; is
25 that right?

1 A: I did.

2 Q: And you walked out to the front of the store to see what
3 was happening, correct?

4 A: Correct.

5 Q: And you saw Mr. Reown pulling off with the couches at
6 that point in time?

7 A: Yes, he was pulling off.

8 Q: Which would've been after 4:10, correct?

9 A: Yes.

10 Q: Now, you mentioned that Lt. Smith called, he called your
11 cell phone, not the store land line; is that right?

12 A: Correct.

13 Q: And when you told him that somebody had in fact purchased
14 the couches earlier that day, he immediately hung up and
15 called the police; is that right?

16 A: He did.

17 Q: I don't have any further questions, Ms. Smalls, thank you
18 very much.

19 THE COURT: Any redirect?

20 MR. TISDALE: Just one question, Your Honor, I think.

21 THE COURT: Very well.

22 REDIRECT EXAMINATION OF TAMKIKA SMALLS BY MR. TISDALE:

23 Q: Ms. Smalls, just one follow-up. Did -- was Mr. Smith's
24 call to you to find out whether or not anyone had stolen
25 furniture -- two males had stolen furniture off of the loading

1 dock; did that call come after Mr. Reown, Thomas, had driven
2 off with what they had purchased?

3 A: Yes.

4 Q: Thank you. Thank you, Your Honor.

5 THE COURT: Any recross?

6 MR. MORAN: Very brief, Your Honor.

7 RECROSS EXAMINATION OF TAMIKA SMALLS BY MR. MORAN:

8 Q: Now, Ms. Smalls, when you were sitting here listening to
9 the testimony of Ms. Reown, you heard her testify about a
10 Sonic located in Pawleys Island; is that right?

11 A: Yes.

12 Q: What's that about, less than a five-minute drive from the
13 Salvation Army Store in Litchfield?

14 A: Correct.

15 Q: No further questions.

16 THE COURT: All right. Witness may step down. Counsel?

17 MR. TISDALE: You want us up there?

18 THE COURT: Yeah, just briefly, very quick. Thank you.

19 REPORTER'S NOTE: (Bench conference with counsel).

20 BY THE COURT:

21 THE COURT: All right. Ladies and gentlemen, we're at
22 the point in the day where the state is calling another
23 witness and running over, and we'll just go ahead and break a
24 little early. But what I'd like you to do is be in your jury
25 room tomorrow morning at 9:15, and we will start at 9:30

1 tomorrow morning with continuing testimony in the plaintiffs'
2 case in chief.

3 When you leave here and when you go to the jury room,
4 again, please don't discuss the case, don't do any independent
5 research about any of the parties involved in this case. All
6 the research you're gonna do is from that jury stand -- from
7 the jury box and listening to the witness stand. So, we will
8 see you tomorrow morning. Have a good evening. Come back
9 tomorrow refreshed and ready to listen to more testimony.
10 Any questions for the Clerk of Court or me before y'all
11 depart?

12 (REPORTER'S NOTE: No response.)

13 THE COURT: Just making sure.

14 All right. Y'all have a nice evening. Please don't
15 discuss the case.

16 (REPORTER'S NOTE: Jury exits courtroom @ 4:09 p.m.)

17 MR. TISDALE: Can I just ask a procedural thing. Can we
18 leave all our papers in here on the table.

19 THE COURT: Yes, sir.

20 Okay. Counsel, anything else for the record today?

21 MR. TISDALE: None from the plaintiff.

22 MR. MORAN: I don't think so, Your Honor.

23 THE COURT: All right. So, as I told the jury to be here
24 at 9:15, if something happens and the traffic pattern from
25 Charleston, try to give us a heads up.

1 MR. MORAN: I do have one matter, Your Honor. I think
2 this is the court reporter's copy.

3 MR. TISDALE: It is.

4 THE COURT: I'll be here probably by 8:30 if y'all need
5 me beforehand.

6 MR. MORAN: We'll let you know if we need anything.

7 THE COURT: All right. Court will be in recess until
8 tomorrow morning.

9 Thank you.

10 **RECESS - 4:11 P.M. - END OF DAY 1**

11 *******OFF THE RECORD*******

12 **OCTOBER 11, 2022 - DAY 2**

13 **ON THE RECORD - 9:41 A.M.**

14 (REPORTER'S NOTE: The following takes place outside the
15 presence of the jury.)

16 THE COURT: Okay. I came in this morning and spoke with
17 the lawyers. We got some videos we're gonna present today to
18 the jury. Plaintiffs have Apple, Defendants have a PC, and
19 we're living out a microcosm of the tech wars as we live here
20 today, so... But the defense is willing to let play some of
21 the stipulated videos or maybe all of the stipulated videos
22 through their -- I'll call it a Microsoft computer, which will
23 then be repeated onto the screens in front of the jurors in
24 the jury box, which will -- that helps things run efficiently.

25 So, anything before we call in the jury here?

1 MR. TISDALE: Not from the plaintiffs, Your Honor.

2 MR. MORAN: No, Your Honor, not this morning.

3 THE COURT: All right. Let's bring them in. Thanks.

4 (REPORTER'S NOTE: Jury enters courtroom @ 9:44 a.m.)

5 THE COURT: Please be seated.

6 All right. Ladies and gentlemen of the jury, welcome
7 back. I hope y'all had a nice evening. I appreciate your
8 being on time this morning.

9 We'll just pick up where we left off yesterday with the
10 next witness in the plaintiffs' case in chief.

11 Mr. Tisdale?

12 MR. TISDALE: Thank you, Your Honor.

13 Your Honor, the plaintiff will call Joshua Smith to the
14 witness stand, please.

15 THE COURT: Very well.

16 LT. JOSHUA SMITH, HAVING BEEN DULY
17 SWORN, TESTIFIED AS FOLLOWS:

18 THE CLERK: Thank you. Please be seated and state and
19 spell your name for the record, please.

20 MR. SMITH: My name is Lt. Joshua Smith, and that's J-O-
21 S-H-U-A, S-M-I-T-H.

22 DIRECT EXAMINATION LT. JOSHUA SMITH BY TISDALE:

23 Q: Thank you, Mr. Smith. Can you hear me okay now?

24 A: Yes, sir.

25 Q: All right. If the jury can't hear him, please let the

1 Judge know and we'll try to get him to prime it up a little
2 bit.

3 Mr. Smith, where do you live?

4 A: I currently live in Pawleys Island.

5 Q: Would you give us that address, please?

6 A: 221 Hagley Drive in Pawleys Island.

7 Q: And I gather, based upon your presence here today,
8 dressed as you are, that you're an employee of the Salvation
9 Army?

10 A: Yes, sir.

11 Q: What is your role in their employment?

12 A: I'm a corps officer.

13 Q: Corps, C-O-R-P-S?

14 A: C-O-R-P-S.

15 Q: Officer?

16 A: Yes, sir.

17 Q: And what are the responsibilities of a corps officer, if
18 you would tell the jury, please?

19 A: Well, I'm a pastor. We have services on Sunday morning
20 that I oversee and preach at. I also help with our social
21 service programs such as utility assistance, and I also help
22 on our food pantry and help fill food for people who come in
23 to get food. And I also oversee the two stores that we have
24 here in the area. What are the two stores in the area?

25 A: One is in Georgetown, and the other is in the Litchfield

1 Community.

2 Q: And is it the Litchfield store that we have being
3 considered in this matter today?

4 A: Yes, sir.

5 Q: Litchfield?

6 A: Yes, sir.

7 Q: Let me ask you a little bit about your background just so
8 we'll know the basis for your doing what you do. Where did
9 you grow up?

10 A: I grew up in Waco, Texas.

11 Q: Waco, Texas?

12 A: Yes, sir.

13 Q: And did you go to -- attend school there?

14 A: Yes, sir.

15 Q: What school?

16 A: I went to Waco High.

17 Q: And after that, did you seek advance -- other education?

18 A: Yes, sir. I went to McClennan Community College and then
19 ---

20 Q: McClennan?

21 A: McClennan Community College and then to Tarleton State
22 University.

23 Q: Charleston State University?

24 A: Tarleton, T-A-R-L-E-T-O-N.

25 Q: Okay. And how long have you been employed by the

1 Salvation Army?

2 A: As an officer, I'm in my fifth year; but prior to being
3 an officer, I had other employment working with youth and
4 other areas with the Salvation Army.

5 Q: Okay. Where is your office located?

6 A: It's in Georgetown at 2401 Anthuan Mayback Road, across
7 from Georgetown High.

8 Q: All right. And who supervises you, if anyone, in the
9 Salvation Army?

10 A: Major Gene Hoag and Lieutenant Colonel Ronnie Raymer at
11 Divisional Headquarters in Charlotte.

12 Q: Okay. And how often do you keep office hours, come to
13 your office that you described just now?

14 A: I'm sorry. Can you ---

15 Q: Do you have regular office hours every day?

16 A: Yes, sir. Our hours are Monday through Thursday, 9:00
17 a.m. to 4:00 p.m.

18 Q: All right. And that's -- you attend that at your office
19 that you gave us the address for a minute ago?

20 A: Yes, sir. Unless I have to go and help out at one of our
21 stores or I have to go into the community to help out for
22 something.

23 Q: All right. Mr. Smith, do you have anything to do with
24 security issues?

25 A: Yes, sir. I monitor the security cameras. And also

1 whenever there is an alarm with our security system, I'm the
2 person that gets called.

3 Q: Okay. Coming to what we're about here today, were you
4 monitoring your security devices on July the 9th, 2021?

5 A: Can you explain, sir?

6 Q: Well, what we have been told is that you ---

7 MR. MORAN: Objection, Your Honor.

8 THE COURT: I think you can rephrase the question, Mr.
9 Tisdale.

10 MR. TISDALE: I will. Thank you, Your Honor.

11 BY MR. TISDALE:

12 Q: Bringing your attention to the date of July 9th, 2021.

13 A: Yes, sir.

14 Q: Do you understand that that's -- an incident occurred at
15 the Litchfield store that we are here today considering?

16 A: Yes, sir.

17 Q: And do you have access to a security camera that would
18 permit you to observe what happened on this occasion at the
19 Litchfield store?

20 A: Yes, sir.

21 Q: Okay. And where were you when you were monitoring that
22 camera showing what might have been occurring at the
23 Litchfield store; where were you?

24 A: I was at home.

25 Q: At home?

1 A: Yes, sir.

2 Q: And do you often -- I mean, is it a regular habit of
3 yours to view what's happening at various stores or this
4 particular store from your home?

5 A: When I receive a notification from the camera; yes, sir.

6 Q: Notification from the camera?

7 A: Yes, sir.

8 Q: But that's not from a person, is it?

9 A: No, sir.

10 Q: Okay. So, what I would ask you to if you will is tell
11 the Judge and the jury what you observed on your camera from
12 home that you later reported to law enforcement, if you did,
13 on that date, July the 9th, 2021.

14 A: On that day, after 4:00 p.m., I received a notification
15 on my phone detecting movement at the back dock from the store
16 in Litchfield.

17 Q: The loading dock?

18 A: Yes, sir.

19 Q: All right.

20 A: Upon receiving that notification, I logged onto the
21 camera to see what it was. When I logged onto the camera, I
22 saw that there was a truck with two individuals backed up to
23 the loading dock loading furniture after hours.

24 Q: You mean after 4 o'clock?

25 A: Yes, sir.

1 Q: Okay. And did you contact anyone in the store then at
2 that point to see if they had purchased the furniture that you
3 saw them loading?
4 A: No, sir. It was after 4 o'clock and the store was
5 closed.
6 Q: Did you later call Ms. Smalls at the store and ask had
7 these people purchased the furniture?
8 A: No, sir. I did not call Ms. Smalls at the store.
9 Q: Okay. Who called you? Did she call you?
10 A: No, sir.
11 Q: Did anyone call you and say did these people had not
12 stolen the furniture?
13 A: No, sir.
14 Q: How did you find out they hadn't stolen the furniture?
15 A: I called Ms. Smalls on her cellphone.
16 Q: Okay. So, you called Ms. Smalls on the cellphone?
17 A: Yes, sir.
18 Q: Her cellphone?
19 A: Yes, sir.
20 Q: And did you tell her that you had observed people
21 stealing furniture from the loading dock?
22 A: I shared with her that I had reported a possible theft,
23 and that's common practice for me to do with my store managers
24 when there's an incident after hours.
25 Q: And what -- and did you ask her whether or not the

1 furniture had been stolen?

2 A: No, she -- when I told her about the incident, she shared
3 with me that they had purchased the furniture.

4 Q: And there had been no theft of furniture by these people
5 sitting back there; is that correct?

6 A: Yes, sir.

7 Q: All right. Now, how long after you observed these people
8 loading furniture at the loading dock at Litchfield did you
9 call a law enforcement department?

10 A: Well, I allowed the siren to go off for about three
11 minutes, and then I attempted to speak to them through the
12 camera stating, please return the furniture to the dock or I'm
13 going to call the authorities four to five different times.
14 So, I would say five to six minutes before I called the
15 authorities.

16 Q: And who did you call?

17 A: The sheriff's department.

18 Q: Georgetown County?

19 A: Yes, sir.

20 Q: Now, I'm going to show you an exhibit that everybody has
21 agreed to, and it -- and it has at the top just for
22 identification, 9912914792 Ocean Highway Shoplift, 070921,
23 phone. I would like -- this has been given to us and I would
24 like you to look at -- that's a transcript that I have been
25 told is a transcript of the telephone call you made to the

1 sheriff's department. Would you look at it and see if you can
2 confirm that?

3 A: Yes, sir. I believe this is correct.

4 Q: Well, look at now. I want you to be sure because I'm
5 gonna ask the Court to make it an exhibit.

6 It's been agreed to, Your Honor, by the parties.

7 A: Yes, sir.

8 Q: Is that an accurate transcription of the telephone call
9 you made from your house to the sheriff's department?

10 A: Yes, sir.

11 Q: Okay.

12 MR. TISDALE: Your Honor, I'd like to offer this as the
13 next exhibit.

14 THE COURT: Without objection?

15 MR. MORAN: No objection, Your Honor.

16 THE COURT: All right. That'll be Plaintiffs' Exhibit 2

17 ---

18 THE COURT REPORTER: Yes, sir.

19 THE COURT: --- will be admitted into evidence without
20 objection. Thank you.

21 PLAINTIFFS' EXHIBIT NUMBER 2

22 ADMITTED INTO EVIDENCE

23 MR. TISDALE: May I pass it to the jury for their
24 observation?

25 THE COURT: May I see it? I haven't seen it myself.

1 MR. TISDALE: Certainly. We've got some more copies if
2 you need it.

3 THE COURT: Okay. Yeah, I'd like a copy if -- not this
4 minute, but maybe later.

5 MR. TISDALE: We'll give you one. And may I pass this to
6 the jury?

7 THE COURT: Sure, but I just want to make sure the jury
8 is not reading that as opposed to listening to the witness.

9 MR. TISDALE: Well, we'll give them a minute to pass it
10 around, if I might.

11 MR. MORAN: Your Honor, we'd ask that they wait so they
12 can hear the witness testify.

13 THE COURT: Your Honor, let me ask you this. Come up
14 real quick.

15 MR. TISDALE: Excuse me. I'll be back, I hope.

16 THE COURT: You'll be back.

17 (REPORTER'S NOTE: Bench conference is held off the record in
18 the presence of but outside the hearing of the jury.)

19 MR. TISDALE: All right. The Judge has suggested that we
20 play the audio of this transcription, but it'll be available
21 later for you to look at if you need to check the accuracy of
22 it.

23 Can we do that, Sarah?

24 And we're gonna -- can we -- do we need to put it over
25 there so they can hear.

1 May we do that, Judge, put it on the ---

2 MR. MORAN: Yeah, or we can play it for you. We've got
3 it right here.

4 MR. TISDALE: Go ahead and play it.

5 THE COURT: All right. Just to be clear now, I know
6 y'all know what this is, but -- so, you're now offering what?

7 MR. TISDALE: Your Honor, this is Exhibit 2, and it is a
8 transcription of the telephone report that Officer Smith made
9 to the sheriff's department on July the 9th, 2021.

10 THE COURT: So, now you're proposing what would be played
11 as Exhibit 3, which would be the audio of that call; is that
12 correct?

13 MR. TISDALE: That is correct, Your Honor. The audio you
14 will hear will be marked and listed as Exhibit 3 in this
15 proceeding.

16 MR. MORAN: We'll stipulate to that without objection,
17 Your Honor.

18 MR. TISDALE: No objection.

19 THE COURT: All right. So, Plaintiffs' Exhibit 3 will be
20 admitted into evidence and you can play it at your ---

21 MR. MORAN: This is a 4:18 p.m. audio call.

22 PLAINTIFFS' EXHIBIT NUMBER 3

23 ADMITTED INTO EVIDENCE

24 (REPORTER'S NOTE: Plaintiffs' Exhibit 3 published for the
25 jury. Audio not transcribed herein.)

1 THE COURT: Okay.

2 MR. TISDALE: May I proceed?

3 THE COURT: Yes, sir.

4 MR. TISDALE: Thank you, Your Honor.

5 BY MR. TISDALE:

6 Q: Now, Mr. Smith, who were you talking with in the audio
7 recording the jury and the Court just heard?

8 A: That was myself talking with the dispatcher.

9 Q: Dispatcher where?

10 A: With the Georgetown County Sheriff's Office.

11 Q: All right. And did there come a time that you found out
12 that these folks had not stolen that furniture?

13 A: Not till after the call had ended.

14 Q: Huh?

15 A: Not till after the call had ended.

16 Q: This call that is?

17 A: Yes, sir.

18 Q: Yeah. Well, that's what I'm saying. After that, did you
19 make a discovery that these people had stolen nothing?

20 A: Yes, sir.

21 Q: All right. And how did you find that out?

22 A: When I called Ms. Smalls on her cellphone.

23 Q: That's Tamika who testified yesterday

24 A: Yes, sir.

25 Q: And when did you call her on her cellphone?

1 A: After I ended the call with the sheriff's office, my wife
2 and I got in our vehicle and, after we got on the road, I
3 called Ms. Smalls.
4 Q: And what did you tell Ms. Smalls?
5 A: I told her what I saw in the video clip and that I had
6 called the sheriff's office.
7 Q: And did you tell her what you had told the sheriff's
8 office?
9 A: I did.
10 Q: And what did you tell her?
11 A: I told her that we saw two individuals that looked to be
12 stealing furniture from the dock.
13 Q: And did you tell her you had called the sheriff's office?
14 A: Yes, sir
15 Q: And did you tell the sheriff's office that these people
16 had stolen the furniture?
17 A: I told them that I saw two individuals that looked to be
18 stealing furniture.
19 Q: Okay. And that was your opinion of the matter?
20 A: Yes, sir. Based on what I saw.
21 Q: All right. And was a video made at the loading dock when
22 the -- that you have testified about and you were watching
23 these people steal the furniture, was a video made of that
24 event?
25 A: The cameras ---

1 Q: A filming?

2 A: The cameras hold the clip for 30 days.

3 Q: Wait a minute. First of all, I asked you did you take a
4 picture on a video camera of the events that you reported to
5 the police?

6 A: And -- yes, the camera recorded it and it holds the clip
7 for 30 days.

8 Q: I was gonna ask you about how long you held it in a
9 minute. I just wanted to know if you did it.

10 MR. MORAN: Your Honor, asked and answered. It's ---

11 THE COURT: Well, overruled. You can ask the question,
12 Mr. Tisdale.

13 MR. TISDALE: I will. Thank you, Your Honor.

14 BY MR. TISDALE:

15 Q: Was there a video recording taken of the scene that you
16 observed at the loading dock when you thought these people
17 were stealing furniture?

18 A: Yes.

19 Q: And do you have a copy of that for us to see?

20 A: No, sir.

21 Q: And I heard you say two or three times just now that it
22 didn't exist anymore.

23 A: Correct.

24 Q: And that it was, what, discarded or erased or what in 30
25 days?

1 A: The camera system holds it on the cloud server for that
2 company for 30 days and after that it automatically deletes.
3 Q: Did anybody suggest to the company that they not destroy
4 that film because of what has happened?
5 A: No, sir. At that 30-day mark, there was no indication of
6 any of this going this far, sir.
7 Q: Even after 30 days?
8 A: Yes, sir; even after 30 days.
9 Q: All right. Now, I might've asked you this before and I
10 apologize if I did, but when did you discover that these
11 people had not stolen anything from the Salvation Army?
12 A: Shortly after I ended the call with the sheriff's
13 department.
14 Q: Well, you said shortly, how long was it?
15 A: A few minutes; four to five minutes afterwards.
16 Q: A few minutes. And is that -- and what did the sheriff's
17 department tell you or who told you they didn't steal it?
18 A: I found out from Ms. Smalls.
19 Q: Ms. Smalls. But it was not until after -- and I just
20 want to be clear about this, and I'm asking you, was your call
21 to Ms. Smalls or her call to you, whichever way it was, was
22 after the event of your reporting this theft to the sheriff?
23 A: Yes, sir.
24 Q: It was. And no call was made to anybody before you
25 called the sheriff's department was there that there had not

1 been theft?

2 A: No, sir. The police have told me in the past to report a
3 suspected crime immediately so they can act.

4 Q: And that's what you did without checking to see if there
5 was a crime, right?

6 A: No, sir. I sounded the siren, and then I attempted to
7 speak to them for several minutes before calling the police.

8 Q: Speak to who for several minutes?

9 A: Through the camera, the plaintiffs.

10 Q: That you don't have the video of, right?

11 A: Yes, sir.

12 Q: Okay. And so, I just want to be very clear about it, and
13 you can say as much as you want about it or not say anything,
14 but my understanding from your testimony -- tell me if I'm
15 right or wrong, that on your camera at home, you saw somebody
16 that you judged was stealing property from the Salvation Army,
17 right?

18 A: Yes, sir. I thought they were stealing at the time.

19 Q: Yes. And you called the sheriff's department and told
20 the sheriff's department that there were people at the store
21 stealing furniture, correct?

22 A: Yes, sir, after giving them an opportunity to return it,
23 yes.

24 Q: Giving them an opportunity to return it?

25 A: Yes, sir. I attempted to sound the siren and attempted

1 to speak to them to give them an opportunity to return it.

2 Q: Okay. And they didn't return it, did they?

3 A: No, sir.

4 Q: And they had purchased it, hadn't they?

5 A: Yes, sir. But at the time, I did not know based on the
6 facts that I had.

7 Q: So, you called the sheriff's department, as I understand
8 it then, without making any inquiry as to whether or not it
9 was their furniture or the store's furniture, right?

10 A: I'm sorry, sir?

11 Q: I'm sorry. Is it correct then that you called the county
12 sheriff's office and told them there was a theft going on
13 without making any inquiry of anybody at the store or
14 elsewhere that the furniture -- whether or not the furniture
15 was stolen by these people or not?

16 MR. MORAN: Objection, Your Honor. That's been asked and
17 answered several times.

18 MR. TISDALE: Well ---

19 THE COURT: You can answer the question, but we ---

20 BY MR. TISDALE:

21 Q: Can you answer the question, please?

22 THE COURT: I think we've hit this part of the timeline
23 after this question. Thank you.

24 MR. TISDALE: So, you want me to ---

25 THE COURT: He can answer the question; yes, sir.

1 BY MR. TISDALE:

2 Q: Answer the question.

3 A: Can you repeat it? I just want to make sure ---

4 Q: I'll try to.

5 A: Thank you.

6 Q: Did you -- I'll try to. Did you call the sheriff's
7 department before making any inquiry of anybody in the store,
8 out of the store, Ms. Smalls, or anybody else to see whether
9 this furniture had been purchased by these people?

10 A: No, sir.

11 Q: Thank you. All right. I'm gonna show you a document
12 and I -- this is an exhibit; is it not? That everybody has
13 agreed to, I believe, Your Honor.

14 THE COURT: Okay.

15 Q: And tell me what this is, Mr. Smith?

16 A: This is the phone call I made to the sheriff's department
17 immediately after finding out that the furniture was not
18 stolen to correct the mistake I made.

19 Q: And would you read that, please, it's a pretty short
20 paragraph or two.

21 A: This is from July 9th, 2021.

22 THE COURT: This is a transcription of the phone call?

23 MR. TISDALE: Yes.

24 THE COURT: Okay. All right.

25 MR. MORAN: No objection to the exhibit, Your Honor.

1 THE COURT: Okay.

2 A: This is from July 9th, 2021, at 16 hours, 30 minutes.

3 BY MR. TISDALE:

4 Q: What time is that in normal time?

5 A: 4:30.

6 Q: Okay.

7 A: This is me speaking. It says, yes, this is Lt. Joshua
8 Smith.

9 Q: Who are you calling?

10 A: The sheriff's department, the dispatcher.

11 Q: All right.

12 A: Yes, this is Lt. Joshua Smith with the Salvation Army. I
13 just called in about shoplifting, someone stealing furniture
14 at our store in Litchfield, and our manager at the store just
15 called me and told me that those individuals actually did pay
16 for those pieces of furniture, so that was a mishap on my
17 part. Then there was a female voice, which would be the
18 dispatcher. All right, we will let him know. And then I
19 said, All right, thank you, I just wanted to make sure that
20 that was corrected. And then another female voice -- a female
21 voice, which would be a dispatcher, all righty. And I said,
22 thank you. And then that female voice said, you're welcome.

23 MR. TISDALE: Your Honor, I'd like to mark this as
24 Exhibit 3.

25 THE COURT: 4, I believe ---

1 MR. TISDALE: Well, whatever it is.

2 THE COURT: So, Plaintiffs' Exhibit 4 will be admitted
3 into evidence without objection.

4 MR. MORAN: That's correct, Your Honor; no objection.

5 MR. TISDALE: Thank you.

6 PLAINTIFFS' EXHIBIT NUMBER 4

7 ADMITTED INTO EVIDENCE

8 BY MR. TISDALE:

9 Q: Mr. Smith, did anybody at the Salvation Army check to see
10 if these people had purchased the -- did you check to see if
11 these people had purchased the -- what you said they stole
12 before calling the police?

13 MR. MORAN: Objection, Your Honor. It's the same
14 question we've been talking about.

15 MR. TISDALE: Well ---

16 THE COURT: Respectfully sustained. That's -- we've
17 plowed that field.

18 MR. TISDALE: All right, sir.

19 BY MR. TISDALE:

20 Q: You said you reported the theft to the police, correct?

21 A: Yes, sir.

22 Q: Did you report the theft to anyone else?

23 A: No, sir, only Ms. Smalls when I called her to let her
24 know about the situation.

25 MR. TISDALE: All right. Your Honor, I don't think I

1 have any further questions at this time.

2 THE COURT: Thank you, sir.

3 Cross-examination?

4 MR. MORAN: All right, sir. Let me scoot over just a bit
5 here. I'll try not to be too close to you guys and your
6 personal space.

7 CROSS-EXAMINATION OF LT. JOSHUA SMITH BY MR. MORAN:

8 Q: All right, Lt. Smith, good morning.

9 A: Good morning.

10 Q: Now, we've stopped short with the Salvation Army. Who
11 does your wife work for?

12 A: The Salvation Army.

13 Q: Fair to say it's a family affair?

14 A: Yes, sir. She carries the same rank and title as I do.

15 Q: And does she have the same job responsibilities that you
16 do as well?

17 A: Yes, sir. She is a pastor, and she does all the same
18 tasks that I do each day.

19 Q: Now, can you describe in a little bit more detail what
20 the Salvation Army is for the jury, please?

21 A: The Salvation Army is a church, and a social service
22 organization, and we help those people in need when they need
23 it.

24 Q: What's the Salvation Army's mission?

25 A: To spread the gospel of Jesus Christ, and to help those

1 in need without discrimination.

2 Q: And that's their stated mission published, correct?

3 A: Yes, sir.

4 Q: What's the -- and the Salvation Army's motto is doing the
5 most good; is that right?

6 A: Yes, sir

7 Q: And what does that mean to you?

8 A: It means do the most good with the resources we have in
9 our community, to help our community the best we can.

10 Q: And when you were just now talking to Mr. Tisdale, you
11 talked about some of the social services and the charitable
12 programs that the Salvation Army provides, correct?

13 A: Yes, sir.

14 Q: And those are provided here in the Georgetown County?

15 A: Yes, sir, here in ---

16 Q: Here in Williamsburg County?

17 A: Yes, sir.

18 Q: And so, they're designed to help residents and citizens
19 here locally; is that right?

20 A: Yes, sir.

21 Q: Can you tell us again what some of those programs are,
22 just for context?

23 A: We have our utility assistance programs where we help
24 individuals who are -- can't pay their light bills or their
25 water bills or their natural gas bills. We help cover those

1 costs with money raised from our stores. We have our food
2 pantry that we use the money raised from the stores to help
3 buy food to fill that food pantry and to hand the food out to
4 those individuals who can't make it by without food till the
5 next paycheck or whether it may be emergency food for an
6 individual, and we give that food out at no cost. We have our
7 clothing voucher program where we write clothing vouchers,
8 which are slips of paper that give information to our store
9 managers so that way they know how much clothing an individual
10 can get from our store at no cost to them. And we also help
11 with furniture vouchers for fire and flood victims.

12 Q: Okay. Now, you mentioned the stores, and the stores play
13 an integral part in all of that process; is that right?

14 A: Yes, sir.

15 Q: And it's because of the stores, the proceeds from sales
16 at the stores, that money gets paid back into the social
17 programs that are provided to the community; is that right?

18 A: Yes, sir. Without the stores, we wouldn't be able to do
19 our programs.

20 Q: And let's say somebody can't afford something, they come
21 to the Salvation Army and they get a voucher for clothing or
22 furniture, they then take that voucher to the stores and they
23 can pick out items for free that they may need; is that
24 correct?

25 A: Yes, sir.

1 Q: Now, you've been involved with the Salvation Army your
2 entire life; is that right?

3 A: Yes, sir.

4 Q: Why did you get involved with the Salvation Army?

5 A: Well, I grew up in the Salvation Army since I was a kid.
6 I attended the church where I grew up in Texas. And it was a
7 calling from God to be a Salvation Army officer, and I wanted
8 to be able help people in our community wherever that may be.

9 Q: And with your job as a lieutenant, you can be moved from
10 one place to another; is that right?

11 A: Yes, sir.

12 Q: But your current posting is here in Georgetown County?

13 A: Yes, sir

14 Q: And you're in your third year here; is that right?

15 A: Yes, sir.

16 Q: Now, we mentioned the proceeds of the sale from items at
17 the store. How much of those proceeds actually end up going
18 back into the community?

19 A: Roughly 84 cents of every dollar.

20 Q: What about the other 16 cents; where would that go?

21 A: That goes towards paying salaries for employees and
22 maintaining the truck and vehicles that we utilize to pick up
23 those donations.

24 Q: Okay. So, it helps pay -- just to meet a small salary
25 and other store employees; is that right?

1 A: Yes, sir.

2 Q: And then your trucks, they go out and they pick up
3 donations that -- from somebody's house, who may be moving or
4 something and they want to donate an item to the Salvation
5 Army, it's -- the money goes to service those trucks that go
6 pick those items up, is that right?

7 A: Yes, sir.

8 Q: Now, let's go to July 9th, 2021. That was a Friday; is
9 that right?

10 A: I believe so, yes.

11 Q: And that's your day off, correct?

12 A: Yes, sir.

13 Q: What were you doing just prior to receiving the
14 notification on your phone after 4 o'clock that day?

15 A: My wife and I were getting ready to leave our home to go
16 pick up our children from preschool.

17 Q: So, is this something you wanted to do to have to call
18 the police or was it something that you felt you had to do as
19 an officer of the Salvation Army to try to get the store's
20 property back?

21 A: No, sir. I didn't want to do it. Friday is our movie
22 nights and pizza nights for our family. So, I didn't want to
23 have to deal with it.

24 Q: Why did you feel like you had to deal with it?

25 A: I felt it was my responsibility as the Salvation Army

1 officer in this community to make sure that the furniture was
2 returned because I wanted to be able to utilize that furniture
3 to sale or give to an individual with a voucher.

4 Q: Now, you talked about the security cameras behind the
5 store and that look at the front of the store as well. Why
6 are there security cameras at the store?

7 A: There are a series of thefts that happen after hours,
8 which would be after the stores have been closed. People come
9 and donate items after hours and leave them by the donation
10 doors. And the other individuals will come and take those
11 items.

12 Q: When were those security camera installed?

13 A: Roughly a month prior to the incident in question.

14 Q: Okay. And between those security cameras being installed
15 a month prior and then on July 9th, 2021, how many thefts
16 approximately did you witness through the notifications you
17 received on your phone?

18 A: I -- there is approximately one an evening.

19 Q: When do these thefts typically occur?

20 A: They occur between 4:00 p.m. and up to 6:00 to 7:00 a.m.
21 in the morning.

22 Q: What time did the security cameras at the store activate?

23 A: They activate at 4:00 p.m. when the store closes.

24 Q: Now what happens if there's motion behind the store
25 before 4:00 p.m.?

1 A: Nothing. I don't receive a notification. I wouldn't
2 even have known anything was going on.

3 Q: And why were the cameras set to only activate at 4:00
4 p.m.?

5 A: The store closes at 4:00 p.m., and they activate at 4:00
6 p.m., so after the employees finish counting down the till and
7 get ready to take that day's sales to the bank, when they exit
8 the building and go to their car, they're able to be on
9 camera, so that way if anything happens to them, it's there
10 and recorded.

11 Q: And when you say counting the till, those are the --
12 that's the sales at the store that day?

13 A: Yes, sir.

14 Q: And so, at the end of the day at close, around 4:00 p.m.,
15 the employees will take the money earned, walk to their car,
16 and then take that to the bank; is that fair?

17 A: Yes, sir.

18 Q: Okay. How were the security cameras positioned back on
19 July 9th, 2021?

20 A: There's two cameras. There's one that's facing the front
21 of the building facing the donation door, and that's the side
22 of the building that's facing Ocean Highway or Highway 17.
23 And then the other camera is facing the side of the building
24 towards the back loading dock.

25 Q: I would like to give you some pictures so we can sort of

1 illustrate for the jury what you may've seen that day.

2 MR. TISDALE: Did you have an exhibit number for that?

3 MR. MORAN: Yes. These are Defendants' Exhibit 1 and 2.

4 MR. TISDALE: 1 and 2.

5 BY MR. MORAN:

6 Q: All right. Lt. Smith, let me hand you Defendants'
7 Exhibit 1 and 2. We'll take them in turn. Now, did you
8 prepare these photos to demonstrate for the jury the view that
9 you would have from the security cameras on July 9th, 2021?

10 A: Yes, sir.

11 Q: And can you tell me what Defense Exhibit 1 is?

12 A: That's an image of our back loading dock on the side of
13 the building.

14 MR. MORAN: Your Honor, I'd like to publish Defense
15 Exhibit 1 to the jury.

16 THE COURT: Do you have it on the computer, too?

17 MR. MORAN: Yes, Your Honor.

18 THE COURT: May I get a copy?

19 MR. MORAN: Yes, here. My apologies.

20 THE COURT: I like to know what we're admitting.

21 MR. MORAN: Here are 1 and 2.

22 THE COURT: Okay. Thank you.

23 MR. MORAN: My fault, Your Honor.

24 THE COURT: All right. Well, first of all, I believe
25 Defense is offering Exhibits 1 and 2 into evidence. Without

1 objection, Mr. Tisdale?

2 MR. TISDALE: Yes, sir.

3 THE COURT: All right. So admitted.

4 DEFENDANTS' EXHIBIT NUMBER 1 AND 2

5 ADMITTED INTO EVIDENCE

6 THE COURT: You can publish.

7 MR. MORAN: Ladies and gentlemen of the jury, can you see
8 an image on the screen in front of you?

9 BY MR. MORAN:

10 Q: Now, Lt. Smith, can you please illustrate for the jury
11 using that picture as a guide what you witnessed on July 9th,
12 2021 when you received that notification on your phone
13 sometime around 4:10?

14 A: Yes, sir. Around 4:10, I received a notification on my
15 phone that there was motion at this area on the back dock,
16 loading dock with -- from this camera. When I logged onto the
17 camera system to look and see what the motion was, I saw a
18 truck backed up to the loading dock, and then there were two
19 individuals loading the furniture into the truck.

20 Q: Now, how is furniture typically removed from the store?

21 A: Through the front doors.

22 Q: And why is that?

23 A: Well, typically, the back -- the doors that lead to the
24 loading dock are sometimes blocked due to other donations or
25 clothing racks.

1 Q: What time of day would furniture typically be removed
2 from the store?

3 A: During operating hours between 9:00 a.m. and 4:00 p.m.

4 Q: Now, when you checked the security camera image, did you
5 see anyone you recognized on the screen?

6 A: No, sir.

7 Q: Okay. So, the two individuals loading furniture, you did
8 not recognize?

9 A: No, sir.

10 Q: And the blue truck you did not recognize, correct?

11 A: No, sir.

12 Q: And there was also a black Mazda back there, that was a
13 car that you did not recognize, correct?

14 A: No, sir.

15 Q: You didn't see any employees on that image of the loading
16 dock, correct?

17 A: No, sir.

18 MR. MORAN: I'd like to publish Defense Exhibit 2 to the
19 jury, Your Honor.

20 THE COURT: Without objection, Mr. Tisdale, correct?

21 MR. TISDALE: Yes.

22 THE COURT: All right. So admitted.

23 MR. MORAN: Ladies and gentlemen, do y'all see a
24 different image in front of you now?

25 BY MR. MORAN:

1 Q: All right. Now, Lt. Smith, you didn't see any of the
2 employees' cars either, the image of the back loading dock or
3 this Defense Exhibit 2, correct?

4 A: Correct.

5 Q: And Defense Exhibit 2, is that an image of the front of
6 the store?

7 A: Yes, sir. That's the donation door.

8 Q: Okay. And am I correct that you previously testified
9 sometime around store close, the employees would pull their
10 car up to the donation door, so it's close to their exit, so
11 when they take the money to leave the store for the day, they
12 don't have far to walk; is that right?

13 A: Yes, sir, roughly an hour before store closing.

14 Q: Okay. And where in this picture would the employees park
15 -- would be parked?

16 A: Typically, it's parked right in front of that pillar in
17 the top middle of the picture.

18 Q: Okay. And just to be clear, on July 9th, 2021, when you
19 were looking at the footage, there was no cars in that
20 picture, correct?

21 A: Correct.

22 Q: Now, what did you do after you checked both views of the
23 camera and didn't see any employees and you didn't see any of
24 the employees' cars?

25 A: I turned on the siren function on the camera.

1 Q: Okay. And you do that by pushing a button on your phone;
2 is that right?

3 A: Yes, sir.

4 Q: Okay. And you said you let that siren run for two to
5 three minutes, why so long?

6 A: I wanted to give the people an opportunity to return the
7 furniture. And it's been my experience that people typically
8 stop when they hear the siren.

9 Q: Because at this point, am I correct that you didn't see
10 any Salvation Army store employees, there's a long history of
11 thefts at the store, you didn't see the employees cars, it's
12 after hours, so you thought ---

13 MR. TISDALE: Your Honor, I know this is cross-
14 examination but I think it's now over into testifying.

15 THE COURT: Okay. We -- I'll certainly give some leeway
16 here on cross for leading but let's try to lay a little bit
17 more foundation and let him tell the story.

18 MR. PHILLIPS: Understood.

19 MR. MORAN: Sorry, Your Honor.

20 BY MR. MORAN:

21 Q: Now, when you pushed the alarm, why did you believe that
22 these individuals may have been stealing furniture?

23 A: It was after 4 o'clock, after the store closed, and I
24 didn't see any vehicles there that showed that any employees
25 were still there.

1 Q: And there's a long history of thefts at the store, too,
2 correct?

3 A: Yes.

4 Q: Okay. Now, have you ever had occasion to hear the siren
5 or alarm that's played from the security camera?

6 A: Yes, sir.

7 Q: And how does it sound to you?

8 A: It's loud and it's high-pitched; it's something that
9 would grab an individual's attention.

10 Q: Now, what happened after you sounded the alarm and you
11 let it run for two to three minutes?

12 A: After I sounded the siren, the young man in the video
13 clip turned directly towards the camera.

14 Q: What did that indicate to you?

15 A: That he had heard the siren.

16 Q: Now, after playing the siren, the younger man in the clip
17 looking up at the camera, what did you do then?

18 A: After they didn't return the furniture after the siren, I
19 then attempted to speak to them through the microphone
20 function on the camera.

21 Q: And again, that's where you push a button on your phone,
22 you speak into it, and then what you say the camera will
23 project it -- or what you say into your phone is projected
24 through the camera on the other end; is that right?

25 A: Yes, sir.

1 Q: Okay. And please remind the jury what you said.

2 A: I said, please return the furniture or the authorities
3 will be called.

4 Q: And did they return the furniture after you said that?

5 A: No, sir. I said that four or five different times and
6 they didn't return the furniture.

7 Q: Okay. Did anything indicate to you that they heard you
8 make that instruction to them?

9 A: Yes, sir. I -- the first time I stated please return the
10 furniture or the authorities will be called, the young man in
11 the video clip again looked directly towards the camera.

12 Q: Now, when you did that, and they didn't return the
13 furniture, did they leave the store after that?

14 A: After I finished speaking with them, they were still
15 there, and then that's when I attempted to call the
16 authorities.

17 Q: Okay. When you call the authorities, at some point while
18 you were on the phone with the authorities, did they leave the
19 premises with the furniture?

20 A: Yes, sir.

21 Q: Now, we heard the first call you made to the Georgetown
22 County Sheriff's Department, what did you hope to accomplish
23 by calling the police to report a theft?

24 A: All I wanted to do was to get the furniture back. I
25 didn't want to hurt anyone or charge anyone, I just wanted the

1 furniture back so that way we could sell it to fund our
2 programs.

3 Q: And just to be clear, that's not your furniture; that's
4 furniture that is used to go back into the community, correct?

5 A: Yes, sir.

6 Q: All right. And then, after you get off the phone from
7 the first call to the police, you and your wife, Lt. Amber
8 Smith get in the car to head to the store, and while we're in
9 the car you call Ms. Smalls. Is that right?

10 A: Yes, sir.

11 Q: Did you learn on that call to Ms. Smalls that Ms. Janet
12 Reown that actually paid for the furniture earlier in the day;
13 is that right?

14 A: Yes, sir.

15 Q: What did you do then?

16 A: Once I found that out, I told Ms. Smalls that I need to
17 hang up, and then I did, and I immediately called the
18 sheriff's department back to correct the mistake.

19 MR. MORAN: Now, Your Honor, the transcript of that call
20 has been admitted into evidence. I'd like to play that call
21 for the jury. It's very brief.

22 THE COURT: Okay. That would be Defense Exhibit 3.

23 MR. MORAN: And before you play that, I'd like to ---

24 MR. TISDALE: We don't have an objection.

25 MR. MORAN: Technological issues, Your Honor. I

1 apologize. May I approach, Your Honor?

2 MR. TISDALE: Will be glad for it to be played.

3 DEFENDANTS' EXHIBIT NUMBER 3

4 ADMITTED INTO EVIDENCE

5 BY MR. MORAN:

6 Q: Let me hand you what's been marked as Plaintiffs' Exhibit
7 4. Is that the transcript of the call that we are about to
8 hear, Lt. Smith?

9 A: Yes, sir.

10 Q: And what's the timing on the transcript at the top?

11 A: It says 16 hours, 30 minutes, which would be 4:30.

12 Q: So, 4:30 on the second call. What time did the first
13 call end, Lt. Smith?

14 A: 16 hours, 26 minutes, which would've been 4:26.

15 Q: Okay. And I believe, if you look on there, the first
16 call ends about 45 seconds in and the second call begins at 30
17 seconds and the minutes you just described. So, roughly three
18 minutes between those two calls; is that right?

19 A: Yes, sir.

20 Q: Okay. Now, I'd like to play that second call for the
21 jury.

22 THE COURT: Okay. So, this will be Defendants' Exhibit
23 3, which is admitted into evidence without objection.

24 MR. MORAN: Yes, Your Honor. We have a drive, so we can
25 give it to you in just a few minutes.

1 THE COURT: That's okay.

2 (REPORTER'S NOTE: Defendants' Exhibit 3 published to the
3 jury.)

4 BY MR. MORAN:

5 Q: Now, Lt. Smith, after you called the police back on that
6 second call, what happened next?

7 A: We thought everything was taken care of and corrected,
8 and so my wife and I went down to Georgetown to pick up our
9 children from preschool.

10 Q: Now, at some point in time, did Ms. Smalls get in touch
11 with you and tell you that Ms. Reown would like you to call
12 her?

13 A: Yes, sir. She texted me between 6:00 and 6:30 that
14 evening.

15 Q: And did you call Ms. Reown?

16 A: Yes, sir. I called her a few minutes after receiving a
17 text.

18 Q: And when you called Ms. Reown, why did you do that?

19 A: I did it out of respect of the fact that she had
20 requested me to contact her.

21 Q: And when you called her, who answered the phone?

22 A: Ms. Reown.

23 Q: What did you say to her on that call?

24 A: I told her who I was, that I was Lt. Joshua Smith with
25 the Salvation Army and started explaining the situation.

1 Q: And what did Ms. Reown say in response?

2 A: She was upset, and she started to raise her voice at me.

3 Q: Okay. Did you talk to anybody else on that call?

4 A: Yes, sir. After Ms. Reown got upset and was raising her
5 voice, I believe it was her son that got on the phone.

6 Q: Okay. And then what do you recall about that
7 conversation?

8 A: I started talking with him and explaining the situation
9 that I was hoping he could understand the situation based on
10 the number of thefts that we've had there. He then got upset
11 and started yelling over the phone and started using
12 profanity.

13 Q: What did he say to you?

14 A: I don't use profanity. If I can get -- if I don't have
15 to repeat the word.

16 Q: Okay. But he was using profanity with you, yelling at
17 you, raising his voice?

18 A: Yes, sir.

19 Q: And so, what did you say to Mr. Reown then?

20 A: I then said to him, you know, if you continue to use
21 profanity I'm gonna have to end the call.

22 Q: And now when Mr. Reown was raising his voice with you,
23 did you try to apologize?

24 A: Yes, sir. I was trying to go talk to him, and I
25 apologized to him at least twice.

1 Q: And what did you -- what did you say to him?

2 A: I said, I'm sorry, sir, for what happened. And then I
3 attempted again after that to apologize. I said I apologize
4 for the situation.

5 Q: Do you believe that he heard you apologize?

6 A: I'm not sure. He was -- his voice was raised and I'm not
7 sure whether he heard me or not. I hope he did.

8 Q: How did the call with the Reowns end?

9 A: Well, he started using profanity, and I told him, you
10 know, if you continue to use profanity, I'm gonna have to end
11 the call. And then he used profanity again. And so, I said,
12 sir, if you continue to use profanity, I'm gonna have to end
13 the call; so I'm ending the call now. And then I hung up.

14 Q: And you the use of profanity, is that something that you
15 just don't do in your household?

16 A: Correct. We don't use profanity at all.

17 Q: As a member of the church and clergy, that's pretty
18 normal in the Salvation Army; is that right?

19 A: Correct.

20 Q: Have you spoken to the Reowns since that call?

21 A: No, sir.

22 Q: Why not?

23 A: Well, after the call ended, I assume that everything
24 would be okay after time and letting everything diffuse.

25 Q: At any point in time after July 9 of 22 -- anyone -- did

1 you check to see if the microphone function was working in the
2 alarm function was working?

3 A: Yes, sir. Roughly a week and a half after the incident,
4 and then once a month after that.

5 Q: And why did you check on them?

6 A: The cameras are outside, and I -- we'd check them to make
7 sure that they're working properly that the siren can be heard
8 in your voice can be heard through the camera, clearly.

9 Q: And did one of those checks show you when you check them
10 out?

11 A: That they were working properly, the siren could be
12 heard, and the voice could be heard clearly.

13 Q: If you provided any comments to the media about what
14 happened on July 9th, 2021?

15 A: No, sir.

16 Q: Have you received messages or calls from media asking you
17 for comments?

18 A: No, sir.

19 Q: Have you posted anything on your social media or
20 otherwise communicated with anybody reporting the events of
21 July 22 anyone -- anyone outside of Ms. Smalls and the police?

22 MR. MORAN: No further questions for now, Your Honor.

23 THE COURT: Redirect?

24 MR. TISDALE: Very briefly, Your Honor.

25 REDIRECT EXAMINATION OF LT. JOSHUA SMITH BY MR. TISDALE:

1 Q: Mr. Smith, at the time that your camera, that is now
2 deleted, show the events over this day, July the 9th of '21,
3 who owned the furniture that was being loaded onto the truck
4 by these people?
5 A: The Reowns did, sir.
6 Q: The Reowns did?
7 A: Yes, sir.
8 Q: And when you called the -- or either Ms. Smalls called
9 you -- I've forgotten which way it was. Which way was it?
10 A: I called her.
11 Q: You called her. She was still in the store, wasn't she?
12 A: Yes, sir. I didn't know that at the time.
13 Q: Well, she was in the store, right?
14 A: Yes, sir.
15 Q: So, the point, you could've called her earlier in the
16 store could you have not?
17 A: Yes, sir. But I didn't have any reason to believe she
18 was in the store.
19 Q: Well, I understand that, but if you called on the
20 telephone, you'd find out, wouldn't you?
21 A: Yes, sir. But the police have told me to call during the
22 act of a possible crime so that they can act.
23 Q: I understand that, but that isn't the question I ask you.
24 You could have called her in the store before, could you --
25 could you not?

1 A: Yes, sir. Like I said, I could have but the police have
2 told me to report a possible crime immediately.

3 Q: And when you called her or talk to her, she was in the
4 store?

5 A: Yes, sir.

6 Q: Yes.

7 MR. MORAN: Very brief, Your Honor.

8 THE COURT: Recross; yes, sir.

9 RECROSS-EXAMINATION OF LT. JOSHUA SMITH BY MR. MORAN:

10 Q: Why did you call her cell phone?

11 A: I didn't believe she was in the store. There were no
12 evidence that she was. The car was gone and the stores
13 closed. It was after hours.

14 Q: Thank you. No further questions.

15 THE COURT: All right. Witness is excused.

16 MR. TISDALE: Thank you, Your Honor.

17 THE COURT: All right.

18 BY THE COURT:

19 THE COURT: All right. Ladies and gentlemen, that was
20 about an hour-and-fifteen-minute witness. So, why don't we
21 just go ahead and take a short break, refresh yourselves in
22 the jury room.

23 Please don't discuss the case, and we'll get you back out
24 here in a few minutes. Thank you.

25 (REPORTER'S NOTE: Jury exits courtroom @ 10:46 a.m.)

1 THE COURT: All right. Let's take ten minutes, folks,
2 and we'll get started with our next witness.

3 **RECESS - 10:28 A.M.**

4 *****OFF THE RECORD*****

5 **ON THE RECORD - 11:05 A.M.**

6 THE COURT: Are we ready to proceed with our next
7 witness?

8 MR. TISDALE: Yes, sir.

9 THE COURT: All right. Let's bring the jury in, please.
10 (REPORTER'S NOTE: Jury enters courtroom @ 11:07 a.m.)

11 THE COURT: Madam Foreman, ladies and gentlemen of the
12 jury, welcome back. I hope you had a nice break. We're going
13 to pick up where we left off with the next witness in the
14 plaintiffs' case in chief.

15 Mr. Tisdale?

16 MR. TISDALE: Thank you, Your Honor.

17 Mr. Thomas Reown, would you come up to the witness stand,
18 please?

19 THOMAS REOWN, HAVING BEEN DULY SWORN,
20 TESTIFIED AS FOLLOWS:

21 THE CLERK: Thank you. Please be seated and then state
22 and spell your name for the record.

23 MR. THOMAS REOWN: Thomas Reown, T-H-O-M-A-S, R-E-O-W-N.

24 DIRECT EXAMINATION OF THOMAS REOWN BY MR. TISDALE:

25 Q: Just to be certain we are all up-to-date on everything,

1 is this your family back there -- part of your family?
2 A: Correct; my mother and my son.
3 Q: Okay. And that's Janet Reown who testified yesterday?
4 A: Yes, sir.
5 Q: And your son's name?
6 A: Kaiden, Kaiden Reown.
7 Q: Now, where do you live?
8 A: Georgetown.
9 Q: How long have you lived here?
10 A: All my life, 30 -- 38 years.
11 Q: You're gonna have to talk loud enough now for the jury to
12 understand you and ---
13 A: Thirty-eight years; my whole life.
14 Q: And where were you born? The date, when is your
15 birthday?
16 A: 9-11-83.
17 Q: 1983. Are you employed in Georgetown?
18 A: I'm currently employed for International Paper; I'm a
19 crane operator.
20 Q: How long have you worked at International Paper?
21 A: This is my eleventh year.
22 Q: Now, Mr. Reown, the jury and everybody else in here has
23 heard a lot about the date of July 9th, 2021. Did you have an
24 opportunity to go to the Litchfield Salvation Army store.
25 A: Yes, July 9th.

1 Q: July 9th, I think it is.
2 A: Oh, yeah.
3 Q: And why did you go there?
4 A: My mother purchased some furniture, and she needed me to
5 come with my truck to deliver it to her home.
6 Q: Did -- was anyone with you on that day?
7 A: Yes; my son, Kaiden.
8 Q: And how old was Kaiden?
9 A: Ten -- 11, 11 at the time.
10 Q: Eleven years old. And do you -- can you, just for the
11 record, when is his birthday?
12 A: 2-24-10.
13 Q: 2-24-2010?
14 A: Yes, sir.
15 Q: All right. Now, why did you say y'all went to the store?
16 A: To pick up furniture my momma purchased from the
17 Salvation Army.
18 Q: Who told you that she purchased it?
19 A: She did.
20 Q: She did. And what time did you arrive at the store that
21 day?
22 A: A little before 4 o'clock.
23 Q: Can you be any more specific? It doesn't matter but it
24 was before 4 o'clock?
25 A: Yes, probably maybe 3:30 or so.

1 Q: All right. And describe to the jury, please, and the
2 judge what y'all did when you got there at the Litchfield
3 store.
4 A: When I arrived, I proceeded in the store and speak with
5 Ms. Tamika, the manager.
6 Q: You did what now?
7 A: Speak with Ms. Tamika, the manager.
8 Q: What did she say -- what did she tell you?
9 A: She proceeded to showing me the couches or whatnot.
10 Q: What?
11 A: Showed me the couches inside the store.
12 Q: And did she tell you about where to put them in your
13 truck?
14 A: Yes, sir.
15 Q: What did she say?
16 A: The route that we needed to take to get it outside the
17 store and load it in my truck.
18 Q: And did she wear in the store you would be loading it in
19 your truck?
20 A: Yes.
21 Q: Where?
22 A: Loading docks.
23 Q: Loading dock. And did you drive your truck around to the
24 loading dock?
25 A: Correct.

1 Q: Kaiden still with you?

2 A: Yes.

3 Q: So, how long were you there to load it up?

4 A: Maybe 15, 20 minutes at the tops.

5 Q: All right. Did you go into the store to speak with Ms.

6 Smalls?

7 A: Yes, I was in the store.

8 Q: Okay. And where was your truck parked when you did that?

9 A: At the beginning, my truck was out front.

10 Q: Front of the store?

11 A: Front of the store, regular parking space.

12 Q: Was the store still open when you arrive there?

13 A: Correct; it was still open.

14 Q: As far as you know, was it open the whole time you were

15 there?

16 A: Yes.

17 Q: All right. And did you and Kaiden load the furniture

18 into the truck?

19 A: Correct, yes.

20 Q: Now, there's been testimony here that you have heard.

21 You've been in the courtroom the whole time, haven't you?

22 You've been sitting back here the whole time, haven't you?

23 A: Yes, sir.

24 Q: You have to say something for the record.

25 A: Yeah, yes.

1 Q: Yes. Did y'all hear any strange noise, a noise you
2 didn't expect?

3 A: Correct.

4 Q: That has been described earlier.

5 A: Yes.

6 Q: Tell the Court and the jury what you heard if you can
7 describe it.

8 A: It sounded like just a -- just like trash noise, just
9 static or whatnot, like a TV with no channel on, just static,
10 scratchy.

11 Q: Were there any voices on what you heard?

12 A: No.

13 Q: And did you hear anything that sounded like a siren?

14 A: Correct.

15 Q: Did it sound like that?

16 A: Correct.

17 Q: And what did you interpret that to be?

18 A: The store closing up, maybe an alarm that the store is
19 closing; I don't know.

20 Q: But it wasn't any signal that you knew anything about
21 that affected you, was it?

22 A: Didn't have nothing to do with me.

23 Q: Yes, sir. So, did you, after loading the furniture that
24 your mother had bought -- what was the furniture, by the way,
25 if you could just give me a quick description?

1 A: Two couches, two matching couches.

2 Q: Okay. And where were you going to take them when you

3 left?

4 A: To my mother's residence.

5 Q: Where is her residence?

6 A: Georgetown.

7 Q: Georgetown?

8 A: Yes, sir.

9 Q: So, what time do you think you left the store?

10 A: Right at a little after 4:00.

11 Q: Okay. And what route did you take, what roads?

12 A: 17 North, because instead of going straight to my

13 mother's address, while I was on that side, I decided to go to

14 Home Depot first.

15 Q: To do what?

16 A: Purchase a garbage disposal for my new house.

17 Q: Purchase a what?

18 A: Garbage disposal.

19 Q: All right. And did there come a time during that journey

20 that you were surprised by law enforcement vehicles?

21 A: Correct.

22 Q: Tell the jury, please, about that

23 A: Well, as we're proceeding to Home Depot, me and my son,

24 Kaiden, noticed a deputy behind us with the ---

25 Q: A deputy sheriff.

1 A: Deputy sheriff, with the lights activated. Thinking he's
2 going to an emergency, we proceeded ---
3 Q: When you say the lights activated, do you do you mean
4 blue lights?
5 A: Yes, sir; blue lights, flashing lights.
6 Q: Thinking he going to an emergency, we proceeded to move
7 off to the side of the road, and he moved off along with me.
8 So, I'm like, oh, he's stopping me. So, being that the post
9 office right there, you know, to be on the safe side for him
10 and his safety and my safety, we just pulled in the post
11 office parking lot.
12 Q: You pull into the post office parking lot?
13 A: Correct.
14 Q: As you were going down Highway 17, is that on the left
15 side of the road or the right?
16 A: That'd be on the right side of the road.
17 Q: Right side of the road. And did the deputy sheriff also
18 come into the parking lot at the post office?
19 A: Correct.
20 Q: During your visit there, did any other law enforcement
21 officers arrive?
22 A: Correct. Maybe two to three more officers and vehicles
23 arrived.
24 Q: And what did the sheriff say to you?
25 A: As we stop, I got out of the vehicle, walked toward the

1 vehicle, and ---

2 MR. MORAN: Objection, Your Honor. Hearsay.

3 THE COURT: You said he got out of the vehicle? What?

4 MR. MORAN: He said what the sheriff say to you?

5 A: Yeah.

6 THE COURT: Okay. Hold on.

7 Well, first of all, I don't think he was answering that
8 question, but the question was eliciting an out-of-court
9 statement. So, why don't you rephrase your question.

10 MR. TISDALE: Excuse me, Your Honor.

11 THE COURT: If you could rephrase your question.

12 MR. TISDALE: Yes, yes.

13 THE COURT: Thank you.

14 BY MR. TISDALE:

15 Q: Did the sheriff speak to you?

16 A: Yes, they did speak to me.

17 THE COURT: Okay.

18 Q: And go ahead and tell us what happened?

19 MR. MORAN: Objection, Your Honor.

20 THE COURT: Well, no, that -- please don't testify what
21 the sheriff's told you, because that's an out-of-court
22 statement. The objection has been made; so, can you ask the
23 question another way?

24 MR. TISDALE: Okay.

25 BY MR. TISDALE:

1 Q: You and the sheriff were in the -- deputy sheriff were in
2 the parking lot, right?

3 A: Correct.

4 Q: Tell us what happened.

5 A: As -- well, as we was in the parking lot, I got out of my
6 vehicle and approached the sheriff, and they told me that they
7 got a call about stolen furniture from the Salvation Army.

8 Q: And what happened after that?

9 A: My son, Kaiden, I told him to go live.

10 Q: To do what?

11 A: Go live on social media. As I, you know, speak with the
12 sheriff to try and figure this out. I then told them that my
13 mother purchased this furniture. I need to call her because
14 she's going to Georgetown, I was going the opposite direction.
15 She had the receipt that nobody stole no furniture. It was
16 purchased.

17 Q: Did you say that to the sheriff?

18 A: Yes, sir.

19 Q: All right. And did other officers arrive onto the scene?

20 A: Yes, sir.

21 Q: And did -- how were you feeling, what was the effect on
22 you, on that occasion?

23 A: I was scared. I thought I'm about to go to jail for some
24 stolen furniture.

25 Q: Yeah, yeah. And did other people come by, bypassers ---

1 A: Yes.

2 Q: --- and observed what was going on?

3 A: While the deputies and me was out, numbers of cars rode
4 by, we could hear the horn blowing and whatnot. People must
5 be recognize me and my truck.

6 Q: Yeah.

7 A: I received a phone call from a family friend during the
8 time and told him what we had going on, and he told me if I
9 needed anything, help or anything, just let him know and give
10 him a call back.

11 Q: Was the matter eventually resolved that there had been no
12 theft that you had been accused of?

13 A: Yes.

14 Q: And how did that happen?

15 A: By my mother going back to the Salvation Army store and
16 speaking with the manager, Tamika, explaining to her that the
17 police have stopped me about theft of furniture that she just
18 purchased.

19 Q: Now, going back to this when you heard the noise and
20 before you left the loading dock, did -- what did you think
21 the noise was for, what it was telling you, if anything?

22 A: As far as the siren, it was a siren. Now, the talking
23 part did not came out as audio that we could perceive what was
24 said.

25 Q: You just couldn't understand what was being said?

1 A: No, couldn't understand it. It was just audio trash is
2 all I can say.

3 Q: Did anybody at the store attempt to come out and attempt
4 to -- and inform you as to what was going on?

5 A: No, sir.

6 Q: And y'all left without anybody from the store suggesting
7 anything?

8 A: Yes, sir.

9 Q: Okay. Now, how has this affected your life?

10 A: Well, it's pretty rough when you around town and people
11 cut jokes at you that, hey, you don't have no couches on the
12 back of your truck or, you know, whatnot. At times I can see
13 it affects my son. You know, he's a kid that loved the
14 police, and now he's kind of sketchy. He's learned that
15 anybody can lie on you at any minute now. The police got a
16 job to do. They don't know if you doing the right thing or
17 the wrong thing. It's hard to trust anybody in this world.

18 Q: All right. And how has it affected your life up to now?

19 A: It's -- up to now, it's still stressful. Going through
20 with these procedures and just -- I don't want to say
21 nightmares, but just playing over and over in my head that
22 this police stopping me and telling me that I stole furniture
23 that I didn't steal.

24 Q: Yes. Now, Mr. Reown, I think that you have described the
25 events of that day for the Court and the jury, and this

1 gentleman over here is probably gonna want to ask you some
2 questions. Would you answer their questions?

3 A: No problem; I will.

4 Q: Thank you.

5 THE COURT: All right. Cross-examination?

6 CROSS-EXAMINATION OF THOMAS REOWN BY MR. MORAN:

7 Q: I'm gonna back up a little bit. I have tendency to be a
8 little loud, and in this courtroom my voice carries.

9 Good afternoon, Mr. Reown. You and I are just a meeting
10 for the first time today, correct?

11 A: Correct.

12 Q: Now, on July 9th, 2021, you testified you arrived at the
13 Salvation Army store in Litchfield shortly before 4:00 p.m.,
14 correct?

15 A: Correct.

16 Q: I believe at your deposition you said around 3:40 or so;
17 do you recall that?

18 A: Correct.

19 Q: You testified that you were in the store and you spoke
20 with Ms. Tamika Smalls; is that right?

21 A: Correct.

22 Q: And you talked about taking the furniture out of the back
23 of the store through the loading deck?

24 A: Yes.

25 Q: Now, do you recall her telling you that you usually take

1 furniture out of the front door of that store?

2 A: Yes, I recall -- I recall the conversation of the front
3 -- discussing the front and the back. It's a -- it's a thrift
4 store, so you have furniture all over the place in a thrift
5 store. And our best was to go out the back, out the back to
6 the loading dock.

7 Q: So, you and your son, Kaiden, had proceeded to carry the
8 couches back to the loading dock one by one; is that right?

9 A: Correct.

10 Q: And that process took about 15, 20 minutes?

11 A: Give or take.

12 Q: And then another 10 or 20 minutes or so to load the
13 furniture into your truck and strap it down; is that right?

14 A: I'd say less than that.

15 Q: Mr. Reown, do you recall giving a deposition under oath
16 in this case?

17 A: Do I recall?

18 Q: Giving a deposition under oath in this case?

19 A: Yes, I recall.

20 Q: And for the benefit of the jury, a deposition is a
21 setting like this where you answer questions under oath about
22 the case, correct?

23 A: Yes, sir.

24 Q: And you realize you are under oath today as you were ---

25 A: Yes, sir. I wouldn't ---

1 Q: If you would, please, go to page 20 of that transcript.

2 THE COURT: I'm trying to find it, too.

3 MR. TISDALE: I'm sorry. You want to use this one?

4 THE COURT: No, sir. I have it in front of me on the
5 computer. I'm good.

6 BY MR. MORAN:

7 Q: We're good. He has a copy there.

8 All right. So, you see Page 20, Line 10, Mr. Reown?
9 There the question is 15 or 20 just get the couches to the
10 back, so then 10 to 20 minutes to load the couches into the
11 truck.

12 Your answer: Yeah, correct.

13 A: Correct. That's my answer; that's what I said in this
14 deposition, yes.

15 Q: I'll take that back from you now, sir.

16 A: All right.

17 Q: So, the entire process of getting the couches back is
18 about 30 to 40 minutes; is that right?

19 A: Yes, correct, okay.

20 Q: And you would've been still loading furniture into your
21 truck after 4:00 p.m.; is that right?

22 A: Correct.

23 Q: Now, at some point when you're just about finished
24 loading those couches into your truck, you heard an alarm
25 sound coming from the security camera, correct?

1 A: Correct.

2 Q: Both you and Kaiden heard the alarm?

3 A: Correct.

4 Q: Now, when you heard the alarm, you didn't go back into
5 the store to ask them about the alarm; is that right?

6 A: No, I didn't.

7 Q: And you didn't call them to ask them about the alarm?

8 A: No, I had no reason to.

9 Q: Now, after the alarm went off, you also heard a voice ---

10 A: Negative.

11 Q: --- from the security camera. Is that right?

12 A: Negative. Did not hear a voice.

13 Q: Okay. So, you heard a -- but you heard another distinct
14 sound from the alarm; is that right?

15 A: I heard -- like I said, we heard -- we heard like audio
16 trash, it wasn't a voice. We never heard a voice. We heard
17 the alarm, but we never heard a voice.

18 Q: Did you later come to find out that the voice sound was
19 Lt. Smith trying to tell you to stop loading the furniture?

20 A: I never heard a voice.

21 Q: After the fact, you now know that Lt. Smith was trying to
22 speak through the phone and tell you to stop loading the
23 furniture?

24 A: Yeah. That was on his side. On my side I never heard a
25 voice.

1 Q: Okay. Kaiden also heard that sound that we now know to
2 be ---

3 A: Correct.

4 Q: Okay. After hearing that sound, do you recall Kaiden
5 saying to you, someone thinks we're stealing these couches?

6 A: Maybe jokingly or whatnot, me and him. I quite can't
7 remember such a long -- such a good time ago. Is it in my
8 deposition or whatnot?

9 Q: It's in Kaiden's.

10 A: It's in his?

11 Q: Yes.

12 A: Okay. Then if he said that, that's what he said.

13 Q: Okay.

14 A: All right.

15 Q: Now, after you and Kaiden talked about that, you didn't
16 go back into the store to ask about ---

17 A: I had no reason. I didn't steal nothing. I was just
18 picking up the couches for my mother; that's all.

19 Q: And after the alarm sounded after you heard the sound
20 that we now know was a voice on Lt. Smith's end, you finished
21 loading the couches, and you left. Is that correct?

22 A: Correct, correct. I finished loading the couches, even
23 strapping them down.

24 Q: Now, when you were pulled over, you and Kaiden got out of
25 the car, walked to the rear of your vehicle to meet with the

1 police officers?

2 A: Correct.

3 Q: Now, that stop lasted about five minutes or so; is that
4 right?

5 A: It seemed like an eternity, but ---

6 Q: Okay. But you agree it was five minutes in actuality?

7 A: Whatever the deposition says.

8 Q: I'm asking you now, sir.

9 A: I go by the deposition. It was so long ago.

10 Q: I believe -- no more than seven minutes, I believe is
11 what they said.

12 A: Yeah, it felt like an eternity, and it could be that
13 amount of time.

14 Q: Okay. Now, when you got out of car, you started a
15 Facebook Live video; is that right?

16 A: Negative.

17 Q: Okay.

18 A: I did not start a Facebook live video when I got out of
19 my car.

20 Q: At some point during that stop, you did start a Facebook
21 Live video?

22 A: After we established that somebody made a mistake and
23 called the police and falsely accused me of stealing
24 furniture. Then, I proceeded with my Facebook live video.

25 Q: So, after the police told you that there had been a

1 report that two individuals in a blue truck had stolen some
2 furniture, that's when you started the Facebook Live?

3 A: No, no. We -- you -- after we established that somebody
4 made a mistake, Lt. Smith ---

5 Q: Oh, I see.

6 A: --- after we established that he made a mistake in
7 accused me of stealing furniture I made Facebook live video.

8 Q: Okay. So, after everything was cleared up, you're saying
9 you made the Facebook Live video?

10 A: Correct. He trying to cross me up.

11 Q: Now, during that stop, you weren't arrested; is that
12 right?

13 A: No, I was detained; I was never arrested.

14 Q: You were free to walk around outside your vehicle,
15 though; is that right?

16 A: Of course, yes.

17 Q: You were never put in handcuffs?

18 A: No, I was not put in handcuffs.

19 Q: Never put in the back of a police car?

20 A: Never put in the back of a police car, but I was detained
21 at the stop I was stopped by the police.

22 Q: Like what happens when you're pulled over in a traffic
23 stop?

24 A: Yes. When you do something you don't have no business
25 doing and the police stop you, that's what it was a traffic

1 stop.

2 Q: And none of the officers ever touched you, that right?

3 A: No, actually, the officers was wonderful. They know it
4 was not true from the start.

5 Q: And is the same true for Kaiden; he was never arrested or
6 put in the back of the police car, never put in handcuffs?

7 A: Correct.

8 Q: Never touched by the officers?

9 A: Correct.

10 Q: He was also able to walk around freely during that stop?

11 A: Correct.

12 Q: Y'all were able to use your phones and you were able to
13 take a video, correct?

14 A: That's right.

15 MR. MORAN: I'd like to show the jury that video. I
16 believe it's been accepted as no objection?

17 MR. TISDALE: We certainly don't have any objection.

18 THE COURT: So, if you could just tell me exactly what it
19 is you want to admit.

20 MR. MORAN: Yes, Your Honor. This is a Facebook video,
21 Facebook Live video that Mr. Reown broadcast at the scene of
22 the traffic stop.

23 THE COURT: And this'll be a video that will be played on
24 the screen for the jury?

25 MR. MORAN: Yes, Your Honor. That's correct.

1 THE COURT: And this would be Defense Exhibit ---

2 MR. MORAN: This will be Defense Exhibit -- Madam Court
3 Reporter, could you remind me?

4 THE COURT REPORTER: 4.

5 MR. MORAN: It'll be Defense Exhibit 4.

6 THE COURT: So, Defense Exhibit 4 will be admitted into
7 evidence without objection?

8 MR. TISDALE: Yes, sir.

9 THE COURT: All right. So admitted.

10 DEFENDANTS' EXHIBIT NUMBER 4

11 ADMITTED INTO EVIDENCE.

12 (REPORTER'S NOTE: Defendants' 4 published for the jury.
13 Audio not transcribed herein.)

14 BY MR. MORAN:

15 Q: All right. Mr. Reown, just a couple of questions about
16 that video. About midway through, that's when the police give
17 you the all clear, correct, and you figure out that you're
18 free to go?

19 A: Come back?

20 Q: About midway through that video, that's when the police
21 give you the all clear, and you tell your followers, you hear
22 that, were all clear.

23 A: Yeah, yeah. The all clear, but that's -- at the
24 beginning of the video, they already had told me that they,
25 you know, it was a mistake. That's when it was, you know,

1 broadcasted, all clear.

2 Q: Now, that video was live and it was being broadcasted in
3 real time to your social media followers?

4 A: Yes.

5 Q: And you were the one who took the video and broadcasted?

6 A: Yes.

7 Q: Okay. Now, during that video, you're walking around
8 freely, obviously, correct?

9 A: Correct.

10 Q: And in that video, you were laughing and joking with the
11 police officers and with Kaiden, correct?

12 A: Correct.

13 Q: And Kaiden, I believe, makes a joke about the Carolina
14 Squat; he's joking as well, right?

15 A: Correct. After, after we found out that it was a
16 mistake, remember that. Remember, this video was after we
17 found out somebody made a mistake. The attitude of us wasn't
18 like this before we you know, before we found out that
19 somebody made a mistake and that we were accused of. So, I
20 want to make sure you know that, you know, the way we are is
21 after we found out, okay, you know, someone made a mistake I
22 just want to make that clear with you, you know, like how you,
23 you know ---

24 Q: No, I appreciate that.

25 A: Yeah, yeah, cool.

1 Q: Just to clarify for everyone, you were stopped, that stop
2 lasted a matter of minutes, and then at the very end of this
3 stop this video occurs. Is that right?

4 A: Yeah. Yes. At the end of the stop, that video occurred
5 at the beginning of the stop. Kaiden's video occurred on
6 Instagram; so it's two videos.

7 Q: And you and Kaiden are the ones who publish those videos
8 onto social media?

9 A: Yes, our social media platform; my Facebook, his
10 Instagram.

11 Q: And at the very end of your video, you told your
12 followers that you think this is funny, correct?

13 A: At the moment, yes.

14 Q: Now, after that stop ended, the police told you you were
15 free to go and everything was sorted out. Is that right?

16 A: Correct.

17 Q: And then you and Kaiden did end up finish running your
18 errands, you went to Home Depot and got your disposal, I take
19 it?

20 A: Yeah. I believe that video cut short. I want to say I
21 remember saying in the video that whoever called owe me an
22 apology.

23 Q: But it's -- that wasn't played just then, was it?

24 A: I don't know. I don't -- no. I think it was cut short.
25 Maybe your version a little shorter than the actual original

1 version.

2 Q: Well, I'll represent to you that that's a version that
3 you all produced to us and the only version that we have,
4 so ---

5 A: Okay. All right.

6 Q: Now, since everything happened on July 9th, 2021, people
7 you interact with have not treated you differently; isn't that
8 right?

9 A: Come back?

10 Q: Since July 9th, 2021, the events that we are here about
11 today, people who you interact with in the community have not
12 treated you differently?

13 A: No, no, not in a negative way, no.

14 Q: Your reputation has not been damaged, correct?

15 A: My reputation? Let's see -- yeah, I feel ---

16 Q: You do feel like that?

17 A: Yeah, I do feel like that.

18 Q: Again, do you recall giving a deposition in this case
19 under oath, right, Mr. Reown?

20 A: Can I get a copy of it, please, sir?

21 Q: I will bring you a copy again; yes, sir.

22 A: Yeah. You took it back from me. That me keep that. And
23 then you can tell me the questions you're asking me, you can
24 tell me what number and what line it on, so I can be on the
25 same page as you.

1 THE COURT: What page you going to?

2 MR. MORAN: 50.

3 A: This happened a whole -- you know, a year ago; it's been
4 a long time.

5 THE COURT: Okay. You may approach the witness.

6 MR. MORAN: Thank you, Your Honor.

7 A: Yeah, what page we on? What number?

8 BY MR. MORAN:

9 Q: Page 50, lines 5 through 7.

10 A: All right. We can do it this way. It was such a -- you
11 know how long ago I gave you this deposition. Right?

12 Actually, it was a different attorney; it wasn't even you.

13 Q: Tell me when you're there, please, Mr. Reown.

14 A: Page 50?

15 Q: Yes, sir.

16 A: All right. What line?

17 Q: Lines 5 through 7. Question: Okay. Do you think what
18 happened damaged your or your son's reputation at all?

19 Answer: I wouldn't say damaged I reputation, no. That's what
20 you testified to.

21 A: All right. That's my answer. That's my answer, sir.

22 Q: And, Mr. Reown, that's because people know that you
23 didn't take the couches -- you didn't steal the couches,
24 correct?

25 A: When you say people, who do you mean by people?

1 Q: People in the community, they know you didn't take the
2 couches?

3 A: Yeah, yeah, now they know.

4 Q: I do have a couple of questions. Sorry, I almost got a
5 little ahead of myself there.

6 A: Go ahead.

7 MR. MORAN: May I approach the witness?

8 THE COURT: Yes, sir. What is this?

9 THE COURT REPORTER: That's supposed to be 5; I'm sorry.

10 THE COURT: This is Defense Exhibit 5?

11 THE COURT REPORTER: Yes.

12 MR. MORAN: Yes, Your Honor.

13 THE COURT: Okay. Is this another one that's been
14 stipulated to?

15 MR. MORAN: Yes, Your Honor.

16 THE COURT: Okay.

17 BY MR. MORAN:

18 Q: All right. Mr. Reown, I'm gonna hand you what's been
19 marked as Defense Exhibit 5. Now, Mr. Reown, you recognize
20 this as a medical record from the Waccamaw Center for Mental
21 Health.

22 A: Correct.

23 Q: And, Mr. Reown, the -- you see at the top it says name,
24 Thomas K. Reown; is that right?

25 A: Correct.

1 Q: Now, that would be Kaiden, correct?

2 A: Correct.

3 MR. MORAN: Your Honor, I'd request to publish to the
4 jury so they can see what we're looking at as we follow along.

5 THE COURT: Okay. And this is a medical -- this is a
6 record for Kaiden?

7 MR. MORAN: Yes, sir.

8 THE COURT: Okay. And this is admitted without
9 objection, correct, Mr. Tisdale?

10 MR. TISDALE: It's the exhibit -- yes, Your Honor.

11 THE COURT: All right. So, Defense Exhibit --

12 MR. MORAN: 5, yes, Your Honor.

13 THE COURT: --- 5, we admit into evidence without
14 objection. Thank you.

15 DEFENDANTS' EXHIBIT NUMBER 5

16 ADMITTED INTO EVIDENCE

17 MR. MORAN: Ms. ---

18 THE COURT: Madam Clerk ---

19 MR. MORAN: Can we publish this to the jury, please?
20 Thank you.

21 Ladies and gentlemen, can you see this on the screen in
22 front of you?

23 (REPORTER'S NOTE: Defendants' 5 published to the jury.)

24 BY MR. MORAN:

25 Q: All right. Now, Mr. Reown, you see up at the top it says

1 service date 7/15/2021. Do you see that about four lines down
2 from the top on the left?

3 A: Correct.

4 Q: Okay. So, that would've been six days after July 9th,
5 2021, the day we're here to talk about, right?

6 A: Correct.

7 Q: Okay. Now, just to be clear, Kaiden had been visiting
8 the Waccamaw Center for Mental Health well prior to July 9th,
9 2021; isn't that right?

10 A: Correct.

11 Q: Okay. Now, if you would please, Mr. Reown, would you
12 please look at the third paragraph under history. It starts
13 with patient and father. Do you see that?

14 A: Yes.

15 Q: All right. Please follow along with me, sir. Patient
16 and father were pulled over by police after phone call had
17 reported they had stolen sofa from Salvation Army. Patient's
18 grandmother had bought the sofa and patient's father had gone
19 to pick it up. And when they did, someone saw it on camera
20 and reported it. Grandmother asked the shopkeeper who sold it
21 to her if she had called, and she said, no, it was someone
22 else. No charges pressed. Patient stated he didn't sleep
23 that night because of being anxious, but stated that he is
24 fine now. Patient stated the police treated them well, and
25 grandmother stated they did as well. Did I read that

1 correctly, Mr. Reown?

2 A: Yes, you did.

3 Q: And that's a statement from Kaiden's therapist, correct?

4 A: Yes.

5 Q: And that's an accurate statement, correct?

6 A: At the time, yes.

7 MR. MORAN: No further questions, Your Honor.

8 THE COURT: All right. Redirect?

9 MR. TISDALE: Your Honor, we have no questions.

10 THE COURT: All right. Very well. The witness may step
11 down. Thank you.

12 A: All right. Thanks.

13 THE COURT: All right. Next witness.

14 MR. TISDALE: Kaiden.

15 KAIDEN REOWN, HAVING BEEN DULY SWORN,
16 TESTIFIED AS FOLLOWS:

17 THE CLERK: Thank you. Please be seated and then state
18 and spell your name for the record.

19 MR. KAIDEN REOWN: Yes, ma'am.

20 DIRECT EXAMINATION OF KAIDEN REOWN BY MR. TISDALE:

21 Q: What is your name for the record?

22 THE COURT: Mr. Tisdale, can I ask you a quick question?

23 MR. TISDALE: Certainly.

24 THE COURT: Counsel, just very quickly. I'll be right
25 back. I'm just gonna turn on this wonderful machine.

1 (REPORTER'S NOTE: Bench conference is held off the record in
2 the presence of but outside the hearing of the jury.)

3 THE COURT: All right.

4 MR. TISDALE: That's an interesting sound, Your Honor,
5 that just cut off.

6 THE COURT: Yeah, I cut it off.

7 BY MR. TISDALE:

8 Q: Kaiden ---

9 A: Yes, sir.

10 Q: You're gonna have to speak into the microphone.

11 A: Yes, sir.

12 Q: And the people that need to hear is, number one, the
13 Judge; number two, the members of the jury. So, I want you to
14 speak loud enough if you will for them to hear.

15 A: Yes, sir.

16 THE COURT REPORTER: I need you to spell your name,
17 please.

18 A: Oh, Thomas Reown, T-H-O-M-A-S, R-E-O-W-N.

19 THE COURT REPORTER: How do you spell Kaiden?

20 A: K-A-I-D-E-N.

21 BY MR. TISDALE:

22 Q: Kaiden ---

23 A: Yes, sir.

24 Q: Can you hear me okay?

25 A: Yes, sir.

1 Q: And I want you to -- first of all, what's your birthday?
2 A: 2010 -- February 24, 2010.
3 Q: 2010, February 24th?
4 A: Yes, sir.
5 Q: All right. I'm gonna stand over here because you gonna
6 have to look at the jury and me, I think, for -- to be sure
7 that we can all hear.
8 Now, where do you live?
9 A: I live with my -- I live with my dad.
10 Q: And, so how old are you now?
11 A: Twelve.
12 Q: Twelve years old. Do you go to school?
13 A: Yes, sir.
14 Q: Where do you go to school?
15 A: Georgetown Middle.
16 Q: Georgetown Middle School?
17 A: Yes, sir.
18 Q: And what grade are you in?
19 A: Sixth.
20 Q: Sixth grade?
21 A: Yes, sir.
22 Q: Now, do you remember this event that was last year in
23 2021 about you and your father picking up some furniture for
24 your mother -- for your grandmother?
25 A: Yes, sir.

1 Q: Tell us what happened that day starting with why did you
2 go with your father to pick up the furniture?
3 A: He can't lift a couch by himself, so I helped him.
4 Q: You helped him.
5 A: Yeah; yes, sir.
6 Q: And so, you were his helper on this trip?
7 A: Yes, sir.
8 Q: Okay. And were you there when this noise came out that
9 they were supposed to give you some sort of message?
10 A: Yes, sir.
11 Q: What it is sound like?
12 A: It was scratchy, and you couldn't understand.
13 Q: Did it have any language with it or words?
14 A: No, sir. It was just noise.
15 Q: Did it sound like a fire engine or something else?
16 A: It was -- it sounded like a police car, thinking the
17 police was coming down the road, but it was a camera ---
18 Q: But it was what?
19 A: It was a camera, and all I heard it was a little noise.
20 I couldn't understand it.
21 Q: All you heard was a little noise?
22 A: Yes, sir.
23 Q: And you could understand anything about it?
24 A: Yes, sir.
25 Q: All right. Now, did you and your father load the

1 furniture into the truck?

2 A: Yes, sir.

3 Q: And you helped him?

4 A: Yes, sir.

5 Q: All right. And where were you taking it?

6 A: We had to go to Home Depot, he had needed to buy
7 something for his new house, but after we got from Home Depot,
8 we were gonna take it to my grandma house.

9 Q: That's Ms. Janet Reown?

10 A: Yes, sir.

11 Q: And was anybody else in the truck with you other than
12 your father?

13 A: No, sir.

14 Q: He was driving, of course?

15 A: Yes, sir.

16 Q: Yeah. Now, what happened on the way carrying the
17 furniture first to Home Depot and then to your grandmother's?

18 A: The police was behind us. We pulled to the side. Police
19 pulled to the side with us. My dad -- there was post office,
20 so he pulled into the post office, and he said he got a call
21 for stolen furniture.

22 Q: Stolen furniture?

23 A: Yes, sir.

24 Q: And who was it that -- did police cars follow you all ---

25 A: Yes, sir.

1 Q: --- to the post office?

2 A: Yes, sir.

3 Q: Parking lot?

4 A: Yes, sir

5 Q: And how many police cars showed up there?

6 A: First, there was one, and then like two or three came.

7 Q: So, you had about four out there?

8 A: Yes, sir.

9 Q: Police and deputy sheriffs?

10 A: Yes, sir.

11 Q: All right. Let me ask you this, Kaiden, did you and your

12 father steal furniture from Salvation Army?

13 A: No, sir.

14 Q: And whose furniture was it as far as you know?

15 A: My grandma.

16 Q: Uh-huh, (affirmative response). And your grandma, did

17 you believe she paid for it?

18 A: Yes, sir.

19 Q: She had already before this happened?

20 A: Yes, sir.

21 Q: All right. Now, Kaiden ---

22 A: Yes, sir.

23 Q: --- have you been having people bringing this event up to

24 you at your school?

25 A: Yes, sir.

1 Q: What did they say to you?

2 A: I talked -- I talked to my principal, counselor, and
3 police officer.

4 Q: All right. Why did you -- the police officer at the
5 school?

6 A: Yes, sir.

7 Q: All right. And what did you talk to him about?

8 A: Well, he talked to me about it.

9 Q: All right. Did the principal talk to you about this
10 event?

11 A: Yes, sir.

12 Q: What did the principal say to you?

13 A: He was like -- he was like, how you doing, and is
14 everything okay? And I was like, yes, sir.

15 Q: Okay. And how about the police officer at the school?

16 A: He said, he was like -- he was like, is everything okay?
17 How is your dad and grandma and you doing?

18 Q: After this event?

19 A: Yes, sir.

20 Q: Now, Kaiden, if you can -- and I know you are 12, 11
21 years old then and 12 now. How has this affected you in terms
22 of your daily life? What has happened and has it affected you
23 in any way?

24 A: A lot. Yes, sir.

25 Q: Explain it for the jury about that.

1 A: Every time I see a police, I get nervous about it. And
2 it keeps coming back to my mind.
3 Q: To your mind, this event, when you were accused of
4 stealing furniture?
5 A: Yes, sir.
6 Q: All right. And is it the same now as it was then or is
7 it better or worse?
8 A: It's getting a little better.
9 Q: A little bit better?
10 A: Yes, sir.
11 Q: Okay. Now, I think I've already asked you this question,
12 but I need to be sure. Did you and your father steal
13 anything?
14 A: No, sir.
15 Q: Have you ever stolen anything?
16 A: No, sir.
17 Q: Okay. And bear with me just one second.
18 Now, did you take a video or somebody take a video of you
19 out at the scene?
20 A: Sir?
21 Q: Did you or somebody take a video of you at the scene with
22 the police officers?
23 A: Yes, sir. I took a video.
24 Q: You did?
25 A: Yes, sir.

1 MR. TISDALE: Your Honor, we've agreed on that as an
2 exhibit, and we would like to show it to the jury now.

3 THE COURT: And that will be Plaintiffs' Exhibit 5.

4 MR. TISDALE: How we gonna do that? Y'all gonna put it
5 on?

6 MR. PHILLIPS: We'll play it for you, Tom.

7 THE COURT: So, Plaintiffs' Exhibit 5 will be admitted
8 into evidence without objection, and we will publish it to the
9 jury.

10 PLAINTIFFS' EXHIBIT NUMBER 5

11 ADMITTED INTO EVIDENCE

12 BY MR. TISDALE:

13 Q: Now, before we show this Kaiden ---

14 A: Yes, sir.

15 Q: Was this -- when was this video taken?

16 A: Right when he said, we got a call we was stealing
17 furniture.

18 Q: Where what?

19 A: Right when he said we was stealing -- he got a call -- it
20 was at the beginning of everything.

21 Q: It was what?

22 A: At the beginning of everything.

23 Q: At the beginning of everything?

24 A: Yes, sir.

25 Q: Was it in the loading -- at the loading dock or after you

1 left?

2 A: After we left.

3 Q: And was it as far as the post office where the police had
4 pulled you over?

5 A: It was -- yes, sir.

6 Q: Is that where it was?

7 A: Uh-huh, (affirmative response).

8 Q: When the police pulled you over?

9 A: Yes, sir.

10 THE COURT: All right. We ready?

11 (REPORTER'S NOTE: Plaintiffs' 5 published for the jury.

12 Audio not transcribed herein.)

13 BY MR. TISDALE:

14 Q: Kaiden, did you watch that?

15 A: Yes, sir.

16 Q: Does that express your feeling on that day ---

17 A: Yes, sir.

18 Q: --- when the police were after you?

19 A: Yes, sir.

20 Q: As you go about your life in school and in the community
21 around Georgetown, do people bring this up to you?

22 A: Yes, sir.

23 Q: Still today?

24 A: Yes, sir.

25 Q: And sometimes -- can you give the jury an idea of what

1 they have said?

2 A: They be like, did y'all -- do y'all got more couches for
3 me?

4 Q: And so that's still going on?

5 A: Yes, sir.

6 Q: All right. Now, Kaiden, these gentlemen may want to ask
7 you some questions, and I would like for you to please try to
8 answer their questions as you have mine.

9 A: Yes, sir.

10 Q: Okay? So, there we are.

11 THE COURT: All right.

12 All right. Cross-examination?

13 CROSS-EXAMINATION OF KAIDEN REOWN BY MR. MORAN:

14 Q: Hi, Kaiden. Good morning. You and I met just a couple
15 of weeks ago at your deposition; is that right?

16 A: Yes, sir.

17 Q: Well, I'm just gonna ask you a few additional questions
18 today. Okay?

19 A: Yes, sir.

20 Q: Now, when you were stopped by the police on July 9th,
21 2021, those police officers were nice to you, correct?

22 A: Yes, sir.

23 Q: That Instagram video we saw just a minute ago, that was
24 taken at the very beginning of the stop, correct?

25 A: Yes, sir.

1 Q: Now, just a few minutes after that happens, we saw your
2 video that your father took and you were feeling much better
3 by that time, correct?

4 A: Yes, sir. Yes, sir.

5 Q: You were able to joke around with your dad and the police
6 officers a couple of minutes later, correct?

7 A: Yes, sir.

8 Q: Now, for a day or two after that, you had a little bit of
9 trouble sleeping; is that correct?

10 A: Yes, sir.

11 Q: But, after that, you've been better; you've been fine?

12 A: Yes, sir.

13 Q: And you're not aware of anyone ever accusing you of a
14 thief because of this incident, correct, after the fact,
15 anybody in the community?

16 A: No, sir.

17 Q: Now, just a few more questions for you, Kaiden, I'm
18 almost done. When you were helping your dad load the couches
19 at the Salvation Army store, you heard the siren come on the
20 camera, correct?

21 A: Yes, sir.

22 Q: And you looked up at the camera?

23 A: Yes, sir.

24 Q: And you also heard a voice; is that right?

25 A: No, sir.

1 Q: Okay. But you did hear a separate distinct sound from
2 the siren?

3 A: Yes, sir.

4 Q: At that point, when you heard that sound, you told your
5 dad that you thought somebody thought you were stealing the
6 couches, right?

7 A: Yes, sir; as a joke.

8 Q: But then after you said that to him, you and your dad
9 finished loading up and leaving, correct?

10 A: Yes, sir.

11 Q: You didn't go in and clear up any confusion with the
12 store?

13 A: No, sir.

14 Q: I don't have any further questions, Kaiden. Thank you
15 very much.

16 A: Thank you.

17 THE COURT: Redirect?

18 MR. TISDALE: No, no questions, Your Honor.

19 THE COURT: All right. The witness may step down.

20 MR. TISDALE: Kaiden, come on down.

21 Your Honor, that is the last witness.

22 THE COURT: Plaintiff rests?

23 MR. TISDALE: Indeed.

24 BY THE COURT:

25 THE COURT: All right. Ladies and gentlemen, the

1 plaintiff has rested. I've got to take some matters up with
2 the attorneys. It's already noon.

3 I'm gonna go ahead give you a lunch break now. I would
4 like you to be back in the jury room at 1:30. Okay?

5 MR. TISDALE: What time, Your Honor?

6 THE COURT: 1:30. We can start at 1:30. So, maybe be
7 back at 1:20.

8 All right. Thanks very much. We'll see you after your
9 lunch.

10 Please don't discuss the case or do any independent
11 research of the case. Thank you.

12 (REPORTER'S NOTE: Jury exits courtroom @ 12:01 p.m. The
13 following takes place outside the presence of the jury.)

14 THE COURT: All right. Motions?

15 MOTIONS:

16 MR. MORAN: Yes, Your Honor. We're gonna make our motion
17 for a directed verdict.

18 THE COURT: Very well. Okay. Well, do y'all need five
19 minutes before we do that or ---

20 MR. TISDALE: Do they have any witnesses to call? I mean
21 ---

22 THE COURT: They're making their motion for a directed
23 verdict at the close of the plaintiffs' case, which is
24 required, so --

25 MR. MORAN: Tt's correct, Your Honor.

1 THE COURT: But I was just gonna ask, does anybody need a
2 short break before we start with that?

3 MR. TISDALE: No, I mean, I assume will have a lunch
4 break later.

5 THE COURT: Okay. All right.

6 MR. MORAN: Your Honor, we're ready to proceed, if that's
7 okay?

8 THE COURT: All right. Proceed.

9 MR. MORAN: Your Honor, we addressed this matter on
10 Friday. Mr. Tisdale pleaded that the Court allow you to hear
11 the evidence. The evidence has not changed what is already in
12 the record. There are -- none of the facts are in dispute,
13 Your Honor, and none of those facts that are in the record
14 demonstrate that Lt. Smith acted with actual common law malice
15 or that when he talked to the police, he abuse the scope of
16 his privilege by saying something incendiary or by
17 broadcasting it to anybody further then he needed to do to
18 protect the Salvation Army's interest, and that is the
19 standard here in this case, Your Honor. And there's no
20 evidence in the record at all of either of those things being
21 met.

22 THE COURT: And just -- and you're referring to -- just
23 to go back -- rewind a little bit from where we started
24 pretrial, you are referring to qualified privilege?

25 MR. MORAN: Yes, Your Honor, and -- please go ahead. I

1 apologize.

2 THE COURT: Well, there's -- this is -- I mean, we have a
3 defamation case here, a slander case, a slander per se case,
4 which is actionable subject to an assertion of privilege.

5 MR. MORAN: Correct, Your Honor.

6 THE COURT: We have a -- the defendants have asserted a
7 qualified privilege based upon the report being made to law
8 enforcement, which whether there is a qualified privilege is a
9 question of law which I answered at the beginning of the case
10 and I said there was a qualified privilege based off the
11 evidence in the record. However, that we needed to hear -- I
12 thought it was appropriate to hear all of the live testimony
13 pertaining to whether or not there was an abuse or a --
14 exceeding the privilege. So, that's kind of where we are and
15 that's where the focus is for this motion. It's your
16 contention that the evidence hasn't changed and that the court
17 should rule as a matter of law that there is no abuse which
18 would warrant a directed verdict.

19 MR. MORAN: If I may add a little bit more there, Your
20 Honor?

21 THE COURT: Sure.

22 MR. MORAN: Since there is a -- this an occasion for
23 which a qualified privilege applies. It is the plaintiffs'
24 burden to show actual malice whether that be abusing the
25 scope or the privilege. Plaintiffs had not shown that by the

1 evidence they have presented in their case, Your Honor. You
2 heard from Lt. Smith himself, he testified exactly what he
3 witnessed in front of him occurring, he called the police in
4 good faith, Your Honor. He only called the police and called
5 Ms. Smalls to inform her of the situation. He didn't
6 broadcast anything publicly to anyone. He didn't make any
7 incendiary comments other than reporting what he thought was a
8 theft, describing the individuals by description, describing
9 their vehicle.

10 THE COURT: Okay. Well, let me -- well, I think I
11 understand your point, but I'll come back to you.

12 Mr. Tisdale, where in the record would you assert is the
13 factual basis for abuse?

14 MR. TISDALE: Your Honor, the record is that this man,
15 Mr. Smith, called the police with no evidence whatsoever that
16 a theft had occurred, period. No theft had occurred. All he
17 had to do was call the store and say is this furniture paid
18 for or not paid for, and he did not do that. The keystone in
19 this case is his failure to determine whether the report he
20 made in -- was true or false, and he did not do that. And
21 that, I think, is wide open for a jury.

22 THE COURT: Well, let me actually do it this way. Let's
23 just talk about the elements of abuse. All right. So, the
24 party asserting qualified privilege prove the following -- I
25 should say, qualified privilege, good faith, an interest to be

1 upheld, a statement limited in its scope to this purpose, the
2 proper occasion, publication in a proper manner to proper
3 parties. As I understand it -- what prong do you believe
4 fails from those elements?

5 MR. TISDALE: Well, he had no reason to be reporting this
6 at all, and he did, and it was legally malicious because all
7 he had to do was find out -- make -- do an investigation.

8 THE COURT: Okay. So, just -- if I understand correctly
9 ---

10 MR. TISDALE: He did not have probable cause.

11 THE COURT: So, you're common -- if I understand you,
12 you're arguing common law malice and ill will would be
13 exhibited by his not confirming whether it was a -- something
14 that -- whether they had permission to get the furniture or
15 not.

16 MR. TISDALE: Precisely.

17 THE COURT: Okay. Anything else on that? That's
18 basically how ---

19 MR. TISDALE: That's it. I mean, he just didn't do
20 anything. He just called the police and that was that.

21 THE COURT: All right. Mr. Moran?

22 MR. MORAN: Your Honor, there is complete absence of any
23 evidence of ill will on behalf of Lt. Smith at all. To have
24 ill will, he would've had to have known that they didn't steal
25 those but went through the call anyway just to harm them.

1 That did not happen, Your Honor. In fact, Lt. Smith
2 testified under oath here that he didn't want anybody to get
3 in trouble. All he wanted to get was the property back that
4 he thought was stolen. And when he thought it was stolen,
5 Your Honor, he thought it was stolen because he let the alarm
6 sound for two to three minutes, and then he spoke into the
7 phone, and on his end of the phone, it appeared to him that
8 his voice was heard. And only then did he call the police and
9 then his communication to the police was 100 percent properly
10 limited in its scope. There has been no abuse of a privilege
11 here, Your Honor.

12 MR. TISDALE: Your Honor, he simply did not do anything
13 to see that this injustice could be avoided by checking on it
14 or doing anything. I mean, it's just unbelievable that -- and
15 this is the kind of case that in Judge Toal's opinion there's
16 a case ---

17 THE COURT: Which opinion are you referring to?

18 MR. TISDALE: Swinton.

19 THE COURT: Okay.

20 MR. TISDALE: --- should be decided by a jury as to
21 whether or not he abused it. And it is an abuse. And his
22 abuse is, Your Honor, no short -- not short of recklessness.
23 It was reckless to have these people arrested and under these
24 circumstances.

25 THE COURT: Okay. Well, was it reckless to make the

1 report at all?

2 MR. TISDALE: It was, because all he had to do was find
3 out that it was based on a falsity.

4 THE COURT: Okay.

5 MR. TISDALE: It was false.

6 MR. MORAN: Your Honor, may I ---

7 MR. TISDALE: It was a false report.

8 THE COURT: Listen, nobody denies that fact that the
9 Reowns purchased the furniture. That's established
10 conclusively. But I'm -- I have to be laser focused on a
11 specific issue of privilege and abuse.

12 MR. TISDALE: Well ---

13 THE COURT: Obviously, it was a mistake in hindsight
14 because they did purchase the furniture, and ---

15 MR. TISDALE: Well, he made a report to law enforcement
16 to have these people charged with a crime that they did not
17 commit when all he had to do was pick up the telephone and
18 find out that it was false.

19 THE COURT: And you assert that that was with ill will or
20 malice.

21 MR. TISDALE: I know it was by -- in law.

22 THE COURT: You gathered that from his testimony?

23 MR. TISDALE: Huh?

24 THE COURT: Do you believe based on his testimony that
25 that was an example of ill will or malice?

1 MR. TISDALE: I do.

2 THE COURT: Okay.

3 MR. TISDALE: In law.

4 THE COURT: Okay.

5 MR. MORAN: So, Your Honor, the part that Mr. Tisdale is
6 arguing, actually goes to whether a qualified privilege exists
7 or not. We've already determined there is one. Right?

8 Now, ---

9 MR. TISDALE: Unless it was abused.

10 MR. MORAN: Exactly. But you've heard from Lt. Smith,
11 there's nothing in his testimony that indicates there's any
12 malice at all. In fact, the opposite of malice, whatever that
13 may be. And, Your Honor, he was instructed by the police, as
14 he's testified before, to call the police first immediately if
15 he suspected there was a crime going on, and that's what he
16 did, Your Honor.

17 THE COURT: All right.

18 MR. TISDALE: It's a jury question, but I think the
19 verdict ought to be directed in our favor on that point.

20 THE COURT: Well, I think the general rule is that --
21 well, let me find that specific language. Generally, whether
22 an occasion gives rise to -- let's see -- make sure I'm
23 reading the right one. Okay. Whether a qualified privilege
24 has been abused is a question of fact for the jury unless only
25 one conclusion can reasonably be drawn from the evidence. You

1 know, factual inquiries related to the determination whether a
2 privilege has been abused while generally left to the jury can
3 include whether the defendant acted in good faith in making
4 the statement, whether the statement was properly limited in
5 its scope, and whether the statement was sent only to proper
6 parties.

7 MR. TISDALE: Right.

8 THE COURT: That is from -- actually, that's persuasive,
9 that's from *Cantrell*, but it's cited to a South Carolina case.

10 MR. MORAN: The *Woodward* case also states that -- it's a
11 Supreme Court case, and this is Mr. Tisdale's case himself. I
12 think he's stated a couple of times. He's the one who tried
13 this case. But, Your Honor, I know the law from that case
14 because I've cited it several times. And the *Woodward* case
15 says that in the absence of a controversy as to the facts as
16 it is here, it is for the Court to say in a given instance
17 whether the privilege has been abused or exceeded. Mr.
18 Tisdale just says that case, he doesn't argue that language.

19 MR. TISDALE: The *Swinton* case came after that.

20 THE COURT: Well, I've got *Swinton* in front of me.

21 MR. TISDALE: That was Justice Toal, I keep saying.

22 MR. MORAN: Your Honor, and just to be clear *Swinton*
23 doesn't displace *Woodward*. *Woodward* makes the distinction
24 that where the facts are not in dispute, it's for the Court to
25 decide. There was a factual dispute in *Swinton*.

1 THE COURT: Yeah, I'm trying to find the language. Okay.
2 And *Swinton* was a directed verdict that was reversed.
3 Financial issues.

4 MR. MORAN: Your Honor, if I'm correct, I believe *Swinton*
5 was reversed because there was a dispute as to the facts.

6 THE COURT: Correct. And I -- actually, and to be clear,
7 the Court of Appeals were reversed. The Court of Appeal
8 affirmed and then the Supreme Court reversed the Court of
9 Appeals, anyway.

10 Well, can we agree on one thing that for an abuse of
11 privilege here there has to be -- the plaintiff has to prove
12 some sort of ill will or common law malice?

13 MR. TISDALE: And, Your Honor, my position is this, the
14 claim of qualified privilege to stand, that it can here
15 because the claim of privilege is abused entirely upon the
16 false statement for which the privilege claimed. It was
17 entirely false, and that in itself is evidence of malice that
18 the Court needs to consider and the jury, if it needs to be
19 determined, can decide whether it was abused or not.

20 THE COURT: All right.

21 Yes, sir?

22 MR. MORAN: Your Honor, he's saying because the statement
23 was false it's a presumption of malice. That's not true at
24 all. That's been addressed spot on and the Courts said that
25 where the privilege exists, even if it's a defamatory

1 statement per se, the plaintiff still has to prove malice.
2 The burden of proof is on them, and they have not done that
3 here, Your Honor.

4 THE COURT: All right.

5 MR. TISDALE: So, the question is what is malice. And
6 malice is a matter of law in this situation.

7 MR. MORAN: I don't disagree, Your Honor. Actual malice
8 means that the defendant was actuated by ill will and what he
9 did was designed to causelessly and wantonly injure the
10 plaintiff.

11 MR. TISDALE: That's exactly what happened.

12 THE COURT: Okay. All right. I'll take a break. It's
13 12:15. Why don't we just -- cause I need a few minutes to
14 think about this.

15 MR. MORAN: Understood, Your Honor.

16 THE COURT: Frankly, why don't y'all -- why don't we just
17 come back and 1 o'clock. 1 o'clock; that's 45 minutes. We'll
18 find some granola bars around here and that'll be lunch.

19 All right. We'll be in recess until 1 o'clock.

20 MR. MORAN: Yes, sir.

21 **RECESS - 12:19 P.M.**

22 *****OFF THE RECORD*****

23 **ON THE RECORD - 1:16 P.M.**

24 **RULING OF THE COURT:**

25 THE COURT: All right. We've had the chance to break for

1 lunch. Prior to the break, we had some robust arguments
2 addressing Defendants' motion for a directed verdict. We've
3 now -- we're now in a -- we've heard the plaintiffs' case.
4 I've already ruled that qualified privilege applies to the
5 facts of this case. Therefore, for the plaintiffs to recover
6 in the action, it's their burden to show that the privilege --
7 the qualified privilege present was abused or exceeded. This
8 can be done by demonstrating that the person making the
9 alleged defamatory statement either: (1) failed to limit the
10 scope of the statement by sending it to unnecessary parties;
11 or (2) acted with actual malice or a lack of good faith.

12 Now, I've heard the evidence. There is no dispute that
13 Lt. Smith published the statement to only necessary parties.
14 He called the only interested party, the police, to report a
15 perceived possible crime, and then Ms. Smalls to notify the
16 store manager of an ongoing situation. Doesn't appear to be
17 competing evidence regarding this point, and there are no
18 competing inferences on which a jury could find that the
19 statement was published to any other parties. So, in sum,
20 this really all comes down to the phone call made to the
21 police by Lt. Smith. So, the issue of the case turns on
22 whether Lt. Smith acted with actual malice in contacting the
23 police. Now, actual malice is defined in *Swinton Creek*
24 *Nursery v. Edisto Farm Credit* as a showing that the defendant
25 was activated by ill will in what he did with a design to

1 causelessly and wantonly injure the plaintiff, or that the
2 statements were published with such recklessness as to show a
3 conscious disregard for the plaintiffs' rights.

4 Now, at trial, over the past day and a half now, there's
5 been uncontested evidence presented by Lt. -- that Lt. Smith
6 saw what he thought was a crime on security cameras and then
7 took prompt steps given the circumstances to communicate with
8 the parties he saw on the camera. Now, it's undisputed that
9 Lt. Smith sounded an alarm that was heard by the plaintiffs.
10 He also attempted to speak to the plaintiffs through a
11 microphone function, though the plaintiffs testified they
12 could not understand him. Now, whether or not the speech was
13 audible and understood by the plaintiffs is not dispositive of
14 whether Lt. Smith acted with ill will or malice toward the
15 plaintiffs. The question of ill will and malice is based on
16 the statement to police, which began this chain of events, and
17 if that qualified privilege was abused.

18 Now, while the abuse of a conditional qualified privilege
19 is ordinarily an issue for the jury, in the absence of a
20 controversy as to the facts, it is for the Court to say that a
21 given instance whether or not privilege has been -- whether or
22 not the privilege has been abused or exceeded. Now, in
23 listening to all the witnesses' testimony, it does not appear
24 to the Court that the defendants acted with any malice or ill
25 will toward the plaintiffs in making the initial report of the

1 possible crime. Regardless of whether it was ultimately shown
2 to be incorrect, which everyone agrees it was, no one disputes
3 that. More importantly, the Court does not see competing
4 inferences on which a reasonable juror could find that Lt.
5 Smith acted with actual malice or ill will toward the
6 plaintiffs.

7 As such, the Court grants directed verdict on Plaintiffs'
8 defamation claim in favor of the defendants and rules that
9 there is a qualified privilege, and further rules as a matter
10 of law that the privilege was not abused or exceeded based
11 upon the evidence presented to me in this trial.

12 I recognize that people can have disagreeing viewpoints,
13 and I recognize that not everyone will agree with this
14 decision. I would like to say -- I would like to say that I
15 am sorry that this situation ever occurred. I am sorry that
16 the Reowns had to go through this. There is no doubt it was a
17 mistake. There's no doubt they purchased that furniture, but
18 at the end of day is it an actionable claim of defamation?
19 And under the law, I do not see a qualified privilege that has
20 been abused and I am duty-bound to grant the directed verdict.
21 Okay?

22 That's all. Court will be in recess.

23 **RECESS @ 1:20 P.M.**

24 ******OFF THE RECORD******

25 **ON THE RECORD - 1:32 P.M.**

1 (REPORTER'S NOTE: Jury enters courtroom @ 1:33 P.M.)

2 BY THE COURT:

3 THE COURT: Madam Foreman, ladies and gentlemen of the
4 jury, welcome back. Hope y'all had a nice lunch.

5 When we left, the plaintiff had rested their case and I
6 explained to you that I needed to take some matters up with
7 the attorneys anyway and you could go ahead to lunch. During
8 the recess for lunch, I took up several matters with the
9 attorneys and I made a decision as a matter of law to grant
10 what we call a directed verdict in this case, and I have
11 basically dismissed the case. That's on a -- that is for
12 legal reasons only, matters in the law. It has nothing to do
13 with my feeling about any of the parties or anything like
14 that. But, it's a difficult decision, but one that I thought
15 that was appropriate under the circumstances.

16 So, long story short, your jury service is concluded.
17 We appreciate your time here over the last few days. As I
18 said at the beginning, we can't move cases unless people come
19 forward, and I'll use the word volunteer, but agree to serve
20 as jurors in both our criminal and our civil justice court
21 system. So, the lawyers did a good job of presenting both
22 their cases, this is just a decision that I made and I alone
23 made.

24 But on behalf of all of us, thank you for your service.
25 You're free now to depart and move on with the rest of your

1 week. But, thank you very much.

2 (REPORTER'S NOTE: Jury exits courtroom @ 1:35 p.m.)

3 THE COURT: During -- Mr. Tisdale, while you were coming
4 back up here, we did get out the rule book and confirm there's
5 ten days for post-trial motions for any post-trial motions I
6 expect we may see. And if you would be so kind as to let me
7 know and, you know, email them to me as well, so they don't
8 fall off the radar.

9 I mean what I said, I appreciate the work the attorneys
10 did in this case. I thought y'all both did -- both sides did
11 a good job. And as y'all probably know, I don't take a
12 decision like that lightly, but I thought it was necessary
13 under the circumstances.

14 So, anything else for the record before we depart?

15 MR. TISDALE: No. Thank you, Your Honor. We appreciate
16 your service.

17 THE COURT: All right.

18 MR. MORAN: Absolutely. Thank you.

19 MR. PHILLIPS: Thank you.

20 THE COURT: Court's in recess. I don't know if we're
21 adjourned for the week or not, but we're in recess.

22 **ADJOURNED - 1:36 P.M.**

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Thomas Reown, et al. v. Salvation Army, et al., held in the Court of General Sessions for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on October 10-11, 2022.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.

Kay H. Richardson
Official Court Reporter

December 21, 2022.

99129 14792 Ocean Hwy SHOPLIFT 070921 phone)

Recording: July 9, 2021, 16 hours, 18 minutes, 36 seconds.

Female: Just a sec

Male: Yes this Lt. Joshua Smith with the Salvation Army. I am currently watching individuals steal furniture from our dock at our store in Litchfield. The address is 14792 Ocean Highway.

Female: **[inaudible]** Is it still there? Are they doing it now?

Male: Yes ma'am, it is in progress. I am watching them. They loaded a couch and loveseat onto the back of a royal blue Ford Ranger with silver rims.

Female: You said a Ford, I'm sorry a blue Ford Ranger?

Male: Yes ma'am. Blue Ford Ranger. It has aftermarket rims on it. The two gentlemen were African-American. One was a bigger heavysset fellow and the other one was slim. There was another car back—go again, I'm sorry.

Female: Hold on one second. I have a shoplifting in progress Salvation Army 14792 Ocean Highway, 14792 Ocean Highway. I'll advise that there are two male subjects stealing furniture off the dock. It'll be a blue Ford Ranger, _____ information at this time.

Do you see a tag number by any chance, sir?

Male: No they backed up to the dock. I can check to see if they've left and then maybe I can get a tag number?

Female: Salvation Army 14792 Ocean Highway.

You said two black males, sir?

Male: Yes, ma'am, it was two black males. There was a black sedan back there with them. But I didn't see anyone get in or out of that vehicle. Looking at the cameras now, they are gone, which means they are probably on Ocean Highway someplace. We'll we can--

Female: **[inaudible]**

Male: Let me see if I can see on the other camera which way they went.

Female: Blue Ford Ranger has left the scene heading possibly toward Ocean Highway **[inaudible]**

Male: If they were going to head South and go to Georgetown they would have to go North first and turn around at the roundabout.

Female: And you have them on camera?

Male: Yes ma'am I have them on camera and I have the theft, the whole thing.

Female: You're not able to see the tags.

Male: No, I can see the front on the truck. It's got like a plate on the front but its not a state plate. It looks like it's a sports team plate of some sort but it too small, I can't tell. Oh it looks like

Female: **[inaudible]** blue Ford Ranger, possibly heading towards Ocean Highway, they do have furniture on the back of the vehicle. Not able to get a tag.

Male: After looking at it from the angle that I had it after zooming in, the slender male that was there, oh no lost the—it look like it was a minor.

Female: **[inaudible]**

Male: I'm sorry.

Female: He says he does have it on camera. Okay, they are looking for them. Sir, he's asking can you tell north or south on Ocean Highway?

Male: I can't tell because we only have two cameras and only one of them gets part of that exit way but it doesn't get the whole point because where we are at on Ocean Highway you have to go North in order to even have a chance to turn around to go South.

Female: F179, he's not able to tell specifically but advises the way the road is set up they have to go North. I'm sorry, north you said north right. Correct it is north?

Male: Yes.

Female: They are looking for them in the area if there is any more information you can give us, just give us a call back, but they will be looking for them. If you happen to zoom in the camera **[inaudible]**

Male: Okay.

Female: **[inaudible]** What type of furniture?

Male: It was like a brown couch and loveseat or an oversized chair.

Female: That's going to be a blue Ford Ranger, advise that it should have a loveseat or big chair on the back.

Male: Yeah, there's two pieces that match

Female: Thank you sir. An officer—Said 17 is split—Sir, we got officers looking for them in the area, okay?

Male: Okay.

Female: If you get any more information you can call back.

Male: Okay.

Female: Alright.

Male: What is the process? Is something happens or they find them, how will you reach out to me, if you find them to return the merchandise

Female: ? Okay, sir go ahead and give me your name.

Male: Lt. Joshua Smith

Female: Okay, what's your phone number sir?

Male: 843-385-6779.

Female: Okay, we got _____ get them to give you a call to make report, okay?

Male: Alright, thank you ma'am.

Female: You're welcome sir.

Male: Bye-bye.

Recording: July 9, 2021, 16 hours, 26 minutes, 45 seconds

99129 14792 Ocean Hwy INFO 070921 phone2 phone1

Recording: July 9, 2021, 16 hours, 30 minutes, 30 seconds.

Female: **[inaudible]**

Male: Yes this Lt. Joshua Smith with the Salvation Army. I just called in about shoplifting, someone stealing furniture at our store in Litchfield and our manager at that store just called me and told me that those individuals actually did pay for those pieces of furniture, so that was a mishap on our part.

Female: Alright, we will let him know.

Male: Alright, thank you. I just wanted to make sure that was corrected.

Female: Alrighty.

Male: Thank you.

Female: You're welcome.

THE
SALVATION
ARMY

GEORGETOWN SC
PAWLEYS ISLAND
843-235-3918

DATE 07/09/2021 FRI TIME 14:32

MENS FT1	\$4.99
CHILDRENS FT1	\$3.99
WOMENS FT1	\$5.99
CHILDRENS FT1	\$3.99
CHILDRENS FT1	\$3.99
CHILDRENS FT1	\$3.99
FURNITURE FT1	\$179.99
FURNITURE FT1	\$129.99
%-	-10.000%
AMOUNT T1	-33.69
SUBTOTAL	\$303.23
TOTAL	\$303.23
CHARGE1	\$303.23
CLERK 3	\$303.23

121092 00001

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
	)	
THOMAS M. REOWN Individually	)	
and as Parent and Natural	)	
Guardian of K.R., a minor aged 11	)	
years,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	SUMMONS
	)	
LIEUTENANT JOSHUA SMITH	)	
and THE SALVATION ARMY OF	)	
THE CAROLINAS,	)	
	)	
Defendants.	)	

TO: THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint herein, a copy of which is served upon you, and to serve a copy of your written response to the said Complaint upon the Law Offices of Thomas S. Tisdale, LLC, 4 North Wharf, Suite 100, Charleston, South Carolina, 29401, within thirty (30) days after the date of service hereof, exclusive of the day of service; and if you fail to Answer the Complaint within the time aforesaid, the Plaintiffs in this action will apply to the Court for the relief demanded in the Complaint.

Dated: September 23, 2021.

Respectfully submitted,

/s/Thomas S. Tisdale
 Thomas S. Tisdale, 5584
 Salvatore G. Davi, 104954
 LAW OFFICES OF THOMAS S. TISDALE, LLC
 4 North Wharf, Suite 100
 Charleston, South Carolina 29401
 Telephone: (843) 823-4100
 Email: tst@chancellorsc.com
 sd@chancellorsc.com

Counsel for Plaintiffs

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
	)	
THOMAS M. REOWN Individually	)	
and as Parent and Natural	)	
Guardian of K.R., a minor aged 11	)	
years,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	COMPLAINT
	)	(Jury Trial Demanded)
LIEUTENANT JOSHUA SMITH	)	
and THE SALVATION ARMY OF	)	
THE CAROLINAS,	)	
	)	
Defendants.	)	

The Plaintiffs complaining against the named Defendants herein allege:

This is an action brought by the Plaintiffs against the Defendants for the damages they sustained due to the defamatory and negligent acts and omissions by Defendant Smith as an agent of Defendant The Salvation Army of the Carolinas.

JURISDICTION AND VENUE

1. Plaintiff Thomas M. Reown (hereafter "Plaintiff"), is a citizen and resident of Georgetown County, South Carolina.
2. Plaintiff K.R. is the eleven-year-old son of Thomas Reown and lives with Thomas Reown in Georgetown County, South Carolina.
3. Defendant The Salvation Army of the Carolinas (hereafter "Defendant", or, "The Salvation Army") is a non-profit entity incorporated in the state of North Carolina that serves and North and South Carolina, and services individual retail locations, administrative and social service offices,

and shelters across the state of South Carolina, including the Litchfield Beach Family Store located at 13089 Ocean Highway, Litchfield Beach, South Carolina 29585 (hereafter “the Store”).

4. Defendant Salvation Army Lieutenant Joshua Smith (hereafter “Lt. Smith”), at the time that the events concerning this action took place, oversaw the Store and, upon information and belief, is a citizen and resident of Georgetown County.

5. Both the Plaintiffs and the Defendants are subject to the jurisdiction of this Court, and Georgetown County is a proper venue for this action because all acts and omissions arising out of this matter occurred within the Litchfield Beach retail store located within Georgetown County.

6. All of the matters, transactions, and things alleged in this Complaint occurred in Georgetown County and this Court is therefore a proper venue for this action because all of Defendant The Salvation Army’s business activities and its property are within Georgetown County, and Defendant Lt. Smith is employed at The Salvation Army retail location in Georgetown County, South Carolina.

FACTUAL BACKGROUND

7. On or about July 9, 2021, Thomas Reown’s mother, Janet Reown, purchased two couches from Defendant’s retail location located in Pawleys Island at 13089 Ocean Highway, Litchfield Beach, South Carolina 29585. Ms. Reown was provided a sales receipt at the conclusion of the transaction.

8. Unable to lift or transport these couches herself, Ms. Reown requested that her son, Plaintiff Thomas M. Reown, and Plaintiff’s eleven-year-old son, K.R., come to the Store to load the couches into Plaintiff’s truck.

9. When Plaintiff and his young son arrived at the Store, they were greeted by employees, who took them to the couches. Plaintiff and his son lifted and loaded the couches from the loading

dock at the back of the Store and into their truck, cordially left the Store, and began heading north towards Murrells Inlet on Ocean Highway.

10. After driving for less than 15 minutes, Plaintiff noticed several police cars with their lights activated in his rearview window; Plaintiff promptly pulled over into the United States Post Office parking lot located on US-17 South in Murrells Inlet, about 11 miles from the Salvation Army Store.

11. Plaintiff and K.R. cautiously got out of the vehicle and were approached by the police officers, who informed Plaintiff that the supervisor of the Salvation Army Store in Pawleys Island Lt. Joshua Smith, reported to the police that individuals had just stolen furniture and left the premises of the store.

12. Understandably disconcerted by the accusations, Plaintiff and K.R. pleaded with officers that the couches in Plaintiff's truck were in fact purchased by Ms. Reown, who was in possession of the receipt of purchase for the merchandise, and were not stolen. Moreover, Plaintiff conveyed to officers that the Salvation Army employees knew that Plaintiff had picked up the couches and had led Plaintiff and K.R. to the furniture and supervised him as he lifted the couches from the loading dock of the Store into his truck.

13. Officers allowed Plaintiff and K.R. to leave the scene only after Ms. Reown sent to Plaintiff's phone a picture of the sales receipt. Plaintiff's eleven-year-old son was visibly shaken by the ordeal, thinking that his father was going to be arrested for theft.

14. The same day, Ms. Reown went back to the Store to inquire to Store employees as to why they had called the police to report that the couches they had helped her purchase and witnessed her son load into his truck were stolen from the Store. The employees replied that Lt. Smith, a white male, had been monitoring the Store's surveillance cameras and saw Plaintiff and his son

take the couches and assumed that they were being stolen. Lt. Smith carelessly neglected to call the Store to confirm with his employees before reporting his false claims of theft to the police.

15. Ms. Reown expressed to the Store employees that she wished for an apology.

16. Upon information and belief, later that day, Lt. Smith called Ms. Reown and stated that his employees had told him that she had wanted a phone call. Ms. Reown replied that she had wanted him to apologize for the incident in which he accused Plaintiff and his son of stealing furniture, and for his relaying to others the same. Lt. Smith retorted that he did not call her to apologize, and continued to refuse to apologize to both Ms. Reown and later to Plaintiff directly.

17. Plaintiff K.R., a child, and his father were traumatized, having been accused of committing the crime of grand larceny.

18. Because of the malicious and negligent acts and omissions of Defendant and its agents, Plaintiffs have suffered damages. And, because the Defendants refused to even apologize, Plaintiffs bring this action for compensation for their damages to which they are entitled by law.

FOR A FIRST CAUSE OF ACTION
NEGLIGENCE

19. Plaintiffs reallege all of the foregoing allegations of the Complaint as if set forth here verbatim.

20. Defendant Lt. Smith, acting as an agent for Defendant The Salvation Army, made a false statement that the Plaintiffs had stolen furniture with reckless disregard for the truth of his assertion.

21. Furthermore, Lt. Smith owed customers a duty to reasonably investigate whether or not these customers, the Plaintiffs herein, had stolen or shoplifted merchandise before reporting them to the police as thieves to humiliate and interrogate them.

22. The Plaintiffs suffered intense emotional harm and mental anguish thereafter that will have lasting effects due to Lt. Smith's baseless, irresponsible accusations.

23. Plaintiffs are therefore entitled to compensation for their damages.

FOR A SECOND CAUSE OF ACTION
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

24. Plaintiffs reallege all of the foregoing allegations of the Complaint as if set forth here verbatim.

25. Plaintiff K.R., an eleven-year-old child, directly witnessed his father's apprehension by police, having been pulled over and questioned with his father, and reasonably feared that his father was going to be arrested and jailed for the crime of grand larceny.

26. Plaintiff K.R.'s father's confrontation with the police was a result of Defendant Lt. Smith's negligent and false reporting that Plaintiffs had stolen couches from The Salvation Army Litchfield Beach Store.

27. The witnessing of this event was especially damaging to K.R. given the current political and social climate involving police and African-Americans, which has caused substantial distrust of law enforcement by the Black community.

28. Plaintiff K.R. was significantly traumatized by the event and suffers to this day, and is therefore entitled to reasonable damages.

FOR A THIRD CAUSE OF ACTION
DEFAMATION *PER SE*

29. Plaintiffs reallege all of the foregoing allegations of the Complaint as if set forth here verbatim.

30. Defendant Lt. Smith published a false statement to police, his employees, and others with malice by alleging that the Plaintiffs had committed a crime without any inquiry or investigation whatsoever as to the truth of the matter that was reported to the police.

31. Because this defamatory statement involves allegations of a crime, damages are therefore presumed and actionable.

32. Nonetheless, Plaintiffs' reputations have been harmed and they have suffered serious emotional harm, mental anguish, and damage to their reputation as a result of Defendant's acts and omissions.

33. Plaintiffs are entitled to compensation by law for the presumed damages they have sustained.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs herein demand an award and judgment from this Court to compensate them for all the actual damages they have sustained, and for all of the costs and disbursements incurred in this matter; and, they are also entitled to an award and judgment for punitive damages for the reasons described herein.

Dated: September 23, 2021.

Respectfully submitted,

/s/Thomas S. Tisdale

Thomas S. Tisdale, 5584
Salvatore G. Davi, 104954
LAW OFFICES OF THOMAS S. TISDALE, LLC
4 North Atlantic Wharf, Suite 100
Charleston, South Carolina 29401
Telephone: (843) 823-4100
Facsimile: (843) 823-5251
Email: tst@chancellorsc.com
sd@chancellorsc.com

Counsel for Plaintiffs

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF GEORGETOWN) FIFTEENTH JUDICIAL CIRCUIT

THOMAS M. REOWN Individually and as Parent	)	Civil Action No. 2021-CP-22-00806
and Natural Guardian of K.R., a minor aged 11 years,	)	
	)	
Plaintiffs,	)	
	)	<u>AMENDED ANSWER</u>
vs.	)	
	)	Jury Trial Requested
LIEUTENANT JOSHUA SMITH and THE	)	
SALVATION ARMY OF THE CAROLINAS,	)	
	)	
Defendants.	)	
	)	

Defendants, Lieutenant Joshua Smith (“Lt. Smith”) and The Salvation Army, A Georgia Corporation (improperly named as “The Salvation Army of the Carolinas”) (hereinafter, “The Salvation Army” and jointly “Defendants”), file this Amended Answer to Plaintiffs’ Complaint and state as follows:

GENERAL DENIAL

Except as otherwise expressly admitted or qualified herein, Defendants generally deny all the averments of Plaintiffs’ Complaint.

JURISDICTION AND VENUE

1. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 and, therefore, deny the same.

2. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 and, therefore, deny the same.

3. Regarding Paragraph 3, Defendants deny that The Salvation Army is incorporated in North Carolina. Defendants admit that The Salvation Army provides a multitude of religious, charitable, and community services throughout the Southeast, including South Carolina.

Defendants admit that The Salvation Army operates the Litchfield Beach Family Store located at 13089 Ocean Highway, Litchfield Beach, SC 29585. Defendants deny any remaining allegations of Paragraph 3.

4. Paragraph 4 is admitted.

5. To the extent Paragraph 5 alleges proper jurisdiction and venue, Paragraph 5 contains legal conclusions to which no response is necessary. To the extent a response is required, such allegations are denied. To the extent Paragraph 5 contains factual allegations, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 and, therefore, deny the same.

6. To the extent Paragraph 6 alleges proper jurisdiction and venue, Paragraph 6 contains legal conclusions to which no response is necessary. To the extent a response is required, such allegations are denied. To the extent Paragraph 6 contains factual allegations, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6 and, therefore, deny the same.

FACTUAL BACKGROUND

7. Paragraph 7 is admitted.

8. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 and, therefore, deny the same.

9. Regarding Paragraph 9, Defendants admit that Plaintiffs came to the store, loaded the couches, and drove away. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 9 and, therefore, deny the same.

10. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10 and, therefore, deny the same.

11. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11 and, therefore, deny the same.

12. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12 and, therefore, deny the same.

13. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 13 and, therefore, deny the same.

14. Regarding Paragraph 14, Defendants admit that Lt. Joshua Smith remotely viewed the store's surveillance camera feed upon receiving a motion sensor alert after closing time and noticed two individuals loading furniture into a truck from the loading area of the store. Defendants admit Lt. Smith, upon viewing the footage and given the history of similar thefts at the store, contacted the Georgetown County Sheriff's Office in good faith to report a suspected theft. Defendants admit that, Lt. Smith immediately contacted the Georgetown County Sheriff's Office to report that the furniture had been purchased rather than stolen upon confirming the same with store employees. Defendants deny the remaining allegations of Paragraph 14.

15. Regarding Paragraph 15, Defendants admit that Ms. Reown demanded Lt. Smith's personal contact information and, when the request was refused, agreed to provide her own information so that Lt. Smith could contact her. Defendants deny the remaining allegations of Paragraph 15.

16. Regarding Paragraph 16, Defendants admit that Lt. Smith called Ms. Reown later that evening and apologized. Defendants admit that Lt. Smith hung up the phone after repeated requests for Ms. Reown and others on the call to refrain from profane speech went unheeded. Defendants deny the remaining allegations of Paragraph 16.

17. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 17 and, therefore, deny the same.

18. Paragraph 18 is denied.

ANSWER TO PLAINTIFFS' FIRST CAUSE OF ACTION

19. Defendants incorporate all of the foregoing answers as if set forth here verbatim.

20. Paragraph 20 is denied.

21. Paragraph 21 is denied.

22. Paragraph 22 is denied.

23. Paragraph 23 is denied.

ANSWER TO PLAINTIFFS' SECOND CAUSE OF ACTION

24. Defendants incorporate all of the foregoing answers as if set forth here verbatim.

25. Paragraph 25 is denied.

26. Paragraph 26 is denied.

27. Paragraph 27 is denied.

28. Paragraph 28 is denied.

ANSWER TO PLAINTIFFS' THIRD CAUSE OF ACTION

29. Defendants incorporate all of the foregoing answers as if set forth here verbatim.

30. Paragraph 30 is denied.

31. Paragraph 31 is denied.

32. Paragraph 32 is denied.

33. Paragraph 33 is denied.

34. The Paragraph under "Prayer for Relief" beginning "WHEREFORE . . ." is denied and Defendants deny that Plaintiffs are entitled to any judgment whatsoever.

FIRST DEFENSE
(Rule 12(b)(6), SCRCP)

35. Plaintiffs have failed to state facts sufficient to constitute a cause of action and, thus, their Complaint should be dismissed.

SECOND DEFENSE
(Self-Publication)

36. Plaintiffs self-published the alleged defamatory statements and occurrence by speaking to the media regarding the same and, thus, Plaintiffs are barred from any recovery.

THIRD DEFENSE
(Qualified Privilege)

37. In reporting a suspected theft to the Georgetown County Sheriff's Department, Defendant Smith (1) acted in good faith; (2) in the interests of protecting Defendants' property and in reporting suspected criminal activity; (3) made statements limited in scope for the purpose of protecting those interests; (4) on a proper occasion; and (5) in a proper manner to proper parties. Consequently, any allegedly defamatory statements by Defendants were qualifiedly privileged and, thus, Plaintiffs are barred from any recovery.

FOURTH DEFENSE
(Failure to Mitigate)

38. Plaintiffs' damages, if any, should be reduced or eliminated to the extent Plaintiffs have failed to mitigate their alleged damages.

FIFTH DEFENSE
(Modified Comparative Negligence)

39. Plaintiffs' own negligence outweighs any negligence by Defendants and, thus, Plaintiffs are precluded from any recovery. To the extent Plaintiffs' own negligence is found to be

less than or equal to that of Defendants, Plaintiffs' recovery, if any, should be reduced in proportion to their own negligence.

SIXTH DEFENSE
(Limitations on Punitive Damages)

40. Defendants specifically incorporate the limitations on punitive damages set out in S.C. Code § 15-32-530 as well as all limitations imposed by the Constitution of the United States and the Constitution of the State of South Carolina as if expressly set out herein.

SEVENTH DEFENSE
(Charitable Immunity)

41. The Salvation Army, is a tax-exempt 501(c)(3) charitable organization. As such, it is subject to the provisions of S.C. Code Ann. § 33-56-180 and S.C. Code Ann. § 15-78-120. Therefore, Plaintiffs' recovery, if any, is limited by the provisions of this statute. Defendants invoke and incorporate herein by reference all of the limitations, rights defenses afforded by § 33-56-180 and S.C. Code Ann. § 15-78-120.

EIGHTH DEFENSE
(Reservation of Additional Defenses)

42. Defendants reserve the right to assert additional defenses as discovery and investigation of this case unfolds.

WHEREFORE, Defendants respectfully request that this Court dismiss Plaintiffs' claims, with prejudice, and award Defendants the costs of this action.

[SIGNATURES ON FOLLOWING PAGE]

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/Wesley T. Moran
Wesley T. Moran
SC Bar No. 012797
E-Mail: wes.moran@nelsonmullins.com
3751 Robert M. Grissom Parkway / Suite 300
Post Office Pox 3939 (29578-3939)
Myrtle Beach, SC 29577-6412
(843) 448-3500
G. Mark Phillips
SC Bar No. 007945
E-Mail: mark.phillips@nelsonmullins.com
151 Meeting Street, Suite 600
Charleston, SC 29401
(843) 853-5200

***Attorneys for Defendants Lieutenant Joshua Smith and The
Salvation Army, A Georgia Corporation***

Myrtle Beach, South Carolina
October 7, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
	)	
THOMAS M. REOWN Individually	)	CASE NO.: 2021-CP-22-00806
and as Parent and Natural	)	
Guardian of K.R., a minor aged 11	)	
years,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	PLAINTIFFS' MOTION FOR
	)	RECONSIDERATION AND
LIEUTENANT JOSHUA SMITH	)	FOR A NEW TRIAL
and THE SALVATION ARMY OF	)	
THE CAROLINAS,	)	
	)	
Defendants.	)	

The Plaintiffs hereby move the Court for a Reconsideration of its Order of October 11, 2022, by which it Directed a Verdict in favor of the Defendants in this action upon the following grounds and for a new trial.

It is undisputed factually and legally that the Defendant's agent and employee defamed the two Plaintiffs by reporting to a law enforcement agency, Georgetown County Sheriff's Office, that they had committed the crime of larceny by stealing furniture from the Defendant's Litchfield store. Such a statement is false and defamatory.

It is also undisputed that Defendant's agent, Joshua Smith, falsely reported the theft without making any attempt whatsoever to confirm a theft by the Plaintiffs after observing what he thought was a theft by watching the Plaintiffs using a camera from his house miles away from the supposed theft. In fact, again undisputed, the Plaintiffs and their mother and grandmother had been instructed by Mr. Smith's supervisor and store manager, Ms. Smalls, to accept delivery of the

furniture lawfully at a specified location to wit, a loading dock used for the delivery of purchases from the store, and regularly purchased on the same day, July 7, 2021.

It is without any dispute, that Defendant, Mr. Smith did not contact his store manager, who was readily available, in the store, while the Plaintiffs were loading the furniture as instructed by the Defendant. Instead, Defendant, Joshua Smith, wrongly, from his home miles away, concluded that the Plaintiffs were common thieves even though they were only complying with loading instructions from the store management.

The Plaintiffs were not thieves which, in fact, could have been readily discerned and confirmed by a one minute or less phone call to the store manager prior to reporting a theft of furniture to the Georgetown County Sheriff's Department which led to the detention of the so-called thieves. The Court overlooked this evidence in granting the Directed Verdict.

It is without any dispute that the Plaintiffs were defamed by the false accusations published to many people that they had committed the crime of larceny. It is further established that the defamatory accusation is a slander *per se* therefore presumed by law that their reputation was damaged. It is further deemed from the facts in the recent trial, held on October 10 and 11, 2022, and for the foregoing reasons set forth herein, that the actions established by the testimony and behavior of Joshua Smith that he acted without any regard whatever for the truth that those he falsely reported to the Georgetown County Sheriff's Department were common thieves and thereby completely disregard their rights.

The Court, in its Directed Verdict ruled that "*the issue of the case turns on whether Lieutenant Smith acted with actual malice in contacting the police.*" The South Carolina Supreme Court has concluded in the case of Holtzscheiter v. Thomson Newspapers, 306 SC 297, 411 SE 2d 664 (1998) that actual malice in a case where the defamation claimed is actionable *per se* as it is

here then, under common law principles the law presumes the Defendant acted with common law malice and that the Plaintiff suffered general damages. The Supreme Court then proceeded to pronounce the following with regard to actual malice: “*when a publication is actionable per se there arises a common law presumption of implied malice sometimes called “malice in law.” “legal malice” or “presumed malice” which substitutes for common law actual malice.*”

Applying the law settled in *Holzscheiter v. Thomson Newspapers* on the definition of actual malice, it becomes clear that actual malice was established in this case. It is undisputed that the defamation claimed (the crime of theft or larceny) is defamatory *per se*, and that it was made with actual malice according to the South Carolina Supreme Court in *Holzscheiter v. Thomson Newspapers*.

If the Court for some reason declines to adopt the Supreme Court’s opinion in *Holzscheiter v. Thomson Newspapers*, we continue with our position that the claims of Thomas Reown and K.R. Reown should have been submitted to the jury for its decision.

The undisputed facts clearly and strongly reflect that the Defendant, Joshua Smith seriously ignored and failed to do anything whatever to discover truth in this matter. By so acting, he recklessly abused the qualified privilege. The Defendant, Joshua Smith was without any reasonable doubt reckless by his conduct in abusing and depriving the Plaintiffs of their legal human rights.

While it is correct to say that Joshua Smith possessed a qualified privilege to report his conclusion that a threat was underway, which was a wrong conclusion, to law enforcement authorities, he did not have a right to do so recklessly as he did. In this matter, it is clear, that Defendant, Joshua Smith acted grossly recklessly in complete disregard of the Plaintiffs rights when he failed to do anything to confirm that the Plaintiffs were not thieves and he thereby abused

the qualified privilege. Swinton Creek, 334 SC at 486; Woodward v. SC Farm Bureau Insurance Company 277SC 29, 32-33. All he needed to do was to make a telephone call to his supervisor, Ms. Smalls, who was present physically near the Plaintiffs, who would have readily confirmed that the Plaintiffs were not thieves. In fact, Ms. Smalls had directed the Plaintiffs to do exactly as they were doing. The privilege was without doubt abused.

Under the factual and legal conclusions set forth herein, the Directed Verdict granted the Defendants at trial should be vacated and set aside and a new trial should be granted.

Dated: October 20, 2022
Charleston, South Carolina

Respectfully submitted:

/s/ Thomas S. Tisdale
Thomas S. Tisdale, 5584
Law Offices of Thomas S. Tisdale, LLC
4 North Atlantic Wharf, Suite 100
Charleston, South Carolina 29401
(843) 823-4100
tst@chancellorsc.com

Attorney for Plaintiffs

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	
	)	
Thomas M. Reown, Individually and as	)	CASE NO.: 2021-CP-22-00806
Parent and Natural Guardian of K.R., a	)	
minor aged 11 years,	)	
Plaintiffs,	)	ORDER ON PLAINTIFFS' MOTION
	)	FOR RECONSIDERATION AND
vs.	)	FOR A NEW TRIAL
	)	
Lieutenant Joshua Smith and The	)	
Salvation Army of the Carolinas,	)	
	)	
Defendants.	)	

This matter is before the Court upon Plaintiffs' Motion for Reconsideration and for a New Trial ("the Motion"), which was timely filed on October 20, 2022. The Motion was made pursuant to this Court's Directed Verdict in favor of Defendants after the close of Plaintiffs' case at trial, where Plaintiffs were represented by attorney Thomas Tisdale and Defendants were represented by attorneys Wes Moran and Mark Phillips. Defendants' Opposition to Plaintiff's Motion for Reconsideration and for a New Trial ("Defendants' Response") was filed on October 27, 2022. For the reasons set forth below, the Court hereby **DENIES** the Motion.

ANALYSIS

On October 11, 2022, this Court granted a Directed Verdict in favor of Defendants at the close of Plaintiffs' case in chief due to Defendant Lt. Smith being protected by qualified privilege. The Court's Directed Verdict was ordered on the basis that Plaintiff failed to present any evidence (1) that Lt. Smith's communication to the Georgetown County Sheriff's Office exceeded the scope of what the occasion demanded and (2) that Lt. Smith acted with actual malice when reporting a suspected theft to the Georgetown County Sheriff's Office.

In the Motion, Plaintiffs make two arguments that the Court erred in granting a Directed Verdict in favor of Defendants: (1) because Lt. Smith's statements to police in reporting a suspected theft by Plaintiffs were defamatory *per se*, actual malice is presumed; and (2) the Court overlooked evidence that Lt. Smith acted with actual malice because he could have called The Salvation Army store manager to confirm the Plaintiffs were actually stealing furniture before calling police.

Defendants, on the other hand, maintain the Court's Directed Verdict on the basis of qualified privilege was proper. In response to Plaintiffs' first argument, Defendants contend that even in cases where the alleged defamatory statement is actionable *per se*, if the communication is covered by qualified privilege, malice is not presumed, and the plaintiff must prove actual malice. *See Murray v. Holnam, Inc.*, 344 S.C. 129, 142, 542 S.E.2d 743, 750 (S.C. Ct. App. 2001) ("[E]ven if the slander [or defamatory statement] is actionable *per se*, if the communication is privileged, the plaintiff must prove actual malice."). In response to Plaintiffs' second argument, Defendants' claim Plaintiffs have no basis to support their assertion the Court overlooked evidence tending to show Lt. Smith acted with actual malice. The Court agrees.

As discussed pre-trial, the Court held that Lt. Smith's statements to police were qualifiedly privileged, and Plaintiffs concede in the Motion that Lt. Smith "possessed a qualified privilege to report his conclusion that a threat was underway . . . to law enforcement." Plaintiffs' Motion at 3. As such, the burden was on Plaintiffs to show at trial that Lt. Smith acted with actual malice, but they failed to do so and, therefore, granting a Directed Verdict in favor of Defendants was proper.

CONCLUSION

After reviewing the applicable law and considering the arguments of counsel, the Court hereby **DENIES** Plaintiff's Motion for Reconsideration and for a New Trial for the reasons set

forth in this Order. The Court concludes there was no error of law in granting Directed Verdict in favor of Defendants, and therefore, Plaintiffs are not entitled to a new trial.

AND IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]



Georgetown Common Pleas

Case Caption: Thomas M Reown , plaintiff, et al VS Salvation Army Of The
Carolina , defendant, et al

Case Number: 2021CP2200806

Type: Order/Other

It Is So Ordered

s/ Walton J. McLeod

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF GEORGETOWN) FIFTEENTH JUDICIAL CIRCUIT

Thomas M. Reown, Individually and as Parent and) Civil Action No. 2021-CP-22-00806
 Natural Guardian of K.R., a minor aged 11 years,)

Plaintiff,)

vs.)

Lieutenant Joshua Smith and The Salvation Army of)
 the Carolinas,)

Defendants.)

**DEFENDANTS’
 OPPOSITION TO PLAINTIFFS’
 MOTION FOR
 RECONSIDERATION AND FOR
 A NEW TRIAL**

Defendants, Lieutenant Joshua Smith (“Lt. Smith”) and The Salvation Army, A Georgia Corporation (improperly named as “The Salvation Army of the Carolinas”) (hereinafter, “The Salvation Army” and jointly “Defendants”), through their undersigned counsel, submit this Opposition to Plaintiffs’ Motion for Reconsideration and For A New Trial.

INTRODUCTION

As set forth below, this Court correctly granted Defendants’ Motion for Directed Verdict after considering all of the evidence presented by Plaintiffs at trial. Plaintiffs, nonetheless, argue that the Court erred in granting Directed Verdict in favor of Defendants for two reasons. First, in relying on the case of *Holtzscheiter v. Thomson Newspapers*, Plaintiffs argue that because Lt. Smith’s statement to the police (reporting a suspected theft by plaintiffs) was defamatory *per se*, actual malice is presumed, and the issue of actual malice should have been presented to the jury. Second, Plaintiffs claim—without any basis for doing so—that the Court overlooked evidence that Lt. Smith acted with actual malice because he “could” have called The Salvation Army store manager before calling the police to discern if the Plaintiffs were actually stealing the furniture.

Both of the arguments set forth in Plaintiffs' Motion for Reconsideration and For A New Trial are incorrect and neither warrant the relief requested in the motion. As such, Plaintiffs' motion should be denied, and the Directed Verdict in favor of Defendants should stand.

RELEVANT FACTUAL AND LEGAL BACKGROUND

The trial of this matter involved a single claim—defamation—based on statements that Lt. Joshua Smith made to the police when he reported a suspected theft to the Georgetown County Sheriff's Office. However, "[i]n a defamation action, the defendant may assert the affirmative defense of conditional or qualified privilege." *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999). "Under this defense, one who publishes defamatory matter concerning another is not liable for the publication if (1) the matter is published upon an occasion that makes it conditionally privileged, and (2) the privilege is not abused." *Id.*

After considering all of the evidence at the summary judgment stage, this Court found that Lt. Smith and The Salvation Army had a qualified privilege to report the suspected theft to the Georgetown County Sheriff's Office. *See id.* (holding that the question whether an occasion gives rise to a qualified or condition privilege is one of law for the court). Therefore, the only issue at trial was whether Lt. Smith and The Salvation Army abused their qualified privilege. Abuse of a qualified privilege may be shown by communication that exceeds what the occasion demands. *Davis v. Niederhof*, 246 S.C. 192, 199-200, 143 S.E.2d 367, 371 (1965). In addition, the privilege may also be overcome by a showing of common law malice on the part of the alleged defamer. *Murray v. Holnam, Inc.*, 344 S.C. 129, 142, 542 S.E.2d 743, 750 (Ct. App. 2001).¹

¹ The only issues raised by Plaintiffs in their Motion deal with actual malice and therefore, Defendants likewise limit their analysis to issues concerning actual malice. However, Defendants do note that the Court was correct in its determination that there was no evidence that Lt. Smith's communication to the Georgetown County Sheriff's Office exceeded the scope of what the occasion demanded, as evidenced by the calls between Lt. Smith and the Georgetown County Sheriff's dispatcher.

On October 11, 2022 this Court correctly granted a Directed Verdict in favor of Defendants at the close of Plaintiffs' case because Plaintiffs failed to put forth any evidence that (1) Lt. Smith's communication to the Georgetown County Sheriff's Office "exceeded the scope of what the occasion demanded" and (2) that Lt. Smith acted with actual malice when reporting a suspected theft to the Georgetown County Sheriff's Office. In reaching this decision, the Court considered the testimony of fact witness Janet Reown, fact witness and Salvation Army employee Tamika Smalls, both plaintiffs, and Defendant Lt. Smith. The Court also considered the other evidence presented at trial such as the two recorded calls between Lt. Smith and the Georgetown County Sheriff's dispatcher where in the first call Lt. Smith reported the suspected theft to the police and where in the second call (three minutes after the first) Lt. Smith informed the police that he had made a mistake and that no theft had actually occurred.

LEGAL STANDARD

Although Plaintiffs do not make clear which South Carolina Rule of Civil Procedure gives them authority for their Motion for Reconsideration and For A New Trial, it appears that they rely on Rule 59(e)—a motion to alter or amend judgment—given that they are asking the Court to reconsider its decision to grant Defendants' Motion for Directed Verdict.

A motion under Rule 59(e) has long been viewed as a "motion for reconsideration." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). Courts interpreting Rule 59 have recognized three grounds for amending an earlier judgment: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. *See Villagomez v. Knight*, No. 1:21-cv-0309-MBS, 2022 WL 1050464, at *1 (D.S.C. Mar. 7, 2022); *see also Overland, Inc. v. Nance*, 423 S.C. 253, 257, 815 S.E.2d 431, 433 (2018) (drawing on federal caselaw to interpret Rule 59

of the South Carolina Rules of Civil Procedure); *Lanier v. Lanier*, 364 S.C. 211, 217, 612 S.E.2d 456, 459 (Ct. App. 2005) (same). “Mere disagreement with the court’s ruling does not warrant a Rule 59(e) motion.” *Villagomez*, 2022 WL 1050464, at *1 (citations omitted). Rather, Rule 59 motions are appropriate when the Court has “patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension.” *Id.* (citation omitted). Because “[s]uch problems rarely arise,” it follows that “the motion to reconsider should be equally rare.” *Id.* (citation omitted).

ARGUMENT

None of the grounds for amending a judgment are present here. There has not been an intervening change in controlling law; there has not been any evidence discovered that was not available at trial; there has not been any clear error in law; and there has not been any manifest injustice. Rather, Plaintiffs simply disagree with the Court’s ruling on Defendants’ Motion for Directed Verdict and are now trying to manufacture grounds to vacate that ruling. However, for the reasons set forth below, the Court properly granted Defendants’ Motion for Directed Verdict and that ruling should stand.

I. PLAINTIFFS RELIANCE ON *HOLTZSCHEITER V. THOMSON NEWSPAPERS* IS MISPLACED AND ACTUAL MALICE IS NOT PRESUMED IN THIS CASE.

Plaintiffs rely on *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1998)² for the proposition that where a statement is defamatory *per se*, the law presumes that the Defendant acted with common law actual malice, and therefore the issue of malice should have

² Plaintiffs actually cite *Holtzscheiter v. Thomson Newspapers* 306 S.C. 297, 411 S.E.2d 664 (1998), which is a mixture of the citations of the 1991 *Holtzscheiter* opinion (*Holtzscheiter v. Thomson Newspapers* 306 S.C. 297, 411 S.E.2d 664 (1991)) and the 1998 *Holtzscheiter* opinion (*Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1998)). However, it appears Plaintiffs rely on the 1998 *Holtzscheiter* opinion because the quote they include on page three of their motion is from the 1998 opinion. Ultimately, it does not matter which *Holtzscheiter* opinion they cite as the analysis contained in Section I applies equally to both.

been sent to the jury. (Pls.' Motion at 2-3.) However, in relying on *Holtzscheiter*, Plaintiffs' fail to account for one crucial fact—*Holtzscheiter* was not a case where the defamatory statement was made with a qualified privilege, as it was in this case. In cases where the defamatory statement was made under a circumstance where a qualified privilege applies, actual malice is not presumed, but must be proved by the Plaintiff.

If a defamation is actionable per se, then under common law principles the law presumes the defendant acted with common law malice and that the plaintiff suffered general damages. *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1998). If a defamation is not actionable per se, then at common law the plaintiff must plead and prove common law actual malice and special damages. *Id.* Slander is actionable per se if it charges the plaintiff with one of five types of acts or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession. *Id.*

However, even if the slander is actionable per se, if the communication is privileged, the plaintiff must prove actual malice. *Bell v. Bank of Abbeville*, 208 S.C. 490, 38 S.E.2d 641 (1946) (finding that a privileged communication is exception to rule that malice will be presumed where offending statement is actionable per se).

Murray v. Holnam, Inc., 344 S.C. 129, 142, 542 S.E.2d 743, 750 (S.C. Ct. App. 2001) (citing *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1998)).³

Here, the Court found that Lt. Smith's statement to the police was qualifiedly privileged. The Plaintiffs even concede that Lt. Smith "possessed a qualified privilege to report his conclusions that a theft (sic) was underway" to law enforcement. (Pls.' Motion at 3.) As such, actual malice is not presumed in this case, but rather the burden is on the Plaintiffs to prove Lt. Smith acted with actual malice when he made the statement to the Georgetown County Sheriff's

³ See also, *Bell v. Bank of Abbeville*, 208 S.C. 490, 494–95, 38 S.E.2d 641, 643 (1946) ("Ordinarily, proof of a defamatory publication, charging another with the commission of a crime, makes out a prima facie case of malice in the author. But a privileged communication is an exception to the rule. In such case the presumption of malice is rebutted. The effect is to cast upon the plaintiff the necessity of showing malice in fact—that is, that the defendant was actuated by ill will in what he did and said, with the design to causelessly and wantonly injure the plaintiff.").

Office. Additionally, both parties stated numerous times on the record that the facts of the case were not in dispute. Therefore, the issue of whether Lt. Smith abused the privilege by acting with actual malice was one for the Court to decide; not the jury. *See Woodward v. South Carolina Farm Bureau Ins. Co.*, 277 S.C. 29, 32-33, 282 S.E.2d 599, 601 (1981) (emphasis added) (“While abuse of the conditional privilege is ordinarily an issue reserved for the jury, in the absence of a controversy as to the facts, as here, it is for the court to say in a given instance whether or not the privilege has been abused or exceeded.”). As such, and as further analyzed below in Section II, the Court properly made the determination that Lt. Smith did not abuse his qualified privilege because Plaintiff put forth no evidence that Lt. Smith acted with actual malice.

II. THE COURT CORRECTLY CONSIDERED ALL OF THE EVIDENCE AND GRANTED DEFENDANTS’ MOTION FOR DIRECTED VERDICT ON GROUNDS THAT LT. SMITH DID NOT ACT WITH ACTUAL MALICE WHEN MAKING HIS STATEMENT TO THE POLICE.

Plaintiffs also erroneously claim that the Directed Verdict should be vacated, and a new trial should be granted, because the Court overlooked evidence that Lt. Smith “could” have called the store manager before calling the police when ruling on Defendants’ Motion for Directed Verdict. As a threshold matter, Plaintiffs have no basis to support their assertion that the Court overlooked this evidence. Moreover, even if Lt. Smith “could” have called the store manager before calling the police, that fact does not indicate that Lt. Smith acted with actual malice.

Actual malice means that the defendant was actuated by ill will in what he did, with the design to causelessly and wantonly injure the plaintiff; or that the statements were published with such recklessness as to show a conscious indifference toward plaintiff’s rights. *Murray*, 344 S.C. at 142, 542 S.E.2d at 750. Plaintiffs put forth no testimony or evidence that Lt. Smith or The Salvation Army acted with actual malice. Rather, the testimony and evidence presented during Plaintiffs’ case-in-chief established that Lt. Smith acted with the good faith belief that a theft was

occurring at the Salvation Army store at issue in this case (the “Store”). Specifically, the testimony and evidence established the following:

- The Store has a history of frequent thefts where individuals steal items that patrons leave outside the Store after Store hours.
- After Store hours on the day in question, Lt. Smith was at his home when he received a notification on his phone indicating that the security camera had detected motion behind the Store.
- When he logged on to check the live footage from the security camera, he witnessed two individuals he did not recognize (now known to be Plaintiffs) loading two couches that had been donated to the Store into a vehicle he did not recognize.
- Upon seeing this, Lt. Smith checked the various viewpoints on the security camera to see if any Store employees were there with the unidentified individuals or if the employees’ cars were in the parking lot. Lt. Smith did not see any of the Store employees or any of their cars in the parking lot.
- Seeing no employees, nor their cars, and given the history of thefts at the Store, Lt. Smith used his phone to remotely sound the alarm on the security camera.
- When Lt. Smith sounded the alarm, one of the individuals now known to be Plaintiff K.R., looked up at the security camera, but despite the alarm, Plaintiffs continued to load the couches into Plaintiffs’ vehicle.
- After letting the alarm run for 2-3 minutes, Lt. Smith then used the microphone function on his phone to speak through the security camera and instructed the Plaintiffs several times to put the furniture down or the police would be called. When Lt. Smith did this, Plaintiff K.R. again looked up at the camera, but Plaintiffs continued to load the couches into Plaintiffs’ vehicle.
- It was only after sounding the alarm and instructing the Plaintiffs to stop loading the furniture, that Lt. Smith called the Georgetown County Sheriff’s Office to report the suspected theft.
- When asked why he called the Georgetown County Sheriff’s Office, Lt. Smith testified that he had been instructed by the police to call law enforcement immediately if a suspected theft was occurring so that the police could respond to the theft.
- Lt. Smith also testified that his purpose for calling the Georgetown County Sheriff’s Office was to have the couches returned to the Store so that the proceeds from their eventual sale could be used to benefit The Salvation Army’s charitable programs.

- After calling the Georgetown County Sheriff's Office to report the suspected theft, Lt. Smith called the Store manager, Tamika Smalls, who informed Lt. Smith that the couches had been paid for. Lt. Smith then immediately hung up with Ms. Smalls and called the Sheriff's Office back to let them know that the couches were not stolen.
- Only three minutes elapsed between Lt. Smith calling the police to report the theft and calling the police back to let them know that the couches were not stolen.
- When asked why he called the police back, Lt. Smith testified that he did not want anyone to get in trouble.

The facts above, were established through the witnesses' testimony at trial, and the facts are undisputed. After considering these undisputed facts, and all of the other evidence presented in the case, this Court determined as a matter of law that no evidence existed such that a reasonable juror could find that Lt. Smith acted with actual malice when he called the Georgetown County Sheriff's Office to report what he thought was a theft. Since there was an absence of controversy as to the facts, and since the undisputed facts clearly demonstrated that Lt. Smith did not act with actual malice, the Court appropriately made the determination as to whether Lt. Smith abused the qualified privilege rather than sending that issue to the jury. *See Woodward* 277 S.C. at 32-33, 282 S.E.2d at 601. As such, Plaintiffs' motion should be denied and the Directed Verdict in favor of Defendants should stand.

CONCLUSION

Based on the foregoing, Plaintiffs' Motion for Reconsideration and For A New Trial should be denied.

Respectfully submitted,

[SIGNATURE PAGE TO FOLLOW]

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/Wesley T. Moran
Wesley T. Moran
SC Bar No. 012797
E-Mail: wes.moran@nelsonmullins.com
3751 Robert M. Grissom Parkway / Suite 300
Post Office Pox 3939 (29578-3939)
Myrtle Beach, SC 29577-6412
(843) 448-3500
G. Mark Phillips
SC Bar No. 007945
E-Mail: mark.phillips@nelsonmullins.com
151 Meeting Street, Suite 600
Charleston, SC 29401
(843) 853-5200

***Attorneys for Defendants Lieutenant Joshua Smith and The
Salvation Army, A Georgia Corporation***

Myrtle Beach, South Carolina
October 27, 2022