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Jun 15 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE BERKELEY COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2022-000927

Shelby Trehus and Kayden M.,
a Minor, By His Guardian Ad Litem
Shelby Trehus,

Appellants,

v.

Santee Run Apartments,
A South Carolina Corporation,

Respondent.

RECORD ON APPEAL

June 15, 2023

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INDEX

Pleadings

Plaintiff Shelby Trehus Amended Complaint filed December 6, 2019.....	001
Defendant, Santee Run Apartments' Answer to Plaintiff, Shelby Trehus Amended Complaint filed March 3, 2020.....	009
Plaintiff, Kayden Montagna, by his Guardian Ad Litem Shelby Trehus Complaint Filed April 29, 2020.....	016
Defendant, Santee Run Apartments' Answer to Plaintiff, Kayden Montagna's Complaint Filed May 15, 2020.....	025
Plaintiffs' Motion for New Trial filed March 4, 2022.....	031
Defendant Santee Run Apartments' Memorandum in Opposition to Plaintiffs' Motion for a New Trial filed March 15, 2022.....	034
Plaintiffs' Memorandum in Support of their Motion for New Trial filed March 21, 2022...	040
Defendant's Memorandum in Opposition to Plaintiffs' Motion for New Trial & Memorandum in Support, filed April 7, 2022.....	048
Jury Verdict Form, February 25, 2022.....	059

Orders

Form 4 Order, by Honorable Bentley D. Price dated June 6, 2022, denying Plaintiffs' Motion for new Trial.....	063

Deposition Transcripts

Transcript of Deposition of Shelby Trehus, June 22, 2020, pages 43-44.....	066
Transcript of Deposition of Dr. Timothy Brewerton, February 18, 2022; all portions of the deposition are in the Record on Appeal except p 37, line 7 – p 41, line 15; p 92, line 11 – p 94, line 13; page 98, line 14 – p 110, line 14; and p 155, line 21- p 156, line 3.....	068
Transcript of Deposition of Wm. Corey, pp. 9-10.....	247

Volume II

Other Transcripts

Transcript of Hearing on Motion for New Trial held April 18, 2022.....	249
Transcript of Day One of Trial on February 22, 2022.....	268
Transcript of Day Two of Trial on February 23, 2022.....	409
Transcript of Day Three of Trial on February 25, 2022.....	504

Other Materials or Documents

Santee Run Apartments Month to Month Rental Agreement, February 12, 2018.....	581
Photograph of Smoke Detector in Appellants' Apartment.....	587
Moncks Corner Fire Department Incident Report dated May 29, 2019.....	588

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

June 15, 2023

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SC Court of Appeals

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY)

FOR THE NINTH JUDICIAL CIRCUIT

Shelby Trehus)

Case No. 2019-CP-08-02808

Plaintiff,)

v.)

Santee Run Apartments, a South Carolina,
Corporation, and Shelby Jean Colley,)**AMENDED SUMMONS**
(Jury Trial Demanded)Defendants.)
_____)**TO: THE ABOVE-NAMED DEFENDANTS:**

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 Hellman Yates & Tisdale, PA, 105 Broad Street, Third Floor, 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 Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

December 6, 2019

Respectfully submitted,

/s/ Thomas S. Tisdale

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Counsel for Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
Shelby Trehus	)	
	)	Case No. 2019-CP-08-02808
Plaintiff,	)	
	)	
v.	)	
	)	
Santee Run Apartments, a South Carolina,	)	COMPLAINT
Corporation, and Shelby Jean Colley,	)	
	)	
Defendants.	)	
_____	)	

The Plaintiff, Shelby Trehus, complaining of the Defendant alleges:

THE PARTIES:

1. Shelby Trehus, the Plaintiff herein, is a resident of Berkeley County; and this Complaint concerns an accident in which she sustained personal injuries that occurred in Berkeley County.
2. The Defendant, Santee Run Apartments, Inc., is according to the records of the South Carolina Secretary of State, a corporation that was formed on September 26, 1997 of which the registered agent is listed in the official records as Robert G. Colley whose address is 314 Rembert C. Dennis Blvd., Moncks Corner, SC 29461; and, on information and belief, is an owner of Santee Run Apartments.
3. The Defendant, Shelby Jean Colley is, on information and belief, a resident of Berkeley County and an owner of Santee Run Apartments.

JURISDICTION AND VENUE:

4. Both the Plaintiff and the Defendant Shelby Jean Colley are residents of Berkeley County; and the Defendant Santee Run Apartments Inc., is principally located in Berkeley County at 219 Bonnoitt St, Moncks Corner, SC 29461.

5. The claim made is based upon acts and delicts that occurred in Berkeley County.
6. Berkeley County is, according to the foregoing jurisdictional allegations, a proper venue for the matters alleged herein, and this Court has jurisdiction of the matters alleged herein.

FACTUAL BACKGROUND:

7. Plaintiff, Shelby Trehus, entered into a lease agreement with Santee Run Apartments on February 14, 2018 for the rental of apartment 40, for which she paid \$600.00 per month in addition to other fees including a \$600.00 security deposit, \$25.00 for a background check, and application fee of \$35.00. Although, the landlord is listed as the Santee Run Apartments, Defendant Shelby Jean Colley informed the Plaintiff that she was the owner of the apartments.
8. Plaintiff occupied the leased second-floor apartment with her son, Kayden, who was 3 years old at the time of the incident that occurred on May 29, 2019.
9. On May 29, 2019 at about midnight the apartment building became engulfed in flames from a fire that erupted in one of the nearby apartments in the same building as Plaintiff's apartment.
10. Plaintiff awoke a little after midnight to discover her apartment was engulfed in smoke from the nearby fire. The smoke was so intense that she could barely see from one side of the room she was in to the other side of the room. There was no alarm of any kind to warn her of the fire or the smoke. The one smoke alarm in her apartment never sounded which demonstrated that it was completely defective as it never gave any warning of the extreme danger facing Plaintiff and her child.
11. Upon being awakened by intense smoke surrounding her, the Plaintiff jumped out of her bed, looked around the apartment to find the source of the smoke and then realized that the building was on fire.

12. She quickly discovered that the nearest stairwell to the apartment was inaccessible for escape because of the flames and smoke from the fire. Unable to use the stairs or any other safe exit from the building, she ran into the room where her child was sleeping, grabbed him, and went to the nearest window to try to escape the fire and smoke which surrounded and engulfed them.

13. Below the child's bedroom window there were other tenants who had escaped and were standing on the ground and calling for her to drop the child to them. Plaintiff, in desperation and terrified, raised the window while screaming to the people below. She dropped Kayden, her three-year-old son, from the second-floor window of the apartment as it was the only way that she could save his life.

14. Immediately after dropping Kayden to the arms of the people assembled below, she jumped from the same window to the ground below to save her own life.

15. The Plaintiff was injured in the jump from the window as she hit the ground, injuring her left leg and breaking her ankle and foot.

16. Plaintiff was immediately taken to a hospital and put under medical care for her injuries.

17. Among the expenses she incurred for the treatment for her injuries, and for incidental expenses she would not have incurred except for the injuries she sustained are the following:

- (a) Medical and Physician costs;
- (b) Protective devices, crutches and braces;
- (c) Hospital costs;
- (d) X-rays, inpatient and outpatient;
- (e) MRI costs;
- (f) Moving expenses and higher rental costs;

(g) Other necessary and incidental expenses.

18. Plaintiff is still suffering from the injuries she sustained and believes that some of the injuries she sustained are likely permanent.

19. It was determined after the fire in the apartment building was extinguished that the smoke alarm in Plaintiff's apartment was installed in 2006 and had not been replaced since then despite safety rules and regulations that required replacement of such devices no later than ten (10) years after the installation. It was further determined that smoke alarms in apartments/living spaces, such as the one occupied by the Plaintiff, were required to be inspected monthly to insure proper operation in case of a fire in the building. It was further determined that the one smoke alarm in Plaintiff's apartment was never inspected.

20. The applicable rules and regulations for smoke alarms in the living spaces in apartment buildings such as the one occupied by the Plaintiff required the installation of a smoke alarm in each room of each apartment. Plaintiff's apartment had one alarm installed for the entire apartment.

21. The intensity of the smoke and the blazing fire made it impossible for the Plaintiff and her son to use the normal exit stairwells to escape from the burning building necessitating plunging from the window of the apartment from the second floor of the building to the ground, all of which would not have been necessary except for the absence of sufficient and functional smoke alarms in Plaintiff's apartment.

FOR A FIRST CAUSE OF ACTION:
(Negligence)

22. Plaintiff realleges all the allegations in the Complaint comprising paragraphs one through twenty-one as if set forth here verbatim.

23. The conduct of the Defendants as described hereinabove is negligent and negligent as a matter of law and fact in the following particulars.

(a) By failing to provide the Plaintiff, their tenant, with a safe place to live as required by law;

(b) By failing to use due care to provide a safe place to live in the apartment rented to Plaintiff as required by law;

(c) By failing to install smoke alarms, as required by law, to warn the Plaintiff of fire and smoke in her apartment to allow her to safely escape such a hazard without injury or death;

(d) By failing to install the required smoke alarms in the bedrooms of Plaintiff's apartment as required by law and which is evidence of lack of due care;

(e) By failing to replace a smoke alarm in Plaintiff's apartment within the 10 years of its installation as required by law and the use of due care;

(f) By failing to provide for the monthly inspection of the smoke alarm in Plaintiff's apartment as required by law and the failure to do so is a lack of due care;

(g) By failing to provide adequate fire extinguishing equipment in the apartment building to control fires and the resulting dangerous smoke from fires in the building;

(h) By failing to provide both necessary equipment and safe passages to escape from fires and dangerous smoke exposure in the building.

24. The acts of negligence alleged based upon the facts described are the direct and proximate cause of the physical injuries and the other damages sustained by the Plaintiff.

FOR A SECOND CAUSE OF ACTION:
(Gross Negligence)

25. Plaintiff realleges all of the preceding allegations of this Complaint as if set forth here verbatim.

26. The acts and delicts and the willful and wanton conduct of the Defendants described herein are, in large part, violations of statutory laws of South Carolina; and are, in themselves acts beyond simple negligence all of which constitutes gross negligence entitling the Plaintiff to both actual and punitive damages.

27. The violations of the statutory laws of South Carolina are, by law, acts of negligence per se and evidence of gross negligence.

FOR A THIRD CAUSE OF ACTION:
(Breach of Contract)

28. The Plaintiff realleges all of the foregoing allegations of the Complaint as if set forth here verbatim.

29. As alleged and described herein, Plaintiff and the Defendants entered into a lease agreement which was a contractual by law agreement, based on consideration by which the Defendants assured the Plaintiff that the apartment rented to her, for her and her child, was by law, a safe place to live, when in fact it was not safe and it was dangerous for them as demonstrated by the facts of the occurrence described above.

30. The Defendants' conduct and failure to provide a safe place to live for the Plaintiff was a breach of contract for which the Plaintiff is entitled to recover damages resulting therefrom.

DAMAGES:

31. As a result of the acts, omissions, and delicts of the Defendants, the Plaintiff, Shelby Trehus, is entitled to recover actual and consequential damages for her physical injuries which

are likely to be permanent, which include medical; doctor; and hospital expenses; crutches; an orthopedic boot; MRI costs; outpatient fees; and disruption in her employment responsibilities, and all other incidental damages, such as moving expenses and the necessity of paying for a more expensive rental, she sustained as a direct and proximate result of the negligence, gross negligence and acts of breach of contract by the Defendants.

32. For reasons of fact and law described in this Complaint, the Plaintiff is entitled to punitive damages because the Defendants' conduct was willful, wanton, grossly negligent, and violated the laws of South Carolina.

WHEREFORE, the Plaintiff prays that she be awarded a judgment by this Court to compensate her for her damages, direct and consequential, and for punitive damages, and for any other relief that is just and equitable.

December 6, 2019

Respectfully submitted,

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Counsel for Plaintiff

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
	)	
SHELBY TREHUS,	)	Civil Action No. 2019CP0802808
	)	
Plaintiff,	)	
	)	DEFENDANTS SANTEE RUN
vs.	)	APARTMENTS, INC. AND SHELBY
	)	JEAN COLLEY'S ANSWER
SANTEE RUN APARTMENTS, A	)	TO PLAINTIFF'S
SOUTH CAROLINA CORPORATION,	)	AMENDED COMPLAINT
AND SHELBY JEAN COLLEY,	)	(Jury Trial Demanded)
	)	
Defendants.	)	

Santee Run Apartments, Inc. and Shelby Jean Colley, (hereinafter "Defendants"), answer the Amended Complaint of Plaintiff and respectfully assert the following:

FOR A FIRST DEFENSE

1. Defendants are without information or knowledge sufficient to admit or deny the allegations contained in Paragraph 1 of Plaintiff's Amended Complaint.
2. Defendants admit the allegations in Paragraph 2 of Plaintiff's Amended Complaint to the extent Robert G. Colley is an owner of Santee Run Apartments, Inc., who owns Santee Run Apartments.
3. Defendants admit the allegations in Paragraph 3 of Plaintiff's Amended Complaint to the extent Shelby Jean Colley is an owner of Santee Run Apartments, Inc., who owns Santee Run Apartments.
4. In response to Paragraph 4 of Plaintiff's Amended Complaint, Defendant Shelby Jean Colley admits she is a resident of Berkeley County and that Santee Run Apartments are principally located in Berkeley County at 219 Bonnoitt Street, Moncks Corner, South Carolina

29461. Defendants are without information or knowledge to admit or deny the remainder of the allegations contained in said Paragraph.

5. Defendants admit the allegations in Paragraph 5 of Plaintiff's Amended Complaint to the extent Plaintiff has alleged acts or derelicts occurring in Berkeley County.

6. Upon information and belief, Defendants admit the allegations in Paragraph 6 of Plaintiff's Amended Complaint.

7. In response to Paragraph 7 of Plaintiff's Amended Complaint, Defendants admit Plaintiff entered into a Rental Agreement with Santee Run Apartments. Defendants crave reference to the terms of this Rental Agreement and admit only the allegations in accordance with these documents. All remaining allegations are denied.

8. Defendants are without information or knowledge sufficient to admit or deny the allegations contained in Paragraph 8 of Plaintiff's Amended Complaint.

9. Defendants admit the allegations set forth in Paragraph 9 of Plaintiff's Amended Complaint to the extent it is alleged a fire broke out in an apartment in the same building as Plaintiff's apartment at or about midnight on May 29, 2019.

10. Defendants are without information or knowledge sufficient to admit or deny the allegations contained in Paragraphs 10 through 16 of Plaintiff's Amended Complaint.

11. Defendants are without information or knowledge sufficient to admit or deny the allegations contained in Paragraph 17, including subparagraphs (a) through (g), of Plaintiff's Amended Complaint.

12. Defendants are without information or knowledge sufficient to admit or deny the allegations contained in Paragraph 18 of Plaintiff's Amended Complaint.

13. Defendants deny the allegations set forth in Paragraph 19 of Plaintiff's Amended Complaint.

14. Answering Paragraph 20 of Plaintiff's Amended Complaint, Defendants crave reference to the applicable building code rules and regulations and admit only those allegations consisting therewith. Defendants deny the remaining allegations.

15. Defendants deny the allegations set forth in Paragraph 21 of Plaintiff's Amended Complaint.

16. Defendants hereby re-allege and incorporate Paragraphs 1 through 15 of this Answer as if set forth herein verbatim in response to Paragraph 22 of Plaintiff's Amended Complaint.

17. Defendants deny the allegations set forth in Paragraph 23, including subparagraphs (a) through (h), of Plaintiff's Amended Complaint.

18. Defendants deny the allegations set forth in Paragraph 24 of Plaintiff's Amended Complaint.

19. Defendants hereby re-allege and incorporate Paragraphs 1 through 18 of this Answer as if set forth herein verbatim in response to Paragraph 25 of Plaintiff's Amended Complaint.

20. Defendants deny the allegations set forth in Paragraph 26 of Plaintiff's Amended Complaint.

21. Paragraph 27 of Plaintiff's Amended Complaint contain statements and/or conclusions of law to which Defendants are not required to admit or deny. To the extent said Paragraph attempts to allege or does allege any cause of action, claim, act, error, or omission as to Defendants, those allegations are denied, and strict proof thereof is demanded.

22. Defendants hereby re-allege and incorporate Paragraphs 1 through 21 of this Answer as if set forth herein verbatim in response to Paragraph 28 of Plaintiff's Amended Complaint.

23. In response to Paragraph 29 of Plaintiff's Amended Complaint, Defendants crave reference to the terms of the subject Rental Agreement and admit only the allegations in accordance with this document. All remaining allegations are denied.

24. Defendants deny the allegations set forth in Paragraphs 30 through 32 of Plaintiff's Amended Complaint.

25. Defendants deny each and every allegation of Plaintiff's Amended Complaint not specifically admitted, denied, qualified or explained herein.

FOR A SECOND DEFENSE
(Failure to State a Claim)

26. Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted as to any cause of actions, and therefore, Plaintiff's Amended Complaint should therefore be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A THIRD DEFENSE
(Sole Negligence of Third Party)

27. FURTHER ANSWERING SAID AMENDED COMPLAINT, Defendants allege, upon information and belief, that any injury and damage sustained by Plaintiff were due to and caused by the sole and negligent acts or omissions of some other person or persons other than Defendants over whom Defendants neither had nor exercised any authority or control, and, therefore, Defendants is not liable to Plaintiff for any sum whatsoever.

FOR A FOURTH DEFENSE
(Intervening and Superseding Negligence)

28. Defendants would allege and show that any injuries and damages sustained by Plaintiff as alleged in the Amended Complaint, which are denied, were caused and occasioned by the intervening and superseding negligence, carelessness, recklessness, heedlessness, willfulness and wantonness of some other party or parties over whom Defendants had no supervision or control, and Defendants do plead such intervening and superseding negligence, carelessness, recklessness, heedlessness, willfulness and wantonness as the direct and proximate cause of the injuries and damages sustained by Plaintiff as alleged in the Amended Complaint.

FOR A FIFTH DEFENSE
(Sole Intentional Criminal Act of Third Party)

29. Defendants allege, upon information and belief, that any injury and damage sustained by Plaintiff was due to and caused by the sole intentional criminal acts of some other person or persons other than Defendants over whom Defendants neither had nor exercised any authority or control, and, therefore, Defendants are not liable to Plaintiff for any sum whatsoever.

FOR A SIXTH DEFENSE
(Sole Negligence of Plaintiff)

30. Defendants allege any injury and damage sustained by Plaintiff, if any, were due to and caused by the sole negligence and/or willfulness of Plaintiff and, therefore, Defendants are not liable to Plaintiff for any sum whatsoever.

FOR A SEVENTH DEFENSE
(Comparative Negligence)

31. Defendants plead the law and doctrine of comparative negligence and alleges the negligence and recklessness of Plaintiff were greater than the negligence, if any, which might be established against Defendants and, therefore, Plaintiff is barred from any recovery in this action. Defendants further allege any injury and damage sustained by Plaintiff was due to and caused by

the negligence and/or willfulness of Plaintiff combining, concurring, and contributing with the negligence and/or willfulness, if any, on the part of Defendants and, therefore, any amount of recovery awarded to Plaintiff for the injuries and damages alleged in the Amended Complaint shall be reduced by the Court by the percentage of negligence and/or willfulness attributed to Plaintiff.

FOR AN EIGHTH DEFENSE
(Mitigation of Damages)

32. Plaintiff has failed to mitigate her damages and has incurred damages that were unnecessary or unreasonable in amount. Plaintiff is, therefore, barred in whole or part from recovery in this case.

FOR A NINTH DEFENSE
(Punitive Damages Unconstitutional)

33. Defendants would show the claim of Plaintiff for punitive damages cannot be had because any award of punitive damages under South Carolina law would violate Defendants' equal protection and due process rights as guaranteed by the United States Constitution and the South Carolina Constitution and would also violate the laws of the State of South Carolina.

FOR A TENTH DEFENSE
(Bifurcation Requested)

34. Pursuant to S.C. Code Ann§ 15-32-520, the Defendants hereby request trial bifurcation on the issues of actual damages and punitive damages.

FOR AN ELEVENTH DEFENSE
(Reliance on Additional Defenses)

35. The Defendants hereby give notice that they intend to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserve the right to amend its Answer to assert any such defenses.

WHEREFORE, having fully answered, Defendants pray that the Amended Complaint be dismissed, for the costs of defending this action, and for such other relief as the Court and jury deem just and proper.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/ Shawn M. Bevans

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ATTORNEY FOR DEFENDANTS

SANTEE RUN APARTMENTS, INC. and

SHELBY JEAN COLLEY

December 11, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
Kayden Montagna, a minor, by his guardian)
ad Litem Shelby Trehus,)
Plaintiff,)
v.)
Santee Run Apartments, a South Carolina,)
Corporation, and Shelby Jean Colley,)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2020-CP-08-_____

SUMMONS
(Jury Trial Demanded)

TO: THE ABOVE-NAMED DEFENDANTS:

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 Hellman Yates & Tisdale, PA, 105 Broad Street, Third Floor, 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 Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

April 29, 2020

Respectfully submitted,

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Counsel for Plaintiff

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
Kayden Montagna, a minor, by his Guardian)
Ad Litem Shelby Trehus,)
Plaintiff,)
v.)
Santee Run Apartments, a South Carolina,)
Corporation, and Shelby Jean Colley,)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2020-CP-08-_____

COMPLAINT

The Plaintiff, Kayden Montagna, a minor, by his Guardian Ad Litem Shelby Trehus complaining of the Defendant alleges:

THE PARTIES:

1. The Plaintiff, Shelby Trehus brings this action by and on behalf of her son, Kayden Montagna, a minor for whom she has been appointed by this Court to act and serve as his Guardian Ad Litem and is, with her son, the Plaintiff herein are residents of Berkeley County.
2. The Defendant, Santee Run Apartments, Inc., is according to the records of the South Carolina Secretary of State, a corporation that was formed on September 26, 1997 of which the registered agent is listed in the official records as Robert G. Colley whose address is 314 Rembert C. Dennis Blvd., Moncks Corner, SC 29461; and, on information and belief, is an owner of Santee Run Apartments.
3. The Defendant, Shelly Jean Colley is, on information and belief, a resident of Berkeley County and an owner of Santee Run Apartments.

JURISDICTION AND VENUE:

4. Both the Plaintiff and the Defendant Shelly Jean Colley are residents of Berkeley County; and the Defendant Santee Run Apartments Inc., is principally located in Berkeley County at 219 Bonnoitt St, Moncks Corner, SC 29461.
5. The claims made are based upon acts and delicts that occurred in Berkeley County.
6. Berkeley County is, according to the foregoing jurisdictional allegations, a proper venue for the matters alleged herein, and this Court has jurisdiction of the matters alleged herein.
7. The Plaintiff, Kayden Montagna, is a minor having been born on August 24, 2015, and is the son of Shelby Trehus, his mother, who has been appointed by this Court to serve and act as his Guardian Ad Litem (“guardian”) for all matters concerning the claims made herein.
8. The minor Plaintiff was at all times pertinent to the matters alleged herein residing with his mother, Shelby Trehus, at the Santee Run Apartments in Apartment 4D at 219 Bonnoitt Street in Moncks Corner, South Carolina.
9. All of the matters alleged herein are based upon acts and delicts all of which occurred in Berkeley County; and Berkeley County is accordingly a lawful and proper jurisdiction for these claims to be adjudicated.

FACTUAL BACKGROUND

10. The apartment 40 at Santee Run Apartments in which the minor Plaintiff resided with his mother and Guardian was on the second floor or level of the apartment building where they had lived since February 14, 2018.
11. On May 29, 2019 at about midnight, the apartment in which Kayden and his mother resided and at the time were both sleeping became engulfed in flames and smoke from the fire that had erupted in a nearby apartment.

12. The minor Plaintiff's mother, Shelby Trehus, awoke a little after midnight to discover her apartment was engulfed in smoke from the nearby fire. The smoke was so intense that she could barely see from one side of the room she was in the other side of the room. There was no alarm of any kind to warn her of the fire or the smoke. The one smoke alarm in her apartment never sounded which demonstrated that it was completely defective as it never gave any warning of the extreme danger facing Plaintiff and her child.

13. Upon being awakened by intense smoke surrounding her, the minor Plaintiff's mother, jumped out of her bed, looked around the apartment to find the source of the smoke and then realized that the building was on fire.

14. She quickly discovered that the nearest stairwell to the apartment was inaccessible for escape because of the flames and smoke from the fire. Unable to use the stairs or any other safe exit from the building, she ran into the room where her child was sleeping, grabbed him, and went to the nearest window to try to escape the fire and smoke which surrounded and engulfed them.

15. Below the child's bedroom window there were other tenants who had escaped and were standing on the ground and calling for her to drop the child to them. Plaintiff, in desperation and terrified, raised the window while screaming to the people below. She dropped Kayden, her three-year-old son, from the second-floor window of the apartment as it was the only way that she could save his life.

16. Immediately after dropping Kayden to the arms of the people assembled below, she jumped from the same window to the ground below to save her own life.

17. Shelby Trehus, the minor Plaintiff's mother and Guardian, was injured in the jump from the window as she hit the ground, injuring her left leg and breaking her ankle and foot.

18. Over the course of several months following the night of the apartment fire, it became immediately became apparent that Kayden had encountered and experienced severe and instant emotional and psychological distress which has been ongoing and intensifying since the incident occurred.

19. The effects of the traumatic experience of having to be saved from death caused by the apartment fire and having to be physically dropped by his mother from the second floor into the arms of someone on the ground below have been ongoing ever since the event.

20. In an effort to do everything possible to achieve as much healing and resolution to what became apparent to the ongoing emotional and psychological problems, his guardian and mother arranged for Kayden to be examined, evaluated and treated by competent and trained personnel for such matters at the National Crime Victims Research and Trauma Center, Department of Psychiatry and Behavioral Sciences of the Medical University of South Carolina where he is currently undergoing treatment following a reported diagnosis of suffering from a Post-Traumatic Stress Disorder.

21. It was determined after the fire in the apartment building was extinguished that the smoke alarm in Plaintiff's apartment was installed in 2006 and had not been replaced since then despite safety rules and regulations that required replacement of such devices no later than ten (10) years after the installation. It was further determined that smoke alarms in apartments/living spaces, such as the one occupied by the Plaintiff, were required to be inspected monthly to insure proper operation in case of a fire in the building. It was further determined that the one smoke alarm in Plaintiff's apartment was never inspected.

22. The applicable rules and regulations for smoke alarms in the living spaces in apartment buildings such as the one occupied by the Plaintiff required the installation of a smoke alarm in each room of each apartment. Plaintiff's apartment had one alarm installed for the entire apartment.

23. The intensity of the smoke and the blazing fire made it impossible for the Plaintiff and her son to use the normal exit stairwells to escape from the burning building necessitating plunging from the window of the apartment from the second floor of the building to the ground, all of which would not have been necessary except for the absence of sufficient and functional smoke alarms in Plaintiff's apartment, and other functional warning devices that should have been installed, kept in good working condition, and regularly inspected. Such safety equipment was especially necessary as there was a history of fires occurring in the apartment buildings over several years which was obviously known to the owners and managers of the buildings and should have alerted the Defendants to the need for fire protection devices throughout the building which needed regular and proper inspections to insure that they performed their intended purpose to protect the inhabitants of the buildings upon they were collecting compensation from rental payments.

24. Plaintiff realleges all the allegations in the Complaint comprising paragraphs one through twenty-one as if set forth here verbatim.

**FOR A FIRST CAUSE OF ACTION
(Negligence to include Gross Negligence)**

25. The conduct of the Defendants as described hereinabove is negligent and grossly negligent as a matter of law and fact in the following particulars.

- (a) By failing to provide the Plaintiff, their tenant, with a safe place to live as required by law; and by rental or lease contract between the parties;
- (b) By failing to use due care to provide a safe place to live in the apartment rented to Plaintiff as required by law;

(c) By failing to install smoke alarms, as required by law, to warn the Plaintiff of fire and smoke in her apartment to allow her to safely escape such a hazard without injury or death;

(d) By failing to install the required smoke alarms in the bedrooms of Plaintiff's apartment as required by law and which is evidence of lack of due care;

(e) By failing to replace a smoke alarm in Plaintiff's apartment within the 10 years of its installation as required by law and the use of due care;

(f) By failing to provide for the monthly inspection or any inspection at all of the smoke alarm in Plaintiff's apartment as required by law and the failure to do so is a lack of due care;

(g) By failing to provide adequate or any fire extinguishing equipment, including any smoke operable smoke warning devices in the apartment building to control fires and the resulting dangerous smoke from fires in the building;

(h) By failing to provide both necessary equipment and safe passages to escape from fires and dangerous smoke exposure in the building.

**FOR A SECOND CAUSE OF ACTION
(Gross Negligence)**

26. The acts of negligence alleged based upon the facts described are the direct and proximate cause of the physical injuries and the other damages sustained by the Plaintiff.

27. Plaintiff realleges all of the preceding allegations of this Complaint as if set forth here verbatim.

28. The acts and delicts and the willful and wanton conduct of the Defendants described herein are, in large part, violations of statutory laws of South Carolina; and are, in themselves acts beyond

simple negligence all of which constitutes gross negligence entitling the Plaintiff to both actual and punitive damages; any by any reasonable standard provided by law were reckless, willful, and wanton and thereby grossly negligent.

29. The violations of the statutory laws of South Carolina are, by law, acts of negligence per se and evidence of gross negligence.

**FOR A THIRD CAUSE OF ACTION
(Breach of Contract)**

30. The Plaintiff realleges all of the foregoing allegations of the Complaint as if set forth here verbatim.

31. As alleged and described herein, Plaintiff and the Defendants entered into a lease agreement which was a contractual agreement by law based upon valuable consideration inasmuch the Defendants, in writing and by law, agreed to provide the Plaintiff(s) a safe place to reside in exchange for a monthly payment of an agreed amount of money which was duly paid; and based on the further consideration that the Defendants assured the Plaintiff that the apartment rented to her, for her and her child, was by law, a safe place to live, when in fact it was not safe and it was dangerous for them as demonstrated by the facts of the occurrence described above.

32. The Defendants' conduct and failure to provide a safe place to live for the Plaintiff was a breach of contract and in violation of law for which the Plaintiff is entitled to recover damages resulting therefrom.

33. For reasons of fact and law described in this Complaint, the Plaintiff is entitled to punitive damages because the Defendants' conduct was willful, wanton, grossly negligent, and violated the laws of South Carolina.

DAMAGES:

34. The minor Plaintiff's guardian and mother has and is continuing to incur yet undetermined medical and related expenses for the care and treatment of her son, for which he and she will be entitled to be compensated.

35. The minor Plaintiff, Kayden Montagna, is entitled to compensation for the full extent of his traumatic and permanent emotional and psychological damages which he may endure in the term of his entire life as he has been diagnosed to have incurred a serious and permanent Post Traumatic Stress Disorder for which he is entitled by his guardian to be compensated before and after he reaches adulthood.

WHEREFORE, the Plaintiff Guardian Ad Litem, for and on behalf of the minor Plaintiff, Kayden Montagna prays that a permanent guardian be appointed for him until he reaches adulthood, and that he be awarded judgement by this Court to compensate him for his damages both actual, direct, consequential and punitive up to now and in the future, and for any other damages that are just and equitable.

April 29, 2020

Respectfully submitted,

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Counsel for Plaintiff

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
	)	
KAYDEN MONTAGNA, A MINOR, BY	)	Civil Action No. 2020CP0800965
HIS GUARDIAN AD LITEM SHELBY	)	
TREHUS,	)	
	)	
Plaintiff,	)	DEFENDANTS SANTEE RUN
	)	APARTMENTS, INC. AND SHELBY
vs.	)	JEAN COLLEY'S ANSWER
	)	TO PLAINTIFF'S COMPLAINT
SANTEE RUN APARTMENTS, A	)	(Jury Trial Demanded)
SOUTH CAROLINA CORPORATION,	)	
AND SHELBY JEAN COLLEY,	)	
	)	
Defendants.	)	

Santee Run Apartments, Inc. and Shelby Jean Colley, (hereinafter "Defendants"), answer the Complaint of Plaintiff and respectfully assert the following:

FOR A FIRST DEFENSE

1. Defendants, upon information and belief, admit the allegations contained in Paragraph 1.
2. Defendants admit the allegations contained in Paragraph 2.
3. Defendants admit the allegations contained in Paragraph 3 to the extent Shelby Jean Colley is an owner of Santee Run Apartments, Inc., who owns Santee Run Apartments.
4. Defendants admit the allegations contained in Paragraph 4.
5. Responding to Paragraph 5, Defendants admit Plaintiff has alleged claims relating to an accident that occurred in Berkeley County. To the extent said paragraph attempts to allege or does allege any acts or omissions on behalf of Defendants, those are denied.

6. Paragraph 6 contains conclusions of law to which Defendants are not required to respond. To the extent a response is required, Defendants are not contesting jurisdiction or venue at this time.

7. Defendants, upon information and belief, admit the allegations contained in Paragraph 7.

8. Defendants are without information or knowledge sufficient to admit or deny the allegations contained in Paragraph 8.

9. Paragraph 9 contains conclusions of law to which Defendants are not required to respond. However, Defendants are not contesting jurisdiction or venue at this time. Further, to the extent said paragraph attempts to allege or does allege any acts or omissions on behalf of Defendants, those are denied.

10. Responding to Paragraph 10, Defendants admit Shelby Trehus entered into a lease agreement for Apartment 40, which is located on the second floor of the building. Defendants are without information or knowledge sufficient to admit or deny the remaining allegations of said paragraph.

11. Defendants are without information or knowledge sufficient to admit or deny the allegations contained in Paragraphs 11 through 20.

12. Defendants deny the allegations set forth in Paragraphs 21 through 23.

13. Defendants hereby re-allege and incorporate Paragraphs 1 through 12 of this Answer as if set forth herein verbatim in response to Paragraph 24.

14. Defendants deny the allegations set forth in Paragraph 25, including subparts (a) through (h), and 26.

15. Defendants hereby re-allege and incorporate Paragraphs 1 through 14 of this Answer as if set forth herein verbatim in response to Paragraph 27.

16. Defendants deny the allegations set forth in Paragraph 28.

17. Defendants deny the allegations set forth in Paragraph 29 to the extent said paragraph attempts to allege any violation of the statutory laws of South Carolina on behalf of Defendants.

18. Defendants hereby re-allege and incorporate Paragraphs 1 through 17 of this Answer as if set forth herein verbatim in response to Paragraph 30.

19. In response to Paragraph 31 of Plaintiff's Complaint, Defendants admit a lease agreement was entered with Shelby Trehus. Further responding, Defendants craves reference to the terms of that agreement and deny any allegations inconsistent therewith. Defendants further deny any breach of any condition of said lease agreement.

20. Defendants deny the allegations set forth in Paragraphs 32 through 35.

FOR A SECOND DEFENSE
(Failure to State a Claim)

21. Plaintiff's Complaint fails to state a claim upon which relief can be granted as to any cause of actions, and therefore, Plaintiff's Complaint should therefore be dismissed pursuant to Rule 12(b)(6), SCRPC.

FOR A THIRD DEFENSE
(Sole Negligence of Third Party)

22. Defendants allege that any injury and damage sustained by Plaintiff were due to and caused by the sole and negligent acts or omissions of some other person or persons other than Defendants over whom Defendants neither had nor exercised any authority or control, and, therefore, Defendants are not liable to Plaintiff for any sum whatsoever.

FOR A FOURTH DEFENSE

(Intervening and Superseding Negligence)

23. Defendants would allege and show that any injuries and damages sustained by Plaintiff as alleged in the Complaint, which are denied, were caused and occasioned by the intervening and superseding negligence, carelessness, recklessness, heedlessness, willfulness and wantonness of some other party or parties over whom Defendants had no supervision or control, and Defendants do plead such intervening and superseding negligence, carelessness, recklessness, heedlessness, willfulness and wantonness as the direct and proximate cause of the injuries and damages sustained by Plaintiff as alleged in the Complaint.

FOR A FIFTH DEFENSE

(Sole Intentional Criminal Act of Third Party)

24. Defendants allege, upon information and belief, that any injury and damage sustained by Plaintiff was due to and caused by the sole intentional criminal acts of some other person or persons other than Defendants over whom Defendants neither had nor exercised any authority or control, and, therefore, Defendants are not liable to Plaintiff for any sum whatsoever.

FOR A SIXTH DEFENSE

(Sole Negligence of Plaintiff)

25. Defendants allege any injury and damage sustained by Plaintiff, if any, were due to and caused by the sole negligence and/or willfulness of Plaintiff and, therefore, Defendants are not liable to Plaintiff for any sum whatsoever.

FOR A SEVENTH DEFENSE

(Comparative Negligence)

26. Defendants plead the law and doctrine of comparative negligence and allege the negligence and recklessness of Plaintiff were greater than the negligence, if any, which might be established against Defendants and, therefore, Plaintiff is barred from any recovery in this action.

Defendants further allege any injury and damage sustained by Plaintiff was due to and caused by the negligence and/or willfulness of Plaintiff combining, concurring, and contributing with the negligence and/or willfulness, if any, on the part of Defendants and, therefore, any amount of recovery awarded to Plaintiff for the injuries and damages alleged in the Complaint shall be reduced by the Court by the percentage of negligence and/or willfulness attributed to Plaintiff.

FOR AN EIGHTH DEFENSE

(Mitigation of Damages)

27. Plaintiff has failed to mitigate her damages and has incurred damages that were unnecessary or unreasonable in amount. Plaintiff is, therefore, barred in whole or part from recovery in this case.

FOR A NINTH DEFENSE

(Punitive Damages Unconstitutional)

28. Defendants would show the claim of Plaintiff for punitive damages cannot be had because any award of punitive damages under South Carolina law would violate Defendants' equal protection and due process rights as guaranteed by the United States Constitution and the South Carolina Constitution and would also violate the laws of the State of South Carolina.

FOR A TENTH DEFENSE

(Bifurcation Requested)

29. Pursuant to S.C. Code Ann§ 15-32-520, the Defendants hereby request trial bifurcation on the issues of actual damages and punitive damages.

FOR AN ELEVENTH DEFENSE

(Limitation on Punitive Damages)

30. Defendants would show that any award of punitive damages is subject to the limitations set forth in South Carolina Code §15-32-530.

FOR A TWELFTH DEFENSE
(Reliance on Additional Defenses)

31. Defendants hereby give notice that they intend to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserve the right to amend its Answer to assert any such defenses.

WHEREFORE, having fully answered, Defendants pray that the Complaint be dismissed, for the costs of defending this action, and for such other relief as the Court and jury deem just and proper.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/ Shawn M. Bevans

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ATTORNEY FOR DEFENDANTS
SANTEE RUN APARTMENTS, A SOUTH
CAROLINA CORPORATION and SHELBY
JEAN COLLEY

May 15, 2020

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
	)	
SHELBY TREHUS,	)	C/A No. 2019-CP-08-02808
	)	
Plaintiff(s),	)	
	)	
v.	)	PLAINTIFFS' MOTION FOR
	)	NEW TRIAL
SANTEE RUN APARTMENTS, A SOUTH	)	
CAROLINA CORPORATION, and	)	
~~SHELBY JEAN COLLEY,~~	)	
	)	
Defendant(s).	)	
_____	)	
	)	
KAYDEN MONTAGNA, a Minor, By His	)	C/A No. 2019-CP-08-02808
Guardian Ad Litem SHELBY TREHUS,	)	
	)	
Plaintiff(s),	)	
	)	
v.	)	
	)	
SANTEE RUN APARTMENTS, A SOUTH	)	
CAROLINA CORPORATION, and	)	
~~SHELBY JEAN COLLEY,~~	)	
	)	
Defendant(s).	)	
_____	)	

TO: THE ABOVE-NAMED DEFENDANT AND ITS ATTORNEY OF RECORD

The Plaintiffs herein move for a new trial from a jury verdict rendered in this matter on February 25, 2022.

This Motion for a New Trial is brought under the authority of Rule 59 of the South Carolina Rules of Civil Procedure.

The grounds for this motion are as follows:

(1) The Court erroneously declined to give the jury a charge to consider the Plaintiffs' claim based upon Gross Negligence which was supported by the evidence presented by the Plaintiffs;

(2) The verdict of the jury was defective and should be vacated on the following grounds:

- a. The jury failed to render a verdict based upon the Plaintiffs' cause of action for Breach of Contract which was charged by the Court but clearly not considered by the jury;
- b. The Court erroneously refused to charge the jury on the issue of the Defendant's gross negligence which is clearly supported by the evidence presented during the trial;
- c. The jury verdict is defective inasmuch as it found that the Defendant's conduct, acts, or omissions constitutes negligence, and that the Plaintiffs were not contributorily negligent, but entitled to no damages which were clearly supported by the evidence presented by the Plaintiffs and the undisputed testimony of several witnesses during the trial and is therefore an inconsistent verdict by the jury;
- d. The verdict of the jury is defective in that it found the Defendant to have acted negligently to as to Plaintiff Shelby Trehus, but did not make such a finding as to Plaintiff Kayden Montagna; and such a verdict is further defective in that the jury awarded no damages to either Plaintiff which are clearly supported by the undisputed evidence presented; and the jury verdict in the circumstances is a violation of due process and entitles the Plaintiffs to a new trial;

- e. The irregular, defective, and inconsistent jury verdict that was rendered should be vacated for the reasons set forth herein and a new trial should be granted by this Honorable Court.

Dated: March 4, 2022
Charleston, South Carolina

Respectfully submitted:

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Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
	)	
SHELBY TREHUS,	)	Civil Action No. 2019CP0802808
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANT SANTEE RUN
	)	APARTMENTS' MEMORANDUM IN
SANTEE RUN APARTMENTS, A	)	OPPOSITION TO PLAINTIFFS'
SOUTH CAROLINA CORPORATION,	)	MOTION FOR A NEW TRIAL
AND SHELBY JEAN COLLEY,	)	
	)	
Defendants.	)	
K.M., a Minor, By His Guardian Ad Litem	)	
SHELBY TREHUS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
SANTEE RUN APARTMENTS, A	)	
SOUTH CAROLINA CORPORATION,	)	
AND SHELBY JEAN COLLEY,	)	
	)	
Defendants.	)	

COMES NOW Defendant Santee Run Apartments ("Defendant") with this Memorandum in Opposition to the Motion for a New Trial submitted by the Plaintiffs, Shelby Trehus, individually, and as Guardian ad Litem for K.M. ("Plaintiffs"). This motion should be denied because the jury properly heard and considered all arguments made by Plaintiffs' counsel during the trial and the evidence in the record supports the verdict.

PROCEDURAL HISTORY

Plaintiff Shelby Trehus initiated this lawsuit with the filing of a Summons and Complaint on November 11, 2019. A second Complaint was thereafter filed by Plaintiff Trehus, on behalf

of her minor son, on April 29, 2020. The cases were consolidated for trial on December 16, 2021. Trial began on February 22, 2022 and continued on February 23, 2022 when counsel for both parties rested their case. An off day was scheduled for February 24, 2022 and the trial resumed for closing arguments on February 25, 2022. The jury deliberated for two hours, returned a question for the Court, which was answered without objection, and rendered a verdict. The Court polled the jury after the verdict was rendered and confirmed the verdict to be the unanimous finding of the jury. No objections were raised at the time to the form of the verdict or rendering by the jury.

LEGAL ANALYSIS

“A new trial may be granted . . . in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of this State.” S.C. R. Civ. P. 59(a)(1); see also Notes (“This Rule 59 is substantially the Federal Rule.”). Motions under Rule 59 are not to be made lightly: “[R]econsideration of a previous order is an extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources.” 12 JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE P 59.30[4] (3d ed.). A motion to reconsider should not be used as a “vehicle for rearguing the law, raising new arguments, or petitioning a court to change its mind.” Sanders v. Lowe’s Home Ctrs., LLC, 2016 U.S. Dist. LEXIS 140542, *3, 2016 WL 5920840 (citing Lyles v. Reynolds, C/A No. 4:14-1063-TMC, 2016 U.S. Dist. LEXIS 48735, 2016 WL 1427324, at *1 (D.S.C. Apr. 12, 2016; Exxon Shipping Co. v. Baker, 554 U.S. 471, 485 n.5, 128 S. Ct. 2605, 171 L. Ed. 2d 570 (2008)).

A. Plaintiffs’ Motion for New Trial Should Be Denied Because The Evidence Did Not Support a Charge of Gross Negligence.

Plaintiff contends the Court erroneously declined to give the jury a charge to consider the

Plaintiffs' claim based upon gross negligence. Such a charge was not supported by the evidence despite contentions to the contrary by Plaintiffs' counsel. "Gross negligence is defined as 'the failure to exercise slight care.'" Doe v. Greenville County Sch. Dist., 375 S.C. 63, 71, 651 S.E.2d 305, 309 (2007) (quoting Steinke v. South Carolina Dep't of Labor, Licensing & Reg., 336 S.C. 373, 395, 520 S.E.2d 142, 153 (1999)). "It has also been defined as 'the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do.'" Id. "Gross negligence 'is a relative term, and means the absence of care that is necessary under the circumstances.'" Id. "While gross negligence ordinarily is a mixed question of law and fact, when the evidence supports but one reasonable inference, the question becomes a matter of law for the court." Proctor v. Dep't of Health & Env'tl. Control, 368 S.C. 279, 294-295, 628 S.E.2d 496, 504-505, 2006 S.C. App. LEXIS 66, *16-17(citing Etheredge v. Richland Sch. Dist. One, 341 S.C. 307, 310, 534 S.E.2d 275, 277 (2000)); see also Clyburn v. Sumter County Schh. Dist. #17, 317 S.C. 50, 451 S.E.2d 885 (1994) (affirming grant of summary judgment on gross negligence claim).

The uncontested evidence in the case *sub judice* fails to create any inference of gross negligence on the part of Defendant. In fact, Plaintiffs were unable to demonstrate any evidence to prove the smoke alarm in question was not working at the time of the apartment fire. This alone was fatal to Plaintiffs' claim. Assuming, for the sake of argument, the alarm was not working, the only reasonable inference is that Defendant, at the very least, exercised slight care in upholding its duties under the law. For example, Plaintiff Trehus was provided a smoke alarm for her apartment by Defendant. She was instructed to test the alarm and replace the batteries, which she did on at least one occasion. She was also instructed to report any problems with the alarm to Defendant in writing. In addition to these facts, the evidence showed Defendant

promptly provided tenants with replacement smoke alarms upon request. The granddaughter and great grandchildren of Shelby Jean Colley, owner of Defendant Santee Run, lived in the same apartment building and were also forced to evacuate as a result of the fire. None of these facts support a finding of reckless, willful or wanton conduct on behalf of Defendant, nor do they show an intentional failure to act.

Finally, the code section, which Plaintiffs' contend Defendant violated, S.C. Code 5-25-1310 *et seq.*, specifically provides that "[f]ailure to comply with the provisions of this article does not create a cause of action for a per se statutory violation for liability, or for negligence-based liability, for death, injury, or damages." As such, the trial court properly declined to charge the jury with gross negligence as such a charge was not supported by the evidence.

B. Plaintiffs' Motion for a New Trial Should Be Denied Because No Objections With the Verdict Form or Reading of the Verdict Were Raised at Trial.

"[A] moving party must raise the objectionable issue at the appropriate time during trial; thus, unobjected to trial error cannot be advanced as grounds for a new trial." Winters v. Fiddie, 394 S.C. 629, 639-640, 716 S.E.2d 316, 321-322, 2011 S.C. App. LEXIS 252, *10-12; see also Munn v. Asseff, 226 S.C. 54, 58, 83 S.E.2d 642, 643-44 (1954) (holding failure to object or otherwise challenge a jury charge precluded issues from being raised in new trial motion to trial court or on appeal).

Plaintiffs seek to re-argue issues already decided by the jury. In doing so, Plaintiffs attempt to raise issues that were not objected to during the trial and that are contrary to the unanimous findings of the jury. The verdict presented by the jury in favor of Santee Run Apartments was justified and supported by the evidence, which was properly presented to the jury for their determination of fact. The evidence presented by Plaintiffs was, and continues to be, merely interpreted, via argument, by counsel in the light most favorable to his client. The jury

appropriately found that this interpretation did not meet the legal burden placed upon Plaintiffs based on substantial evidence. The jury further found the damages presented by Plaintiff Trehus were not proximately caused by any acts or omissions of the Defendant. The jury also found the minor Plaintiff failed to present any cognizable damages sufficient for recovery.

When addressing a Rule 59 motion, “the trial court . . . must give ‘substantial deference’ to the jury’s determination of damages.” Kelley v. Wren, 415 S.C. 379, 393, 782 S.E.2d 406, 413 (Ct. App. 2016) (quoting Burke v. AnMed Health, 393 S.C. 48, 56, 710 S.E.2d 84, 88 (Ct. App. 2011))). Plaintiffs also did not raise any objections to the verdict form provided to the jury or the reading of the verdict by the Court. Instead, after learning of the jury’s decision, Plaintiffs’ now seek to disturb the verdict, which is complete and justified by ample evidence presented at trial. There is absolutely no evidence that the jury ignored any of the Judge’s charges. In fact, any argument to this affect is based solely on speculation. Rather, it is undisputed that the jury deliberated for approximately two hours after a full night’s rest after the close of the evidence and asked a question for clarification, indicating thoughtful deliberation.

Considering these circumstances, the Court should respect the jury’s fact finding role in this case. See, S.C. CONST. art. V, § 21. (amended 1985)(“Judges shall not charge juries in respect to matters of fact, but shall declare the law.”). Simply put, no jury would be better suited to decide this case than the one seated by the parties and who came to a determination on liability based all evidence on the record regarding their participation.

Finally, even though this Court has discretion under the “thirteenth juror” doctrine, South Carolina law holds that the courts must only exercise this discretion vested in them with fairness and impartiality. Worrell v. South Carolina Power Co., 186 S.C. 306, 313, 195 S.E.2d 635, 641 (1938). Simply put, application of the “thirteenth juror” doctrine is an extreme remedy to be

utilized only in limited cases under very clear circumstances. Considering the evidence presented in the case, the participation by the jury and the respect that should be afforded the jury's findings under the circumstances, Defendant submits any ruling finding that the evidence does not justify the verdict would be manifestly unfair and result in an injustice to Defendant, especially considering the time and effort previously put into the defense of the claim and the emotional toll of the litigation as a whole, including a multi-day trial and participation by Defendant Shelby Jean Colley. In fact, because the evidence clearly supports and justifies the verdict in this case, a new trial absolute would not only result in injustice, but also excessive costs and delay, which are contrary to the goals of the South Carolina Rules of Civil Procedure and our jury trial system. See S.C. R. CIV. P. 1 (providing [the rules] shall be construed to secure the just, speed, and inexpensive determination of every action).

Therefore, Santee Run respectfully submits the Plaintiffs' motion should be denied and the jury's decision be afforded the deference mandated under the facts of the case.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/ Shawn M. Bevans

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ATTORNEY FOR SANTEE RUN
APARTMENTS, A SOUTH CAROLINA
CORPORATION

March 15, 2022

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
	)	
SHELBY TREHUS,	)	C/A No. 2019-CP-08-02808
	)	
Plaintiff(s),	)	
	)	PLAINTIFFS' MEMORANDUM IN
v.	)	SUPPORT OF MOTION
	)	FOR NEW TRIAL
SANTEE RUN APARTMENTS, A SOUTH	)	
CAROLINA CORPORATION, and	)	
~~SHELBY JEAN COLLEY,~~	)	
	)	
Defendant(s).	)	
	)	
K.M., a Minor, By His Guardian Ad Litem	)	C/A No. 2019-CP-08-02808
SHELBY TREHUS,	)	
	)	
Plaintiff(s),	)	
	)	
v.	)	
	)	
SANTEE RUN APARTMENTS, A SOUTH	)	
CAROLINA CORPORATION, and	)	
~~SHELBY JEAN COLLEY,~~	)	
	)	
Defendant(s).	)	
	)	

TO: THE ABOVE-NAMED DEFENDANT AND ITS ATTORNEY OF RECORD

Plaintiff Shelby Trehus, individually and as Guardian Ad Litem for her minor son K.M, through their undersigned attorneys, hereby submit this Memorandum in Support of their Motion for New Trial filed March 4, 2022 as a result of material errors that arose in the trial held during the jury trial term of court for the week February 22, 2022 before The Honorable Bentley Price in the Berkeley County Court of Common Pleas.

INTRODUCTION

In the Plaintiffs' Motion for a New Trial, the Plaintiffs' presented several grounds on which a new trial should be granted.

First, the Court erroneously declined to give the jury a charge to consider the Plaintiffs' claim based on Gross Negligence which was supported by evidence presented at trial without explanation.

Second, the verdict itself was defective for numerous reasons, and not provided to Plaintiffs' Counsel until late in the following week after several requests to the Court.

Firstly, the jury failed to deliver a verdict based upon the Plaintiffs' cause of action for Breach of Contract, as directed by the Court.

Furthermore, the verdict is defective inasmuch as the jury found that the Defendant's conduct, acts, or omissions constituted negligence, found that the Plaintiffs were not contributorily negligent, but determined that the Plaintiffs were not entitled to damages that were clearly established by the evidence

Third, as seen in the verdict form, the jury found that the Defendant was negligent as to Plaintiff Shelby Trehus, but made an inconsistent finding as to Plaintiff K.M., despite the two Plaintiffs' claims being governed by the same facts and law.

BACKGROUND AND PROCEDURAL POSTURE

This case arises from a fire that occurred at the Santee Run Apartments owned and operated by the Defendant corporation on May 29, 2019. Plaintiff and her son awoke to smoke clouding their apartment due the fire which began engulfing their building. Having no other way to escape the burning building or their apartment that had filled with smoke, Ms. Trehus dropped her four-year-old son, K.M., out the window of their second-story unit at the beckoning of the neighbors

below. Ms. Trehus then jumped out the window, fracturing her foot in the process. Plaintiffs allege that the smoke detectors were not functioning and thus did not warn them of the smoke or fire that was quickly consuming Defendant's apartment building, and allege that it was the Defendant's duty per the lease agreement and per statutory law to maintain and ensure operable smoke detectors.

Plaintiff Shelby Trehus filed her Complaint initiating this action on November 11, 2019, asserting causes of action for negligence, gross negligence, and breach of contract. Ms. Trehus filed an Amended Complaint on December 6, 2019. On April 29, 2020, Shelby Trehus filed a Complaint alleging the same causes of action individually and as Guardian Ad Litem for her minor son, K.M..

Discovery was conducted and exchanged, and depositions were taken in both cases predominantly simultaneously. The cases were eventually consolidated for trial, and the cases were put on the jury trial roster for Berkeley County Common Pleas on numerous occasions from December 2021 through February 2022 before being scheduled to move forward during the February 22, 2022 term of court before The Honorable Bentley Price.

On February 25, 2022, the case was submitted to the jury which deliberated and returned a verdict. Due to several material defects and legal and factual deficiencies in the jury verdict, and the Court's failure to charge gross negligence, and the jury's failure to deliberate and consider the Plaintiffs' claim for breach of contract, the Plaintiffs have requested a new trial on March 4, 2022 pursuant to Rule 59 of the South Carolina Rules of Civil Procedure.

LEGAL STANDARD

Rule 59(a) of the South Carolina Rules of Civil Procedure states that "A new trial may be granted to all or any of the parties and on all or part of the issues...in an action in which there has

been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State.” SCRCP 59(a).

““Motions for a new trial on the ground of either excessiveness or inadequacy are addressed to the sound discretion of the trial judge.”” *Riley v. Ford Motor Co.*, 777 S.E.2d 824, 828 (2015), citing *Graham v. Whitaker*, 321 S.E.2d 40, 45 (1984)[citation omitted]. “The consideration of a motion for a new trial...requires the trial judge to consider the adequacy of the verdict in light of the evidence presented.” *Vinson v. Hartley*, 477 S.E.2d 715, 723 (Ct. App. 1996), citing *Patterson v. Reid*, 456 S.E.2d 436 (Ct. App. 1995).

ARGUMENT

Pursuant to the discretion of the trial judge as grounded in well-established South Carolina law, a circuit court has the authority to grant a motion for a new trial upon his/her contemplation of the appropriateness of the jury verdict rendered. Here, significant, material issues are present that demonstrate the inadequacy of the jury’s verdict that entitles the Plaintiffs to a new trial.

The verdict presented by the jury as to Plaintiff Shelby Trehus was that the Defendant was unanimously found to be negligent, that Ms. Trehus was not negligent, but that the Defendant’s negligence was not the proximate cause of Ms. Trehus’ injuries which included her fractured cuboid bone in her foot, and persistent pain and suffering. The verdict as to Plaintiff K. M. was that the Defendant was unanimously found to NOT be negligent. These findings are defective for various reasons.

First, the jury failed to make any finding based upon the Plaintiffs’ third cause of action for breach of the rental contract. The fact that an underlying contract existed that bound both the Plaintiffs and the Defendant to its terms is undisputed. This contract was in the form of the month-to-month lease agreement that was admitted at trial as Defendant’s Exhibit No. 5. Further, the jury

was charged as to the legal definition of a contract and as to breach of contract. Yet, clearly no verdict was rendered on the Plaintiffs' claim for breach of the lease contract as shown on the verdict form, neither was any mention of the Plaintiffs' third claim for breach of the rental contract made by the judge when the verdict was read.

Secondly, the Court declined to charge the jury on the Plaintiffs' second cause of action for gross negligence. This was done without explanation or consideration upon the Plaintiffs' objection raised at the time. Furthermore, the Plaintiffs presented substantial evidence to support their claim for gross negligence through various witnesses' testimony and other exhibits. This evidence would include express statements from firefighters with decades of experience regarding the important purpose of smoke detectors and the deadly effects of smoke inhalation, an exhibit of the smoke detector installed and allegedly maintained by the Defendant that had been expired for nearly three years, and testimony by the Defendant that agents of the corporation inspected the smoke detectors but denied ever taking it off the wall which is necessary to examine it and replace its batteries, and the Plaintiff denied any such inspections.

"Gross negligence ordinarily is a mixed question of law and fact." *Clyburn v. Sumter Cty. Sch. Dist. No. 17*, 451 S.E.2d 885, 887 (1994). "In most cases, gross negligence is a factually controlled concept whose determination best rests with the jury." *Solanki v. Wal-Mart Store No. 2806*, 763 S.E.2d 615, 619 (Ct. App. 2014), citing *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 638 S.E.2d 650, 661 (2006). As such, the determination of gross negligence should be left to the factfinder, and not to be arbitrarily determined by the judge, a move that may be characterized as an abuse of discretion.

Thirdly, the verdict entitled both Plaintiffs to no damages, despite the finding that the Defendant was negligent as to Ms. Trehus; but, the verdict did not find the Defendant negligent as

to Plaintiff K.M. The verdict, however, specifies that the Defendant's negligence was not the proximate cause for the injuries suffered by the Plaintiffs. This result is in conflict with the evidence and the law, and is a misapplication of fact and law.

The negligence alleged by the Plaintiffs was that the Defendant's failure to maintain and ensure the operability of the smoke detectors the Defendant installed in the Plaintiffs' apartment prevented the Plaintiffs adequate warning to properly escape the apartment down the exterior staircase outside of the Plaintiffs' apartment. The undisputed evidence established that because the smoke detectors did not sound due to their defectiveness, as they were installed in June of 2006 and instructed to be replaced in ten years, the Plaintiffs' apartment had already filled with smoke, and thick, deadly smoke had at that point filled the exterior hallway and staircase, rendering the Plaintiffs' escape impossible. This caused the Plaintiffs to have no viable option but to escape out the second-story window. Ms. Trehus sustained a cuboid fracture in the process, and Kayden suffered from post-traumatic stress disorder (PTSD) and lingering trauma symptoms requiring numerous visits to various psychiatrists and counselors for therapy. The damages were therefore, by definition, proximately caused by the failure of the Defendant. "An act is the proximate cause if it is 'an efficient cause without which the injury would not have resulted to as great an extent and that any other efficient cause is not attributable to the person injured.'" *Mellen v. Lane*, 659 S.E.2d 236, 245 (Ct. App. 2008), citing *S.C. Ins. Co. v. James C. Greene and Co.*, 348 S.E.2d 617, 620 (1986) [citations omitted]. "Causation in fact is proved by establishing the plaintiff's injury would not have occurred 'but for' the defendant's action." *Id.*, citing *Bishop v. S.C. Dep't of Mental Health*, 502 S.E.2d 78, 83 (1998). "The defendant may be held liable for anything which appears to have been a natural and probable consequence of his [actions]." *Id.* at 246, citing *Bramlette v. Charter-Medical-Columbia*, 393 S.E.2d 914, 916 (1990); *Greenville Mem'l Auditorium v. Martin*,

391 S.E.2d 546, 548 (1990). “Conduct is the proximate cause of an injury if that injury is within the scope of reasonably foreseeable risks of the conduct.” *Id.*; *Messier v. Adicks*, 161 S.E.2d 845, 846 (1968).

As demonstrated by the undisputed evidence presented during trial, the failure to maintain smoke detectors, which are designed to warn occupants of present smoke in a residence and allow them opportunity to escape, clearly disallowed the Plaintiffs from escaping the apartment by the stairs and caused them to have to jump out of a second-story window, causing both Plaintiffs to sustain actual damages. Based upon the jury’s finding that the Defendant was negligent, a reasonable juror could not conclude that this negligence did not proximately cause the damages to the Plaintiffs and as such, an award of \$0 is unsupported.

Lastly, the jury’s finding that the Defendant was negligent as to Plaintiff Shelby Trehus but not as to Plaintiff K.M. is contradictory and defective. The Plaintiffs, mother and son, respectively, were both sleeping in the same apartment which they coinhabited, and experienced the same fire. Both Plaintiffs suffered damages as a result of the negligent acts and omissions of the Defendant. Neither Plaintiffs were found to be negligent. However, the Defendant was only determined to be negligent as to Ms. Trehus. This finding is inconsistent, erroneous, and not supported by any evidence presented.

CONCLUSION

For the aforementioned reasons, the Plaintiffs are entitled to an order for a new trial pursuant to SCRCP 59 to allow for the Plaintiffs’ case to be retried by the Court so that a proper judgment and verdict can be rendered.

[Signature Block on Following Page]

Dated: March 21, 2022
Charleston, South Carolina

Respectfully submitted:

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Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
	)	
SHELBY TREHUS,	)	Civil Action No. 2019CP0802808
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANT SANTEE RUN
	)	APARTMENTS' REPLY IN
SANTEE RUN APARTMENTS, A	)	OPPOSITION TO PLAINTIFFS'
SOUTH CAROLINA CORPORATION,	)	MOTION FOR A NEW TRIAL &
AND SHELBY JEAN COLLEY,	)	MEMORANDUM IN SUPPORT
	)	
Defendants.	)	
K.M., a Minor, By His Guardian Ad Litem	)	
SHELBY TREHUS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
SANTEE RUN APARTMENTS, A	)	
SOUTH CAROLINA CORPORATION,	)	
AND SHELBY JEAN COLLEY,	)	
	)	
Defendants.	)	

COMES NOW Defendant Santee Run Apartments ("Defendant") and submits this Reply in Opposition to Plaintiffs' Motion for a New Trial & Memorandum in Support. Plaintiffs have raised no valid argument or reasons that warrant a new trial, and their Motion should be denied.

LEGAL STANDARD

Trial judges exercise broad discretion in determining whether to grant a motion for a new trial. *E.g., Burke v. AnMed Health*, 393 S.C. 48, 56-57, 710 S.E.2d 84, 88-89 (Ct. App. 2011). Indeed, reviewing courts "will not disturb a trial court's decision granting or denying a new trial unless that decision is wholly unsupported by the evidence or the court's conclusions of law have

been controlled by an error of law.” *Steinke v. S.C. Dep’t of Labor, Licensing & Reguls.*, 336 S.C. 373, 386, 520 S.C.2d 142, 148 (1999). “‘Compelling reasons’ must be given to justify the trial court invading the jury’s province in” determining the facts and damages. *Riley v. Ford Motor Co.*, 414 S.C. 185, 193, 777 S.E.2d 824, 829 (2015). Here, unlike in *Riley*, the evidence as to negligence, causation and damages is not uncontested but, instead, and despite Plaintiffs’ counsel’s arguments to the contrary, was disputed and challenged at every point.

1. The failure to charge gross negligence does not warrant a new trial.

“Gross negligence is the intentional conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do.” *Bass v. S.C. Dep’t of Soc. Servs.*, 414 S.C. 558, 571, 780 S.E.2d 252, 258-259 (2015). “It is the failure to exercise even the slightest care.” *Id.*, 780 S.E.2d at 259. “Gross negligence ordinarily is a mixed question of law and fact.” *Clyburn v. Sumter County Sch. Dist. #17*, 317 S.C. 50, 53, 451 S.E.2d 885, 887 (1994). However, where, as is the case here, “the evidence supports but one reasonable inference, the question becomes a matter of law for the court.” *Bass*, 414 S.C. at 571, 780 S.E.2d at 259. In other words, where “the only reasonable inference that can be drawn” from the evidence shows that the defendant “at the very least[] exercised ‘slight care,’” the court can find as a matter of law that defendant is not guilty of gross negligence. *Clyburn*, 317 S.C. at 54, 451 S.E.2d at 888.

Here, the facts simply do not warrant a charge of gross negligence. Assuming without conceding that the jury found that Defendant was negligent in failing to inspect and replace the smoke alarm,¹ as noted above/below, there is no evidence that the smoke alarm did not function

¹ As noted by the undersigned at the hearing, Plaintiffs’ discussion of the fire extinguisher which had not been inspected since 2008 is nothing more than a red herring, (Tr. p. 268, lines 16-25), as there is no evidence that Shelby attempted to use or even thought to use the fire extinguisher.

properly on the night of the fire. Moreover, Shelby Jean Colley, one of the owners of Santee Run Apartments, testified that they tell tenants that “they’re responsible for keeping the batteries in the smoke alarms and letting us know if they have a problem with it.” (Tr. p. 218, lines 8-12). Although Shelby notified Santee Run Apartments of an issue with her sink and with the air conditioning, (Tr. 120, lines 9-22), she never notified the owners about the smoke alarms in her apartment. (Tr. p. 218, lines 19-22). Although other tenants came to them and asked for a replacement smoke alarm, Shelby never did. (Tr. p. 222, line 25 – p. 223, line 7).

In addition, Ms. Colley testified that Defendant did inspections of the apartments “from time to time,” although they did not keep records of those inspections. (Tr. p. 225, lines 7-22). She also testified that, during one of the inspections, they tested Shelby’s smoke alarms to see if they operated although, again, they do not keep records of those inspections. (Tr. p. 227, lines 6-10). Ms. Colley also testified that they had some tenants who took their smoke alarms down when they would go off due to cooking, and “when we found out about that, we got onto them because we told them not to ever do that, but they do.” (Tr. 221, lines 2-7). Thus, because there is evidence that Defendant exercised at least slight care, the Court was fully entitled to decide as a matter of law to not charge the jury on gross negligence.

Finally, even if the failure to charge gross negligence was error, which Defendant does not concede, it was not prejudicial since the jury did not even find Defendants were guilty of simple negligence. Patently, “whatever doesn’t make any difference, doesn’t matter.” *Crenshaw v. Erskine Coll.*, 432 S.C. 1, 40 n.17, 850 S.E.2d 1, 21 n.17 (2020).

2. The verdict does not warrant a new trial.

- A. The jury’s failure to return a verdict on Plaintiff’s breach of contract cause of action does not warrant a new trial.

Plaintiffs argue that the jury erred by failing to return a verdict on their breach of contract

cause of action. While the trial Judge instructed the jury on a breach of contract claim, that cause of action was not reflected on the verdict form provided to the jurors. Plaintiffs complain that the verdict form was “not provided to Plaintiffs’ Counsel until late in the following week after several requests to the Court.” However, there is no indication that Plaintiffs’ counsel asked to see the verdict form at any point before it was provided to the jury and, moreover, when the verdict was read with no mention of the breach of contract claim, Plaintiffs’ counsel failed to object or otherwise preserve this issue.

After closing arguments, the Court provided the jury with instructions concerning Plaintiffs’ negligence claims. As part of this discussion, the Court went over the verdict form with the jury in detail, explaining the steps the jury needed to take to evaluate the negligence claims for both Shelby and K.M. (Tr. p. 296, line 8 – p. 297, line 22). The court then proceeded to give instructions on Plaintiffs’ Breach of Contract claim, with no mention of how that claim was treated on the verdict form. There was no question, comment or objection from Plaintiffs’ counsel regarding this omission, and no request to see the verdict form.

Before sending the jury back to deliberate, the court instructed, “And the last thing that I charge you to do is you have to sign and fill out the verdict form, all right. I explained it in the charge how you go one to two, two to three, three to four, and so on and so forth. So if you’ll just take a look at the verdict form, there are two. Obviously, there are two Plaintiffs in this case, and so you will decide as to Shelby Trehus and as to Kayden, all right. And both of them are on here.” (Tr. p. 306, lines 15-23). Again, there was no question, comment or objection from Plaintiffs’ counsel and no request to see the verdict form.

When the jury completed their deliberations and returned to the courtroom, the court indicated that, “[b]ecause we have overly complicated this verdict form, because we realized we

should have put if you find that the person is not negligent, we should have put another line that says just stop here, but we didn't." (Tr. p. 309, lines 5-9). The court then read through the verdict form in its entirety to ensure it reflected the jury's determination, which the forelady confirmed. (Tr. p. 309, line 12 – p. 310, line 16). There was no mention of the breach of contract claim. Again, there was no question, comment or objection from Plaintiffs' counsel. The only request made by Plaintiffs' counsel at the end of the hearing was to ask for a few days to file post-trial motions. (Tr. p. 312, lines 2-4).

"South Carolina jurisprudence indicates that a moving party must raise the objectionable issue at the appropriate time during trial; thus, unobjected to trial error cannot be advanced as grounds for a new trial." *Winters v. Fiddie*, 394 S.C. 629, 639, 716 S.E.2d 316, 321-322 (Ct. App. 2011). In other words, "[a] contemporary objection is typically required to preserve" an issue. *Burke*, 393 S.C. at 54, 710 S.E.2d at 87. Specifically, the failure to object to a verdict form prior to its submission to the jury means any such objection is not preserved for later consideration. *Gause v. Smithers*, 403 S.C. 140, 151, 742 S.E.2d 644, 650 (2013) (rejecting challenge to erroneous verdict form that was first raised after the verdict was read), *citing Johnson v. Hoechst Celanese Corp.*, 317 S.C. 415, 421, 453 S.E.2d 908, 912 (Ct. App. 1995) (by failing to object to the verdict form "at the first opportunity" and waiting until after the verdict had been reached, the plaintiffs' challenge to the verdict form was unpreserved); *see also Munn v. Asseff*, 226 S.C. 54, 58, 83 S.E.2d 642, 644 (1954) (an objection to a jury charge or a verdict form cannot be raised for the first time "by a motion for a new trial" because "[o]rderly procedure requires that objections be timely made"). Here, Plaintiffs' counsel simply failed to make any objection to the verdict form before it was sent to the jury. In fact, it appears that Plaintiffs' counsel did not even ask to see the verdict form before it was given to the jury. And,

finally, Plaintiffs' counsel failed to make any objection as the verdict was read back to and discussed with the jury forewoman. Given his failure to ask to see it prior to jury deliberations and his failure to object when the verdict was read in front of the jury—and included no verdict on Plaintiffs' breach of contract cause of action—he is precluded from raising this issue in a post-hearing motion.

B. The jury's determination that Shelby was not contributorily negligent and also that she is not entitled to any monetary damages does not warrant a new trial.

As an initial matter, “[a] jury’s determination of damages is entitled to ‘substantial deference.’” *Burke*, 393 S.C. at 56, 710 S.E.2d at 88. Here, although the jury found that Defendant was negligent as to Shelby, they also found that “Defendant’s negligence was [not] the proximate cause of Shelby Trehus’ injuries.” This finding is not inconsistent with the jury also finding that Shelby was not contributorily negligent. In addition, there is a simple explanation for the jury finding Shelby was not contributorily negligent but awarding her no damages.

“In a negligence action, the plaintiff must prove proximate cause,” because “[n]egligence is not actionable unless it is a proximate cause of the injury.” *Vinson v. Hartley*, 324 S.C. 389, 400, 477 S.E. 2d 715, 720-721 (Ct. App. 1996) (internal citations omitted). “Proof of proximate cause requires proof of both causation in fact and legal cause. *Mellen v. Lane*, 377 S.C. 261, 278, 659 S.E.2d 236, 245 (Ct. App. 2008). “Ordinarily, the question of proximate cause is one of fact for the jury and the trial judge’s sole function regarding the issue is to inquire whether particular conclusions are the only reasonable inferences that can be drawn from the evidence.” *Vinson*, 324 S.C. at 402, 477 S.E. 2d at 721; *see also Mellen*, 377 S.C. at 279, 659 S.E.2d at 245-246.

Although the jury found Defendant was negligent toward Shelby in some manner, it also

found that Defendant's negligence was not the proximate cause of her injuries. It is possible that the jury found that the Defendant was negligent in not inspecting the smoke alarm, or replacing it within ten years. However, even if that were the case, there is absolutely no evidence that the smoke alarm was defective and did not or would not have gone off once the concentration of smoke in the apartment reached the threshold required to set off the alarm. As Captain Corey Denny with the Moncks Corner Fire Department, (Tr. p. 149, line 10 – p. 160, line 10), testified, although it is recommended—not required—that smoke alarms be replaced, it is quite possible that the alarm in Shelby's apartment, though old, was still functional. (Tr. p. 167, line 21 – p. 168, line 15; *see also* p. 150, lines 11-18 and p. 157, line 24 – p. 158, line 14 (Monks Corner Fire Chief Robert Gass testifying that smoke alarms are not required to be inspected and that the Fire Department teaches “for residents to test them regularly”)). Captain Denny also testified that when he spoke to Shelby after the fire was under control, she did not mention that her smoke alarm did not go off. (Tr. p. 169, lines 13-16).

In addition, Captain Denny testified that “[s]moke alarms are placed up high so when the smoke comes in, the smoke rises, it has a chance to alert you before the smoke gets down to the level where it would be breathed in by the person.” (Tr. p. 163, lines 20-23). Shelby testified that she at no point did she have to drop to her hands and knees and crawl because of the smoke in her apartment but, instead, was fully erect and walking around. (Tr. p. 66, lines 1-7). Photographs admitted by Plaintiffs also show little to no smoke and/or fire damage to Plaintiffs' end unit compared to the remainder of the building. Thus, the jury could have drawn a reasonable inference that the smoke alarm, even though old and at least arguably uninspected, was functional but had not yet gone off because not enough smoke had accumulated to trigger it, such that any injuries suffered by Shelby when she jumped out of the bedroom window were not

proximately caused by Defendant's negligence.

The jury also found that Shelby was not negligent. It is entirely possible for the jury to have determined that, upon opening the door of her apartment and seeing the fire trucks below, Shelby made the choice to leave the apartment via a bedroom window rather than by the stairway. The jury could have determined that her decision, as a concerned mother, to jump out of her son's bedroom window, while not negligent, was the cause of her injuries. Apodictically, South Carolina does not recognize the doctrine of *res ipsa loquitur*. *E.g., Watson v. Ford Motor Co.*, 389 S.C. 434, 453, 699 S.E.2d 169, 179 (2010). The fact that an injury has occurred does not automatically mean one party or the other has to be found negligent, which appears to be the case here.

- C. The jury's determination that Defendant was negligent as to Shelby Trehus but not as to K.M., despite the two claims arising out of the same facts and being governed by the same law, does not warrant a new trial.

Plaintiffs' argument that the jury verdict is inconsistent in that it found Defendant was negligent as to Shelby but not as to K.M. fails as well. Regardless of whether Defendant was negligent toward K.M., the jury clearly found there was no harm suffered by K.M., which is supported by a preponderance of the evidence. For example, Shelby testified that, prior to the fire, K.M. was in a special ed class full time. (Tr. p. 95, lines 7-19). K.M.'s difficulty controlling his anger was noted prior to the fire. (Tr. p. 97, lines 4-21). Although K.M. still is in special ed classes, he is mainstreamed for most of the day now. (Tr. p. 98, line 6 – p. 99, line 4). Furthermore, his IEP from before the fire indicated that his "behavior impedes the student's learning and learning of others," but after the fire, that box was checked, "no." (Tr. p. 111, line 2 – p. 112, line 5).

Defense counsel elicited testimony from Shelby that she only took K.M. to the National

Crime Victims Center on the advice of her counsel and that that occurred only a few weeks after K.M.'s father was tragically killed in a motorcycle accident. (Tr. p. 99, line 5 – p. 100, line 5). Shelby was put in touch with Dr. Brewerton, her expert, again on advice of counsel. She and K.M. met with Dr. Brewerton for a little over two and a half hours of substantive time via a cell phone zoom call so that he could evaluate K.M. for PTSD. (Tr. p. 103, line 3 – p. 104, line 16; p. 107, lines 19-21).

As to K.M.'s alleged sleep disturbance, Shelby acknowledged that he has a television in his bedroom and access to Netflix. (Tr. p. 113, line 21 – p. 114, line 12). She also agreed that K.M. sleeps better when he does not have a television in his room. (Tr. p. 115, lines 23-25). He also is exposed to a video game called "Granny" via his cousins, which causes him to have difficulty sleeping because "Granny" is going to jump out and get him. (Tr. p. 114, line 13 – p. 115, line 3).

Dr. Wiita, Defendant's expert witness, conducted an in-person interview with K.M. and his mother on September 2, 2021 that lasted about two and a half hours. (Tr. p. 136, lines 9-12; p. 210, line 22 – p. 211, line 12). Dr. Wiita confirmed that K.M. met the diagnostic criteria for ADHD, and had a language disorder, both of which he had prior to the fire. (Tr. p. 197, lines 7-25). Dr. Wiita concluded that K.M. did not have PTSD as a result of the apartment fire. (Tr. p. 200, lines 9-12). Dr. Wiita disagreed with Dr. Brewerton's diagnosis that K.M. had "partial PTSD in remission," explaining that that was not a DSM-5 diagnosis. (Tr. p. 198, lines 8-12). Although Dr. Wiita agreed that K.M. would probably remember the fire, (Tr. p. 213, line 13-16), he also agreed that his memory of the fire could be affected by the stories his mother told him about the fire. (Tr. p. 214, lines 18-20).

The fact that the jury properly found that Shelby failed to prove proximate cause and that

she was not entitled to any monetary damages, despite finding Defendant was negligent as to her, demonstrates that the jury determined Shelby's injuries were not proximately caused by Defendant's negligence. In other words, the jury rendered a defense verdict with respect to Shelby's negligence claim. Because K.M.'s damages are even more attenuated to the presence or lack of a functioning smoke alarm than are Shelby's, as he was asleep when she lifted him out of his bed, and Shelby was not sure whether or not he was awake until he was already outside of the apartment, (Tr. p. 65, lines 24-25; p. 71, lines 20-24), the only logical or reasonable conclusion that could be reached is that, even if the jury found Defendant negligent as to K.M., he would not be entitled to any damages for the same reasons Shelby is not entitled to damages—*i.e.*, Plaintiffs' failure to prove proximate cause. *Vinson*, 324 S.C. at 400, 477 S.E. 2d at 720-721. Although the verdict might have been problematic if the jury had found for Shelby and not for K.M., *see Rhodes v. Winn-Dixie Greenville, Inc.*, 249 S.C. 526, 529, 155 S.E.2d 308, 309 (1967) (finding an impermissibly inconsistent verdict where "either both plaintiffs should have won or both plaintiffs should have lost"), here, there was a defense verdict as to *both* Plaintiffs. As a result, the verdict is not inconsistent. *Vinson*, 324 S.C. at 409, 477 S.E. 2d at 725 (verdict not inconsistent where the jury found for the defendant and awarded "no damages" to plaintiff).

Even if the jury verdict could be fairly construed as inconsistent, which Defendant denies, it is at best a harmless error. "[W]hatever doesn't make any difference, doesn't matter." *Crenshaw*, 432 S.C. at 40 n.17, 850 S.E.2d at 21 n.17.

CONCLUSION

Therefore, Santee Run respectfully submits the Plaintiffs' motion should be denied and the jury's decision be afforded the deference mandated under the facts of the case.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/ Shawn M. Bevans

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ATTORNEY FOR SANTEE RUN
APARTMENTS, A SOUTH CAROLINA
CORPORATION

April 7, 2022

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Shelby Trehus)

Plaintiff,)

v.)

Santee Run Apartments, a South Carolina,
Corporation, and Shelby Jean Colley,)

Defendants.)

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Kayden Montagna, a minor, by his guardian
ad Litem Shelby Trehus,)

Plaintiff,)

v.)

Santee Run Apartments, a South Carolina,
Corporation, and Shelby Jean Colley,)

Defendants.)

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2019-CP-08-02808

VERDICT FORM

FILED
2021 FEB 25 PM 1:52
LEAH GUERRY DUPRE
CLERK OF COURT
BERKELEY COUNTY, SC

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2020-CP-08-00965

VERDICT FORM

1. As to Shelby Trehus, we the jury unanimously find the Defendant was negligent,

☒ YES

☐ NO

If YES, we the jury unanimously find the Defendant's negligence was the proximate cause of Shelby Trehus' injuries:

____ YES

✓ NO

2. As to Shelby Trehus, we the jury unanimously find Shelby Trehus was negligent,

____ YES

Q NO

If YES, we the jury unanimously find Shelby Trehus' negligence was the proximate cause of Shelby Trehus' injuries:

____ YES

____ NO

3. We the jury unanimously find the percentage of Defendant's negligence which proximately caused Shelby Trehus' injuries is:

Q

4. We the jury unanimously find the percentage of Shelby Trehus' negligence which proximately caused her injuries is:

Q

NOTE: Please be sure the percentages in Questions 3 and 4 add up to 100 percent.

5. Is Shelby Trehus' negligence greater than Defendant's negligence?

____ YES

Q NO

If YES, stop here and begin questions for Kayden Montagna.

If NO, go on to question 6.

6. As to Shelby Trehus, we the jury unanimously award damages in favor for Shelby Trehus in the amount of \$ Q.

7. As to Kayden Montagna , we the jury unanimously find the Defendant was negligent,

____ YES

☒ NO

If YES, we the jury unanimously find the Defendant's negligence was the proximate cause Kayden Montagna's injuries:

____ YES

____ NO

8. As to Kayden Montagna, we the jury unanimously find Kayden Montagna was negligent,

____ YES

☒ NO

If YES, we the jury unanimously find Kayden Montagna's negligence was the proximate cause of Kayden Montagna's injuries:

____ YES

____ NO

9. We the jury unanimously find the percentage of Defendant's negligence which proximately caused Kayden Montagna's injuries is:

0

10. We the jury unanimously find the percentage of Kayden Montagna's negligence which proximately caused his injuries is:

0

NOTE: Please be sure the percentages in Questions 9 and 10 add up to 100 percent.

11. Is Kayden Montagna's negligence greater than Defendant's negligence?

____ YES

☒ NO

If YES, stop here.

If NO, go on to question 12.

1. As to Kayden Montagna, we the jury unanimously award damages in favor for Kayden Montagna in the amount of \$ 2.

Michael Simon
Foreperson

Date: 2-25-22
Berkeley County, SC

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Berkeley
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP0802808

Shelby Trehus

PLAINTIFF(S)

Santee Run Apartments

DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before the Court as Plaintiff's motion for a new trial. Plaintiff's motion for a new trial is denied.
If the Court granted this motion, it would be prejudicial to the defense as all parties had an opportunity to review and object to the verdict form at trial. No objections were made to the verdict form at trial. Instead, Plaintiff's objections arose after an unfavorable outcome. The ends of justice would not be met by granting this motion. Therefore, Plaintiff's motion for a new trial is denied.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/04/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Berkeley Common Pleas

Case Caption: Shelby Trehus VS Santee Run Apartments , defendant, et al
Case Number: 2019CP0802808
Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2022-06-04 10:27:07 page 3 of 3

1 A. No, sir.

2 MR. BEVANS: Can we mark that as Exhibit 2 to
3 the deposition as well then.

4 (Exhibit 2 was marked for identification.)

5 Q. Let's get to actually talk about why we
6 are here. You woke up on May 29th, and there
7 was a fire at your apartment building; is that
8 right?

9 A. Yes, sir.

10 Q. Tell me about that.

11 A. From start to finish?

12 Q. Yeah. Just like, I mean, I'll kind of
13 give you the floor. I can ask really picky
14 questions about it all, but I want to kind of
15 give you the floor. Tell me what happened.

16 A. Well, I was sleeping. I ended up waking
17 up to a very awful smell and sore throat, nasty
18 taste. Wasn't really sure what was going on. I
19 walked out of my bedroom. I turned on my hallway
20 light. I seen a bunch of smoke in my apartment,
21 wasn't really sure what was really going on.

22 Started looking around, seeing if it was
23 coming from my apartment. Then I had opened up
24 my front door. I had a bunch of smoke roll into
25 my apartment. I really couldn't see anything. I

1 had looked kind of around. It was really hard to
2 see. I seen some of the fire trucks out there,
3 and I had assumed that we were on fire.

4 I shut my front door. I immediately went
5 to Kayden's bedroom. I snatched the curtains and
6 the blinds off of the window. I opened up his
7 window, and I stuck my head out. Everybody that
8 was across the street stayed away from the
9 apartments. They had seen me and started rushing
10 over, saying that, you know, somebody is inside;
11 somebody is inside.

12 Kayden was sleeping in his bedroom at the
13 time. I had reached over to his bed, put him out
14 of the window. As they come running, they told
15 me to drop him. I got him as low as possible,
16 and I dropped him to the people below. And then
17 they told me to jump, so I jumped right behind
18 him.

19 And they tried to catch me, but the ground
20 broke my fall.

21 Q. Let's back up, obviously. What had you
22 been doing that night before you went to bed?

23 A. I watched TV.

24 Q. It was a weekday?

25 A. Yes.

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF BERKELEY) C/A No. 2019-CP-08-02808

3 SHELBY TREHUS,

4 Plaintiff,

5 vs.

6 SANTEE RUN APARTMENTS, A
7 SOUTH CAROLINA CORPORATION,
AND SHELBY JEAN COLLEY,

8 Defendants.

9 KAYDEN MONTAGNA, A MINOR, C/A No. 2020-CP-08-00965
10 BY HIS GUARDIAN AD LITEM,
SHELBY TREHUS,

11 vs.

12 SANTEE RUN APARTMENTS, A
13 SOUTH CAROLINA CORPORATION,
AND SHELBY JEAN COLLEY,

14 Defendants.

15

16 DEPOSITION OF
17 TIMOTHY D. BREWERTON, M.D.

18

19

20

DATE: July 9, 2021

21

TIME: 9:56 a.m. - 1:26 p.m.

22

LOCATION: Law Offices of Thomas S. Tisdale, LLC
4 North Atlantic Wharf, Suite 100
23 Charleston, South Carolina

24

REPORTED BY: Lorraine B. Whiteley

25

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2 another party or transcribed in any form or by any means,
3 electronic, mechanical, photocopying, recording or
4 otherwise, without the prior written permission of the
5 Court Reporter.

6 A-P-P-E-A-R-A-N-C-E-S

7 For the Plaintiffs:

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14 (VIA ZOOM)

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17
18
19
20
21
22
23
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25

INDEX OF EXAMINATIONS

TIMOTHY D. BREWERTON, M.D., Sworn

Examination by Mr. Bevans 5

Reporter's Certificate 179

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

EXHIBIT INDEX

Defendants':

Exhibit 1	Transmittal Letter and Document Subpoena (8 Pages)	6
Exhibit 2	Independent Medical Examination Report Dated 02/01/21 (21 Pages)	28
Exhibit 3	Invoice For Forensic Psychiatry Services (1 Page)	32
Exhibit 4	Medical Record of MUSC Health's Dr. Alice Salter Dated 04/13/20 (1 Page)	43
Exhibit 5	Questionnaires (19 Pages)	109

PROCEEDINGS

= = = = =

(TIMOTHY D. BREWERTON, M.D., having been first duly
sworn as hereinafter certified, testifies as follows:)

= = = = =

E-X-A-M-I-N-A-T-I-O-N

BY MR. BEVANS:

Q Dr. Brewerton, my name is Shawn Bevans and
I'm a lawyer in Charleston with the law firm McAngus,
Goudelock & Courie, and I represent two parties in a
lawsuit filed by Shelby Trehus on behalf of herself and
then on behalf of her minor son, Kayden. My clients in
that lawsuit are Santee Run Apartments and the owner,
Shelby Jean Colley.

Do you understand you're here to give
testimony in regards to those two lawsuits today?

A Yes; I do.

Q And you understand you've been identified as
an expert witness by the Plaintiffs, Ms. Trehus and her
son, in that case --

A Yes.

Q -- or those cases? Okay. Have you given --
how many times have you given deposition testimony as an
expert witness?

A Oh, I -- several, perhaps up to ten.

1 Q Do you have a list of cases that you --

2 A I do.

3 Q Okay.

4 A Not with me, but I do.

5 Q Okay. Is that something you could share with
6 Mr. Tisdale and he could get to me?

7 A Certainly.

8 Q Perfect. The cases that you have testified
9 as an expert before in; what forum are they in? Is it
10 civil court, criminal court, family court?

11 A It's primarily civil.

12 Q Okay.

13 My office sent you what we'll mark as Exhibit
14 1 to your deposition, and that's just the subpoena.

15 (Transmittal Letter and Document Subpoena (8
16 pages), Defendants' Exhibit No. 1 is marked for
17 identification and made part of this deposition.)

18 BY MR. BEVANS:

19 Q And I'll represent to you, it's a subpoena we
20 sent for your file on the Plaintiffs in this case. Do
21 you remember seeing that?

22 A Yes; I do.

23 Q And you provided -- I'm not going to mark the
24 entire response, but you provided me a packet that
25 consisted of 65 pages. Is that what you have with you?

1 A I have all my records. I think it was,
2 technically, provided to you by Mr. Tisdale's office
3 through me.

4 Q That's correct.

5 A Right.

6 Q And I guess a better question is, everything
7 in your file: Is that what you produced --

8 A Yes.

9 Q -- in response to that subpoena?

10 A That's right.

11 Q So there's no e-mails or notes or anything
12 you've held back, in producing your records?

13 A Not to my knowledge. You're welcome to
14 check.

15 Q Okay.

16 A I -- I did have an invoice. I don't know --
17 I think an invoice after February 26, for my services,
18 that you may not have.

19 Q Sure. And do you have that invoice with you?

20 A I do.

21 Q Okay. When we take a break, I might get a
22 copy of that, and that way I'll take it with me instead
23 of having you kind of shoot it through Mr. Tisdale and
24 stuff.

25 Have you had any other communications with

1 Shelby or Kayden since your interview of them on -- was
2 it December 3rd, 2020?

3 A No.

4 Q Have you had any other e-mail communications
5 with Plaintiffs' counsel since you produced those
6 subpoena responses to me?

7 MR. TISDALE: Are you talking about
8 [indicating]?

9 MR. BEVANS: Uh-huh.

10 A Just in regard to the deposition, preparing
11 for the deposition.

12 BY MR. BEVANS:

13 Q Okay. And what did --

14 A Or arranging the deposition. And I got a
15 recent e-mail informing me of your expert witness.

16 Q Okay. So scheduling, and then how we
17 disclosed our expert witness, Dr. Wiita --

18 A That's right.

19 Q -- earlier this week?

20 A That's right.

21 Q Do you know Dr. Wiita? Have you worked --

22 A I do not.

23 Q -- with him in the past?

24 A No.

25 MR. TISDALE: How do you pronounce his name?

1 MR. BEVANS: I say Wiita [ph].

2 MR. TISDALE: Wiita [ph]?

3 MR. BEVANS: Yes, sir. It's a double "I."

4 BY MR. BEVANS:

5 Q What did you do to prepare for your
6 deposition today?

7 A I reviewed my report. I reviewed my
8 video-recorded interview. I looked at a couple of
9 articles that I had referred to.

10 Q "Articles" meaning your citations?

11 A Yes.

12 Q Which ones did you refer to? Because there's
13 a whole list of them. Do you know how many you referred
14 to before today?

15 A I -- no.

16 Q Do you remember the topics of the articles
17 the --

18 A Just PTSD in children. Some of the economic
19 factors associated with PTSD.

20 Q Those citations you list in your report; do
21 you have access to all those? Are those all something
22 public that I would be able to pull up?

23 A I have a thumb drive with me, with all of the
24 copies of -- of all of those articles, if you don't have
25 them.

1 Q Perfect.

2 A But, yes; I -- I have all of those citations
3 that I used and am familiar with them.

4 Q Yeah. My concern -- if you have a thumb
5 drive, that might be great, if I can have a copy of it.
6 Because I went to look at some, and some were restricted
7 access; I didn't have the membership or --

8 A Right.

9 Q To journals you might, you know, have access
10 to.

11 A I understand.

12 Q What is your -- briefly, just kind of go
13 through your background for me, your educational
14 background.

15 A Okay. Starting when?

16 Q I guess with undergrad. I don't need to know
17 your elementary and high school. I trust you're an
18 educated person.

19 A I'm from Louisiana. I went to Baton Rouge,
20 Louis -- I went to LSU, in Baton Rouge, Louisiana, and
21 graduated with a degree in Zoology in three years. And
22 then I went to Tulane Medical School in New Orleans.
23 And, from there, I went to the University of California
24 in San Francisco where I did my psychiatric internship
25 and residency.

1 I got interested in research and applied to
2 the National Institute of Mental Health, where I
3 subsequently did a research fellowship. Meanwhile, I
4 worked for the Public Health Service at Hawaii State
5 Hospital between my residency and my fellowship at NIMH.

6 I -- from -- from Bethesda, Maryland, at
7 NIMH, I came to Charleston and joined the faculty of --
8 of the Medical University of South Carolina in 1987,
9 Department of Psychiatry, as an assistant professor,
10 directed the eating disorder program there for many
11 years, and worked my way up to full professor, tenured
12 professor.

13 I retired from there on medical disability
14 from two thousand -- in 2001, and I've been in -- on the
15 volunteer faculty -- clinical professor, now affiliate
16 professor -- and I'm in private practice in Mount
17 Pleasant, since.

18 Q When did you open -- your private practice is
19 just your name, LLC?

20 A Yes.

21 Q And when did you open that private practice?

22 A 2001, I believe, or '02.

23 Q So roughly --

24 A 2001.

25 Q -- 20 years ago?

1 A Yes. Uh-huh.

2 Q And you've been in private practice for that
3 20-year period?

4 A That's right.

5 Q Any other employment aside from your teaching
6 position at MUSC since you've been in private practice?

7 A I was Executive Medical Director of The
8 Hearth Center for Eating Disorders when it was open in
9 Columbia for four -- three or four years.

10 Q When was that?

11 A I don't know. It's in my CV.

12 Q Okay. That's fair.

13 A 2012 to 2015, something like that.

14 Q How many courses are you currently teaching
15 at MUSC?

16 A I don't teach any courses. I -- I teach
17 certain seminars. I give seminars on certain topics.

18 Q Okay.

19 A And I supervise residents or child psychology
20 Fellows who are wanting supervision with their cases.

21 Q Okay.

22 A I am also hired by Monte Nido & Affiliates.
23 I'm director for clinical outcomes in research. It's
24 a -- it's a large conglomerate of eating disorder
25 treatment facilities at different levels of care, from

1 residential, partial hospital, intensive outpatient.
2 There are 26 sites in ten states and growing, and I
3 organize their research effort and do a lot of writing of
4 data-generated, largely with a focus on trauma and PTSD.

5 Q Where is your office located?

6 A It is at 208 Scott Street, in Mount Pleasant,
7 29464.

8 Q Are you able to gauge how much of your work
9 is in a forensic legal setting versus how much is
10 actually a clinical setting?

11 A It varies. But I would estimate 20, 25
12 percent is forensic.

13 Q And then the remaining 75 to 80 would be
14 clinic, where you're actually treating patients?

15 A I would say another 25 percent to -- 25 to 40
16 percent is clinical, and then the remaining is research,
17 academic. Writing. Scholarly work. Presentations.

18 Q And I saw you had a --

19 A Consultations.

20 Q -- long list of papers you authored or
21 published or have been a part of.

22 A That's correct.

23 Q Have you dealt with any cases specifically
24 like this with PTSD after a fire event?

25 A Specifically after a fire? No.

1 Q Okay. I saw a lot of your is --

2 A You mean forensic cases?

3 Q Correct. Yes, sir.

4 A Correct.

5 Q And any of your -- how about any publications
6 you've written? Any publications on PTSD, specifically
7 after a fire?

8 A No.

9 Q And looking at your work and your resumé, a
10 lot of your focus seems to be on eating disorders. Is
11 that fair to say?

12 A Yes.

13 Q In this case, there's no concern of eating
14 disorder; is there?

15 A No; there is not.

16 Q How much of your forensic work is for the
17 plaintiff side versus the defense?

18 A It's about half and half.

19 Q How many times have you been qualified in
20 State or federal court, or have you?

21 A I don't recall how many times.

22 Q Have you been qualified as an expert witness
23 in State or federal court, though --

24 A Yes.

25 Q -- in South Carolina?

1 A Yes.

2 Q How about in other states?

3 A Yes.

4 Q What other states have you testified in?

5 A Washington state, for sure. North Carolina.
6 Georgia.

7 Q Your list of cases; does it also have a list
8 of testimony you've offered --

9 A Yes.

10 Q Cases you've testified in? And that's
11 something you can provide to Mr. Tisdale?

12 A Yes, sir.

13 Q Within the last two years, how many times
14 have you been deposed as an expert?

15 A Just two, two or three.

16 Q What are your board certifications?

17 A General psychology, child/adolescent
18 psychiatry, forensic psychiatry and addiction medicine.

19 Q So general psychiatry, child and adolescent
20 psychiatry --

21 A Forensic psychiatry, and addiction medicine.

22 Q Do you advertise your forensic work in any
23 publications?

24 A Yes. I advertise in SEAK.

25 Q What's that?

1 A It's an --

2 Q Is it an acronym?

3 A It's an on-line. I don't recall what it
4 stands for. It's S-E-A-K.

5 Q I know what you're talking about. Okay.

6 A I don't think it stands for anything. I
7 don't -- I'm not sure.

8 Q I'm familiar with SEAK.

9 A But it's -- it's a very common platform where
10 lawyers can find experts. I think I'm also signed --
11 signed up for expertpages.com. But, mostly, I've been
12 involved with SEAK over the years.

13 Q Have you worked with Mr. Tisdale or his firm
14 before?

15 A No; I have not.

16 Q What is your -- so your board certifications
17 in general psychiatry, child psychiatry, forensic
18 psychiatry and addiction medicine; are those all for
19 separate certifications?

20 A Yes.

21 Q Okay. When did you become certified in
22 general psychiatry?

23 A When I graduated from my residency in 1982.

24 Q And then do you have to renew those, that
25 certification, at all?

1 A Not -- not that one. I'm grandfathered in
2 for life.

3 Q No like continuing education classes or
4 anything along those lines you have to do?

5 A For license, you have to do that, but not for
6 that particular certification.

7 Q Okay. How about for child psychiatry? Were
8 you ever certified --

9 A First certified in 1996, and then again in
10 2006, and then again in 2016.

11 Q So ever ten years?

12 A Yes.

13 Q How about the adolescent? Is that --

14 A That's --

15 Q -- coupled with child psychiatry?

16 A That's together. Right.

17 Q What is the cut-off age for adolescence, in
18 terms of psychiatry?

19 A It depends. You know, it's -- it's not hard
20 and fast.

21 Q So it's not 13, you're officially past
22 adolescence, in psychiatry terms?

23 A No. It's -- you know, it -- you have to --
24 you can't -- you can't think of it too concretely in
25 chronological terms because you have to consider

1 developmental age along with chronological age.

2 Q Okay.

3 A If that makes sense.

4 Q How about your forensic psychiatry
5 certification?

6 A I was -- let's see -- first certified in
7 1998, I believe, and then 2009. And I have not gotten
8 recertified.

9 Q Okay. So right now you're not certified,
10 technically speaking --

11 A Correct.

12 Q -- in forensic psychiatry?

13 A Correct.

14 Q Okay. What does the certification entail,
15 just taking education classes or --

16 A No; it's --

17 Q What do you do?

18 A It's a major test.

19 Q Is that something you're in line to get
20 recertified for?

21 A No.

22 Q Is there a reason why?

23 A I'm getting old and I'm just semi-retired and
24 don't see the -- a great need or benefit.

25 Q In this case, you're working as a forensic

1 psychiatrist; right?

2 A That's correct.

3 Q The addiction medicine; when did you get
4 recertified in that?

5 A I think that I first got certified in that in
6 2014 or '15.

7 Q Is that another 10-year --

8 A Yeah.

9 Q -- recertification?

10 A Uh-huh.

11 Q So do you have separate licenses for these
12 fields, as well?

13 A No. It's all one medical license.

14 Q Okay. So your medical license is --

15 A For the --

16 Q You're a psychiatrist -- I'm the doctor:
17 That's my license to practice medicine --

18 A Correct.

19 Q Certifications are in subfields?

20 A Correct.

21 Q Okay.

22 A Specializations; yes.

23 Q And then so your understanding of the area of
24 expertise you're testifying in this case would be what?
25 Is it just forensic psychiatry?

1 A Child and adolescent psychiatry, and forensic
2 psychiatry.

3 Q Okay.

4 A Yeah.

5 Q The reason I ask that -- it was kind of a
6 vague question and I'll explain why. Are you offering
7 opinions on Shelby? I mean did you do a full --

8 A Yes.

9 Q -- examination about --

10 A Yes.

11 Q -- Ms. Trehus, as well?

12 A Yes.

13 Q Okay. So then you're relying on -- she's not
14 a child or adolescent. So you're still going on --

15 A Well --

16 Q -- I guess general psychiatry --

17 A Okay. All right.

18 Q -- as well?

19 A So in general psychiatry -- in mean these --
20 there are, simply certifications. There are -- there are
21 lots of expertise -- area of expertise in psychiatry that
22 are not named as specific certifications, like eating
23 disorders, for example.

24 Q Sure.

25 A I'm considered a -- a national, international

1 expert on eating disorders, but there are no
2 certifications, per se, recognized by the American Board
3 of Psychiatry and Neurology in eating disorders. The
4 same is true for trauma and PTSD or any particular
5 disorder, like dissociative disorders or OCD. You just
6 have these basic certifications in broad areas --

7 Q And do you --

8 A In general, child/adolescent, forensic,
9 addiction.

10 Q And I understand. The --

11 A Yeah.

12 Q To get more insight as to why I'm asking my
13 question and maybe help you understand what I'm going --
14 where I'm coming from, is --

15 A Okay.

16 Q -- if we go to trial and Mr. Tisdale -- or
17 lawyers for Ms. Trehus come and say I'm going to qualify
18 Dr. Brewerton as an expert in the field of, that's what
19 I'm asking.

20 A Yeah.

21 Q I kind of want to know what fields you're
22 going to talk about, because then I want to get your
23 background about those specific fields.

24 A Yeah.

25 Q Which I understand you're well-qualified in

1 the eating disorders. But if that's not going to be
2 something you're going to testify about at trial, I'm not
3 really going to ask you a lot of questions about that
4 field today. Understand?

5 A You're compartmentalizing the field when it's
6 actually, in practice, much broader.

7 Q Okay. Okay.

8 A And the issues in this case overlap several
9 different areas within psychiatry.

10 Q That's fair. I understand. So with regard
11 to forensic psychiatry --

12 A Yes.

13 Q -- did you ever complete -- what's your
14 specific training in forensic psychiatry, like
15 educationally? I mean did you complete a Fellowship in
16 forensic psychiatry?

17 A No. I -- I was grandfathered in and took the
18 test in 1998, which was the last time that you do that.
19 So I studied, I took courses, I went to the American
20 Academy of Child and Adolescent -- I'm sorry -- the
21 American Academy of Psychiatry and the Law. I'm a member
22 of that.

23 I went to a lot of -- I took their review
24 courses, which I've done several times, been to their
25 annual meetings. I've prescribed -- subscribed -- to

1 their journal. I -- a lot of it is self-taught.

2 Q Okay. And that was -- you took the question
3 out of my mouth --

4 A Yeah.

5 Q -- actually.

6 A Yeah.

7 Q I was going to say, is it fair to describe
8 it --

9 A Yeah. It's --

10 Q -- as self-taught?

11 A And -- well, self-taught in that I pursued
12 these -- these areas and utilized continuing medical
13 education --

14 Q Okay.

15 A -- that was available to me.

16 Q The test you took in 1998; is that the same
17 test you took again in 2009?

18 A It's a similar test. It's not the same
19 questions.

20 Q Right.

21 A Yeah.

22 Q What's the agency that offers that
23 certification?

24 A The American Board of Child -- I'm sorry.
25 The American Board of Psychiatry and Neurology.

1 Q Okay. So the American Board of Psychiatry
2 and Neurology offers it. You took that test in '98.
3 Passed it. Took it again in 2009 --

4 A Right.

5 Q -- that certification?

6 A Yes.

7 Q And that's the one you're not going to take
8 again because you're just not --

9 A Correct.

10 Q You're slowing down in your career, whatever?

11 A Yes.

12 Q Okay. Outside of -- was there anyone that
13 you mentored with or shadowed with or -- outside of the
14 self-taught information, were there any clinical courses
15 you took or -- I mean how did you learn, other than --

16 A I just told you.

17 Q -- being self-taught?

18 A I went to meetings of the American Academy of
19 Psychiatry and the Law.

20 Q Right.

21 A I went to review courses which last, you
22 know, three days. I studied, read. I did have mentors,
23 a very -- a number of different mentors along the way.

24 Q And you said you got grandfathered in?

25 A Right.

1 Q What does that means? Is it not --

2 A There was a time at which you could take the
3 board certification test without having done a
4 Fellowship.

5 Q Is that not true now?

6 A Correct. It is not true now.

7 Q And so you said you took the test in '98.
8 Did that change right after that?

9 A Correct.

10 Q After you took the test?

11 A That's right.

12 Q Your license; is it -- are you licensed in
13 other states than South Carolina or is it just a South
14 Carolina license?

15 A I'm -- I'm only licensed right now in South
16 Carolina. I have held license in other states. I'm not
17 asked to --

18 Q What other states have you held license?

19 A Starting with California, where I did my
20 internship and residency, then Hawaii, then Virginia,
21 then South Carolina. And I've held a -- a license in
22 Georgia for a while. I was treating someone in Georgia.

23 Q Have you ever had your license suspended or
24 revoked for any reason in any state?

25 A No.

1 Q What professional organizations are you a
2 part of currently?

3 A The American Psychiatric Association, the
4 American Academy of Child and Adolescent Psychiatry, the
5 American Academy of Psychiatry and the Law, the Academy
6 of Eating Disorders, the Eating Disorders Research
7 Society, the International Association of Eating
8 Disorders Professionals, the Society of Biological
9 Psychiatry, the International Association for the Study
10 of Trauma and Association.

11 Q Are these on your CV?

12 A I believe so; yes.

13 Q Okay. I'll just save you -- you listed a lot
14 out there. I don't want you to miss any. Is it on your
15 CV or on your website?

16 A Yes.

17 Q Okay. And do you --

18 A Yes. I've been very active in a number of
19 professional organizations over the years, and I continue
20 to be.

21 Q Okay. Do you currently hold any offices in
22 any professional organizations?

23 A Not currently; no.

24 Q In the last five years?

25 A In the last five years; no.

1 Q When you say you're very active in, is there
2 a select few organizations you would describe yourself as
3 very active in, currently?

4 A By "active," I mean paying my dues,
5 participating in, you know, continuing medical education,
6 teaching, presenting at conferences -- which is listed in
7 my CV, all the presentations I -- I do and have done over
8 time. I've participated in committees. I have had a --
9 I have held offices in various organizations, in -- in my
10 earlier days.

11 Q I don't want you to have to go through and
12 list all of them. But would it be on your CV, though?

13 A It would be.

14 Q Okay. Fair enough.

15 Have you ever, yourself, been a party to a
16 lawsuit?

17 A Yes.

18 Q When?

19 A Around 2017 --

20 Q Without having --

21 A -- 2016.

22 Q -- to provide a lot of detail, what was the
23 general nature of the lawsuit?

24 A Another psychiatrist sued me for ridiculous
25 reasons that were eventually thrown out of court. I

1 testified as an expert witness in a patent suit, and I
2 challenged this guy's assumption that this drug -- you
3 know, it's -- it's a complicated story. But, yes; I've
4 been sued, and that was dismissed in federal court in
5 Carolina.

6 Q What --

7 A His name was -- I can't forget -- I'm
8 forgetting his name right now.

9 Q That's okay. You were the named party,
10 though?

11 A Yeah.

12 Q Under Timothy Brewerton?

13 A Yes.

14 Q What court in South Carolina, federal court?
15 Do you know -- was it Charleston division --

16 A Charleston.

17 Q And you said -- any other lawsuits besides
18 that?

19 A No.

20 Q Okay. Let's shift gears and talk about your
21 actual work on this case. And feel free to refer to your
22 report. I can go ahead and mark it as Exhibit 2 to your
23 deposition, because that's what I'm going to do.

24 A Okay.

25 (Independent Medical Examination Report dated

1 02/01/21 (21 pages), Defendants' Exhibit No. 2 is marked
2 for identification and made part of this deposition.)

3 BY MR. BEVANS:

4 Q And you have it with you, but -- I brought
5 copies, but I think everybody probably has it by now.

6 A Okay.

7 Q Just for the sake of posterity and the
8 record, would you look at Exhibit 2 that I've marked and
9 confirm it's a copy of your report that you have with you
10 so that we're -- everybody's on the same page as to what
11 we're looking at?

12 A [Complying.] That's it.

13 Q Okay. Is this the only draft of report?

14 A "The only draft?"

15 Q Yeah. Do you have -- did you have like other
16 draft notes that --

17 A I -- I work on it -- it's an ongoing -- I
18 don't keep former drafts. I -- I keep -- I just am
19 working on it from the time -- from start to finish, I
20 guess. It's the final project.

21 Q Okay. So in your --

22 A But I don't keep former drafts, if that's
23 what you mean.

24 Q Yes.

25 A Yeah.

1 Q Like in your folder in your computer is not
2 Draft 1, revised like this date --

3 A No.

4 Q -- Draft 2 --

5 A Correct.

6 Q -- this date? Okay. And just as a matter of
7 housekeeping, when I'm looking -- you're smiling. We're
8 talking over each other. It just makes her job tough;
9 that's all. I skipped through some of the ground rules
10 because I figured you'd been through depositions before
11 and you don't need to hear the rules for it.

12 A Sorry about that.

13 Q It's okay.

14 So you can refer to your report. If you know
15 off the top of your head, when were you first contacted
16 by Mr. Tisdale's office to be an expert for Ms. Trehus in
17 this case?

18 A October 1st, 2001.

19 Q And had you ever spoken with Mr. Tisdale or
20 his office, before?

21 A No.

22 Q Did you know Mr. Tisdale prior to this?

23 A No, sir.

24 Q And you testified earlier that you had maybe
25 an invoice in your file that hadn't been produced, that

1 was created after the subpoena?

2 A Yes.

3 Q Do you have that with you?

4 A I do.

5 Q Can you tell me how much -- well, first off,
6 how much are you charging the Plaintiff to be an expert
7 witness for her?

8 A \$400 an hour.

9 Q And you required a \$2,000 retainer; is that
10 right?

11 A That's right.

12 Q And how much have you billed, to date?

13 A \$8,300.

14 Q And who have you sent your bill to?

15 A Mr. Tisdale and his assistant -- paralegal --
16 Sarah Pinckney.

17 Q Have you been paid any of that \$8,300 so far?

18 A Yes, sir. I've been paid all of it.

19 Q Can we make a -- and we can go make a copy of
20 it. I don't want to take your copy.

21 A Yeah.

22 Q But I'd like to mark that as Exhibit 3,
23 please.

24 A You can take my copy. It's printed for that.

25 Q Okay.

1 MR. TISDALE: What's Exhibit 2, Shawn?

2 MR. BEVANS: His report.

3 MR. TISDALE: Okay.

4 MR. BEVANS: And then Exhibit 1 was my
5 subpoena.

6 MR. TISDALE: Okay.

7 (Invoice for Forensic Psychiatry Services (1 page),
8 Defendants' Exhibit No. 3 is marked for identification
9 and made part of this deposition.)

10 BY MR. BEVANS:

11 Q Had you met Ms. Trehus or Kayden at any time
12 prior to this?

13 A No.

14 Q Did you have any knowledge about the Santee
15 Run apartment complex fire before Mr. Tisdale reached out
16 to you?

17 A No.

18 Q What did he tell you about the fire, the
19 first time he reached out to you? Well, I guess a better
20 question, what were you asked to do, the first time he
21 reached out to you?

22 A Well, he explained to me that there was a
23 young mother and her -- her child who were caught in an
24 apartment fire and -- and somewhat trapped, and -- and
25 she had to -- and they were living on the second floor,

1 and that she had to throw the child -- lower the child --
2 I don't know exactly the words that were used. But,
3 basically, throw the child down to allow them to escape
4 because their apartment was filling with -- with smoke
5 and the apartment was very much on fire, their complex.
6 And then she jumped down and had a severe injury for
7 which she got disabled.

8 And that the child had been traumatized --
9 and that they had both been traumatized, and that the
10 child was talking -- preoccupied with the fire, and that
11 he wanted me to evaluate this -- this child and his
12 mother, that he had gotten my name from a friend -- a
13 mutual friend, psychiatrist, Jim Ballinger -- and I said
14 that I was interested. And I sent him my CV and retainer
15 agreement.

16 Q Did you talk to Shelby or -- I guess not
17 Kayden. But did you talk to Shelby during that first
18 phone call, at all?

19 A No.

20 Q Just Mr. Tisdale?

21 A Just -- and maybe -- maybe --

22 Q His office?

23 A His -- his office. And maybe Sarah Pinckney,
24 as well.

25 Q And so all that information was provided to

1 you during the first phone call?

2 A All of that information? Yeah. That -- that
3 little bit of information, yes, was --

4 Q Okay.

5 A -- verbally provided on the phone call.

6 Q And then what did you do in response?

7 A Basically -- basically, he wanted someone to
8 evaluate the sequelae of this kind of traumatic incident.

9 Q As you sit here today, are you finished with
10 your investigation of Kayden and Shelvy?

11 A As I finished?

12 Q Yeah. Have you -- do you have any --

13 A My report is finished.

14 Q Correct.

15 A If there's other information that comes up --
16 I mean I'm always open to revising my opinion if I get
17 new information --

18 Q Sure.

19 A -- that I think is relevant to my
20 conclusions.

21 Q But as you sit here today, you're not aware
22 of any other information to include in your report or any
23 amendments to your report that are necessary?

24 A There -- there's always evolving new
25 information that -- that may change. I mean I -- I'm not

1 specifically anticipating anything in particular, if
2 that's what you mean.

3 Q Okay. That's --

4 A But I'm always --

5 Q We can agree on that.

6 A -- open to hearing about new information that
7 might be relevant.

8 Q Do you have any upcoming appointments to
9 discuss this case with Shelby or Kayden again?

10 A No.

11 Q And understanding you're open to performing
12 additional work, you're not planning to perform
13 additional work on this case at this time?

14 A Correct. Unless I'm asked.

15 Q Certainly. And so all findings and opinions
16 you have regarding both Shelby and Kayden are set forth
17 in your report that's in front of you, Exhibit 2?

18 A Correct.

19 Q You list a number of documents in your report
20 that you reviewed, on -- I think it's page two of your
21 report. Did you review these documents before or after
22 you met with Shelby and Kayden on December 3rd?

23 A Before.

24 Q Everything, 1 through 13, was reviewed before
25 you met with Shelby and Kayden?

1 A Yes.

2 Q Did you ever review Shelby's deposition
3 testimony?

4 A No.

5 Q Did you -- why not?

6 A I'm not sure that it was provided.

7 Q Okay. Were these documents just provided to
8 you by Plaintiffs' counsel in a packet or is this stuff
9 you specifically asked for, these Materials Reviewed, 1
10 through 13?

11 A Let's see. The only thing that perhaps was
12 not evaluated, or not seen by me before, were the
13 school -- some of the school records and progress reports
14 that I'd asked for. And they're in the evaluation. I
15 didn't have all of the school records or report cards.
16 Everything else that you see, I reviewed, before.

17 Q Where you aware Shelby had been deposed in
18 the case prior to you meeting with her?

19 A I don't recall.

20 Q Would you be interested in reviewing Shelby's
21 deposition? She's been deposed twice in this case.

22 A Sure. I'd be interested.

23 Q But you haven't looked at it yet?

24 A No, sir.

25 Q Your meeting of Shelby; where were you -- it

1	was over Zoom?

2	A	Yes, sir.

3 Q And it was three hours long? It looks like
4 1:00 to 4:00 p.m.

5 A It was two hours and 36 minutes long.

6 Q Okay. And that's -- and then --

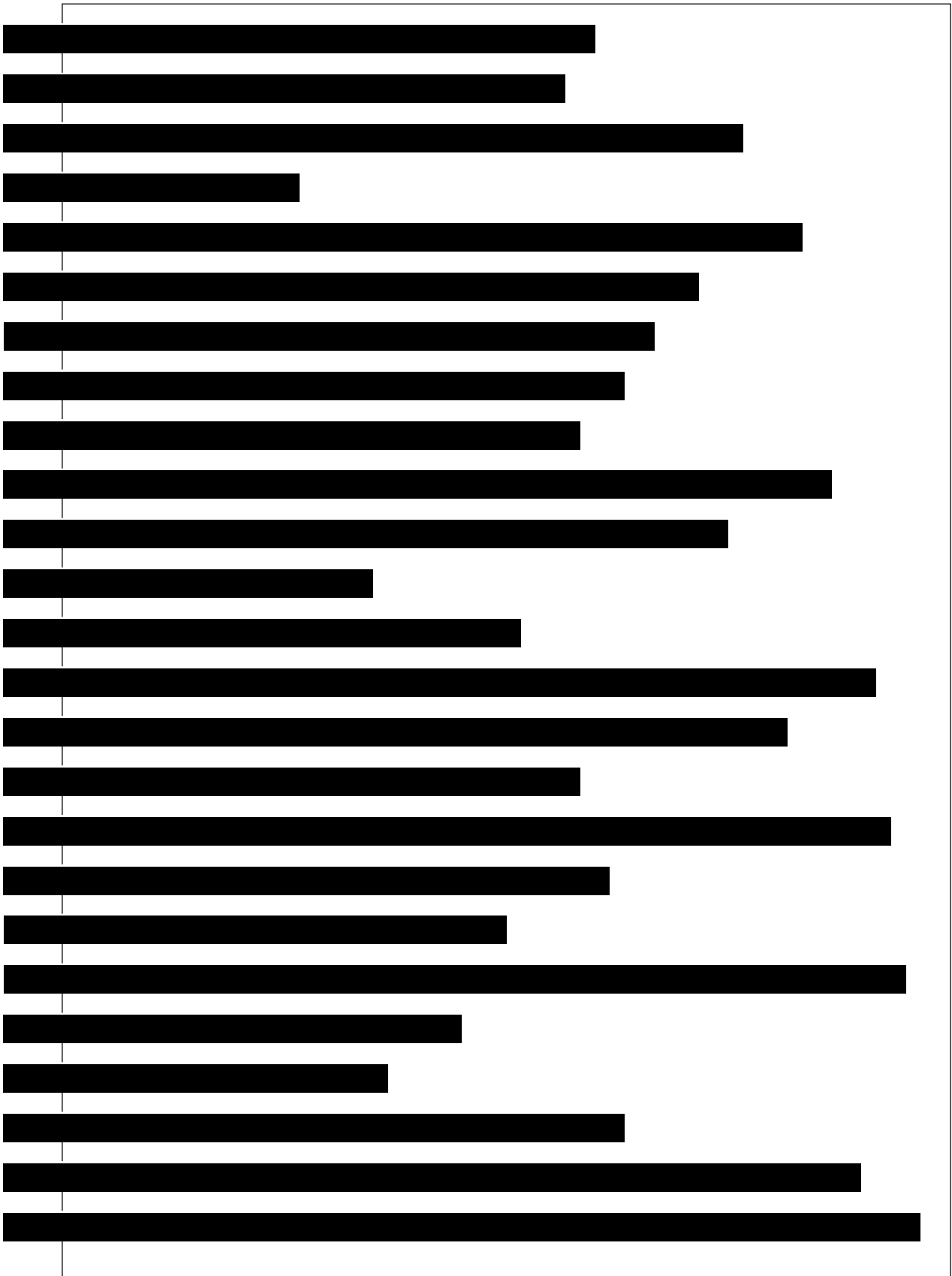


ESQUIRE
DEPOSITION SOLUTIONS

[REDACTED]



A horizontal bar chart consisting of 25 black bars of varying lengths. The bars are arranged in a single column, with the longest bar in the middle and the shortest bars at the top and bottom. The bars represent a distribution of data, with the longest bar in the middle and the shortest bars at the top and bottom.



ESQUIRE
DEPOSITION SOLUTIONS

[REDACTED]

16 Q And then the remainder of the work, roughly
17 16 hours, was completed after the -- to include the IME
18 and afterwards?

19 A If that's what it says; yes.

20 Q Okay. But your time on this is not as
21 accurate?

22 A Yes.

23 Q The invoice you provided --

24 A Yes, sir.

25 Q -- Mr. Tisdale? Okay.

1 Looking at the Materials Reviewed, it seems
2 to me that you didn't get all of the National Crime
3 Victims Research and Treatment Center records. You have
4 just reviewed the Plan of Care dated December -- sorry --
5 dated February 25th, 2021, March 4th and March 16th. Do
6 you see where that is: Number 5 on Materials Reviewed?

7 A Yes.

8 Q Did you review like an entire packet from the
9 NCVC?

10 A I reviewed what I was given.

11 Q Okay. Did you, yourself, send any records
12 requests out, or were you just --

13 A No.

14 Q -- review what you were provided?

15 A Just reviewed what I was provided.

16 Q And I guess I know the answer to this
17 question, but did you review any treatment notes from the
18 NCVC?

19 A Not that I recall.

20 Q And when I say "NCVC," you understand I'm
21 referring to the National Crime Victims Research and
22 Treatment Center?

23 A Yes.

24 My understanding was that they were not
25 available at the time.

1 Q I'll show you a subsequent treatment note
2 that I'd like to mark --

3 MR. BEVANS: Are we on Exhibit 4 now?

4 MADAM COURT REPORTER: Exhibit 4.

5 MR. BEVANS: Thank you.

6 (Medical Record of MUSC Health's Dr. Alice Bryn
7 Salter dated 04/13/20 (1 page), Defendants' Exhibit No. 4
8 is marked for identification and made part of this
9 deposition.)

10 BY MR. BEVANS:

11 Q And this was part of the subpoena production
12 from the National Crime Victims Center. This is a
13 treatment note dated April 13th of 2020.

14 A Okay.

15 Q It looks like right after the March 16th note
16 you would have read. Take a second to review that note.

17 A [Complying.] Okay.

18 Q Does that note change your opinions or
19 findings in any way?

20 A Well, it tells me that on that particular
21 day, at that particular time, that Kayden appeared to
22 have improved, according to his mother.

23 Q Okay. So his mother reported that he was
24 improved -- on that day, at that time; correct?

25 A Uh-huh. Yes.

1 Q Are you aware of who Kelly Cromer is?

2 A No.

3 Q Okay. And you would agree that this note at
4 least says that the mother agreed with the clinician that
5 the child is no longer in need of therapy for symptoms of
6 posttraumatic stress?

7 A I see that that's what is written.

8 Q Okay. And this is at MUSC. And you teach at
9 MUSC, too; right?

10 A Yes.

11 Q And then it looks like, also, the mother felt
12 confident that her son had largely normative behavior
13 problems?

14 A That's what it says.

15 Q Okay. Does this note -- knowing this
16 information, does that change your opinions in any way?

17 A I don't know that it would change my opinion
18 before I spoke to the mother about this.

19 Q What do you mean, before you spoke to the
20 mother about it?

21 A I would --

22 Q So you haven't talk to --

23 A I would want to --

24 Q -- Shelby about that note?

25 A -- to confirm that this is what she thinks --

1 or thought, at the time.

2 Q Okay.

3 A And, you know --

4 Q You didn't read her deposition testimony.
5 She's confirmed it twice.

6 A Okay.

7 MR. TISDALE: You know, it -- I try not to
8 interrupt, Shawn.

9 MR. BEVANS: I -- I -- you're right.

10 A She's -- she's confirmed that he no longer
11 needs any therapy, twice?

12 BY MR. BEVANS:

13 Q At the time. She confirmed the record was
14 accurate, based on her conversations with the clinician.

15 A Okay.

16 Q Basically, you didn't have --

17 A So --

18 Q -- that document in your possession when you
19 formed your report?

20 A So one of the things about PTSD and about
21 psychiatric disorders in general is that symptoms can wax
22 and wane, and they can be very variable, depending on the
23 context and what's going on. And in particular, if a
24 child is not being triggered in any way, they can appear
25 to not have any symptoms.

1 And Shelby is a relatively uneducated person.
2 She didn't make it out of high school. She was expelled
3 from high school. She's not psychologically
4 sophisticated. She's very concrete in her thinking. She
5 has very little understanding, prior to this, about
6 psychiatric disorders.

7 So things can seem to be a certain way when,
8 in fact, when you dig a little deeper, scratch the
9 surface, they are very different. So I do take this with
10 a grain of salt and I am suspicious about this report
11 because it's not what I observed and not what I got out
12 of talking with her.

13 Q Okay. And you're talking with her was the
14 three hours --

15 A Yep.

16 Q -- Zoom session for the purposes of trial;
17 right?

18 A Yes.

19 Q Right.

20 A That's right. But, also --

21 Q You're not treating Shelby or --

22 A But, also --

23 Q -- Kayden in any way?

24 A -- doing -- doing a structured interview. I
25 don't see a structured interview here. This is one note.

1 Do you have -- I -- I don't know -- I haven't seen the
2 entire record. Apparently, you have the entire record.
3 I don't know.

4 But I would like to see the entire record
5 before I would say my opinion changed. I want to know
6 has there been any type of structured interview done to
7 assess his or her symptoms before I would just say, oh,
8 he's better and you don't need treatment anymore.

9 And Kelly Cromer; I have no idea who that is.
10 But I know how things work at CVC and I know that
11 psychology interns are often the ones who are providing
12 the treatment, and they're relatively inexperienced
13 people. I don't know who Kelly Cromer is, whether she's
14 faculty or whether she's a trainee.

15 Q And you don't know how many times --

16 A So there's a lot of things here that I would
17 like more information about before I would say, oh, yes;
18 this changes my opinion.

19 Q But you're relying on, at least, the Plan of
20 Care notes from those three days that you were provided,
21 because those are materials you reviewed before forming
22 your report. And you're relying on the diagnoses of PTSD
23 from the NCVC, as you reference in your report, as well?

24 A It -- I did note that. But that's not why I
25 said he has PTSD.

1 Q Okay.

2 A It's from my own examination.

3 Q Sure.

4 A And that diagnosis -- that presumptive
5 diagnosis given by the CVC, is compatible.

6 Q Okay. So the diagnosis was appropriate, from
7 the NCVC?

8 A In my opinion; yes.

9 Q Okay.

10 A Yes.

11 Q But then when they said --

12 A And -- and --

13 Q -- [unintelligible] resolved the --

14 A And people can get better and improve. But
15 that doesn't mean that it's -- it's an all or nothing
16 kind of thing and that they're unaffected or -- or
17 everything's gone and hunky-dory, the way it was before.
18 It doesn't mean that, at all.

19 Q But, ultimately, you agree you had -- you
20 didn't see all the notes of treatment Kayden had from the
21 NCVC prior to making --

22 A I do agree --

23 Q -- your report?

24 A -- with that; yes.

25 Q And if you'll wait for me to finish my

1 question, I'll do you the same way.

2 A I'm sorry. Yes; I agree.

3 Q And you made it clear -- okay. And you made
4 it clear to Ms. Trehus that in no way were you
5 establishing a doctor/patient relationship with her or
6 Kayden; correct?

7 A In my -- in my opinion, I did; yes.

8 Q And --

9 A And she hasn't acted and any -- otherwise, or
10 tried to seek out treatment with me or anything like
11 that.

12 Q Sure. And --

13 A Yeah.

14 Q And did you talk to Mr. Trehus about her and
15 Kayden's experience with the NCVC?

16 A Yes.

17 Q Okay. Did she tell you how she felt about
18 whether the treatment was beneficial or helpful or
19 whether it didn't change anything?

20 A She felt it was helpful; yeah. She also said
21 that because they missed their appointment with the
22 psychiatrist, which is a Medicaid requirement, they were
23 cut off from treatment -- from subsequent treatment,
24 because -- and I understand that, that that's a
25 requirement to continue. And for whatever reasons, they

1 weren't able to make that appointment and they weren't
2 able to, according to her, reschedule that.

3 Q Okay. And there's no notes -- and again, to
4 refer back to that April 13th, 2020 record from the NCVC,
5 there's no notes talking about Shelby missing a
6 psychiatrist's appointment. It's simply a note that she
7 thought Kayden was no longer in need of therapy. I mean
8 do you see on that record where there's any mention of a
9 missed psychiatrist appointment that's prevented him from
10 getting future care?

11 A No. There's nothing on this one page --

12 Q Okay.

13 A -- that says that.

14 Q When you went to -- so in your report, you're
15 clearly offering opinions about Shelby, in addition to
16 Kayden; correct?

17 A Correct.

18 Q And we talked about that. Did you look at
19 any records whatsoever involving Shelby?

20 A Yes.

21 Q What?

22 A Her medical records in regard to her
23 disability.

24 Q Okay. From Lowcountry Orthopaedics?

25 A Yes.

1 Q Okay. Anything else?

2 A And what -- and whoever did the IME regarding
3 her physical disability. That's where that was from. I
4 don't recall.

5 Q Did you look at any prior records?

6 A I had none to look at; no.

7 Q Were you asked to opine about Shelby when you
8 went into the IME or is that something that just
9 naturally progressed as the IME went on?

10 A I had made it clear early on that I thought I
11 would need to evaluate Mom, as -- as well as Kayden,
12 because they were both traumatized and they had a very,
13 you know, similar traumatic experience in that her --
14 whether or not she developed PTSD -- or her reaction to
15 the trauma, let's say, would be influential onto -- you
16 know, on Kayden, and that it was important to evaluate
17 her, as well; yes.

18 Q In your video, did you go into -- or in your
19 Zoom call with them, did you go into Shelby's nightmares,
20 Shelby's experiences?

21 A Yes.

22 Q Did you?

23 A Yes.

24 Q Did Shelby have any nightmares of the event?

25 A Yes. I went through the -- the PTSD symptom

1 checklist as an interview, went through each of the
2 symptoms.

3 Q Okay. Was that more as a parent moderator
4 because Kayden couldn't fill it out, some of those --

5 A No. If you -- if you saw the entire
6 interview, the last hour I spent pretty much asking
7 Shelby about her symptoms.

8 Q Okay.

9 A Currently, and in her lifetime since the
10 trauma.

11 Q Gotcha.

12 A And so that allowed me to make a diagnosis of
13 PTSD in Shelby.

14 Q Okay.

15 A So I asked questions specifically about her,
16 after I had finished my assessment about Kayden.

17 Q Okay. So the three hours of your call with
18 Shelby and Kayden, the first 20 minutes, roughly, was
19 spent going over some consent forms, et cetera. Then you
20 turned the video on for the --

21 A Yes.

22 Q -- two hours and 36 minutes of video. An
23 hours of that was spent specifically on Shelby?

24 A Approximately; yes.

25 Q Okay. So these are opinions you formed,

1 based off your review of the records that are delineated
2 on page two of your report, and then an hour and a half,
3 roughly, talking about Kayden and an hour talking about
4 Shelby?

5 A Correct. But there's some overlap.

6 Q Obviously. Correct.

7 A Yeah.

8 Q Between Shelby and Kayden?

9 A Yes.

10 Q Sure.

11 A Shared experience.

12 Q And did you look at Shelby's family history,
13 Shelby's treatment, any kind of mental treatment Shelby
14 had been through in her life prior to this?

15 A I asked her about that; yeah.

16 Q Did you go into Shelby's childhood and other
17 traumatizing events?

18 A I asked her about that; yes.

19 Q Okay. And did you discuss with Shelby the
20 death of her -- of Mr. Montagna, Kayden's father?

21 A Yes.

22 Q And that's something you discussed with
23 Kayden a good bit, too; correct?

24 A Somewhat; yeah. I asked him about it.

25 Q We've been going about 45 minutes. You want

1 to take a break or do you want to keep going?

2 A Keep going.

3 Q Okay.

4 So under the Present Illness, if you're
5 looking at page three of your report -- I'm, essentially,
6 just going to kind of walk through your report here.

7 A Okay.

8 Q This information; is this information you
9 gleaned from the interview with Shelby, from the records,
10 from a combination of both?

11 A I -- I would say a combination. But,
12 largely, from the interview.

13 Q Okay.

14 A As I say, with Kayden present in the room,
15 she gave an account of the fire and reported her
16 experience in regard to her -- herself and her son --

17 Q Okay.

18 A -- and what happened.

19 Q And so just to start with the beginning,
20 that's when Shelby woke up and there's smoke in the
21 apartment. She opens the door. More smoke comes in?

22 A Uh-huh.

23 Q What did Shelby tell you about the alarms not
24 sounding due to dysfunction and neglect?

25 A That they weren't working.

1 Q But did --

2 A And --

3 Q So did she say it was dysfunction and
4 neglect?

5 A No. She didn't use that particular word.
6 I -- I probably gathered that from some of the other
7 records.

8 Q What records?

9 A Probably from the -- either the fire
10 department or the police report. But somewhere, it was
11 indicated that they were dysfunctional.

12 Q So if the fire department --

13 A I don't remember --

14 Q -- or police report --

15 A -- exactly where.

16 Q -- didn't have any notification about
17 dysfunctional smoke alarms in the --

18 A I'm sorry?

19 Q I said if not in the fire and police report,
20 where would it may have come from? Because the fire and
21 police report didn't have any notifications of
22 dysfunctioning smoke alarms. Probably with the
23 Complaint, maybe?

24 A Maybe the Complaint; yeah. Maybe.

25 Q Okay.

1 A Maybe so. I don't recall exactly. But
2 somewhere, I read that in --

3 Q Okay.

4 A In the materials.

5 Q And I'm just -- the reason I'm asking is
6 because I want to know where you're getting this
7 information. Because your report's pretty well cited
8 when you talk about your research, but when it comes to
9 the facts --

10 A Yeah.

11 Q And knowing you didn't read Shelby's
12 deposition, I'm just kind of curious where this comes
13 from; that's all.

14 The 20 feet -- so to go back to the smoke
15 alarms. You don't really know -- you haven't done any
16 testing on the smoke alarms. You don't know exactly that
17 the smoke alarms weren't working?

18 A Do I know, personally? No.

19 Q Okay. And, really, the issue is the alarms
20 not sounding, is what Shelby conveyed to you?

21 A Correct.

22 Q Did she report to you that when she did open
23 the door, that there were already numerous fire trucks on
24 the scene?

25 A Yes.

1 Q Okay. That's not in your report, though.

2 A How would that be relevant to her PTSD?

3 Q If she woke up and there were already fire
4 trucks on the scene? How is the not -- the sound of the
5 smoke alarm relevant?

6 A She wasn't warned. She didn't wake up
7 soon -- you know -- you know, earlier.

8 Q Sure. Do you think the fire trucks could
9 have woken her up?

10 A I don't know.

11 Q Okay. Well, they were already on scene, is
12 what she said.

13 A Okay.

14 Q Okay. People on the ground about 20 feet
15 down; is that something Shelby gave you, a number of 20
16 feet? Where did you get that?

17 A I asked her how far it was; yes. She said
18 about 20 feet.

19 Q Okay. You haven't gone and measured that,
20 obviously; right?

21 A Obviously.

22 Q Okay. I haven't, either. And I'm just
23 curious because in another deposition, Shelby testified
24 about ten feet. So your number here is just strictly
25 from Ms. Trehus, at the time?

1 A Correct.

2 Q Okay. And a minute ago, I think when we
3 first opened the deposition, there was talk about the
4 throwing verse dropping him down. You're not certain
5 whether Ms. Trehus launched her son out the window versus
6 lowered him down into the hands of neighbors; are you?

7 A I clarified that in my questioning, and she
8 lowered him down, but had to drop him from a certain -- I
9 don't know how far. But she had to drop him into their
10 arms.

11 Q But you would agree, there's a difference in
12 throwing him out the window verse lowering him down or
13 dropping him to neighbors?

14 A I didn't say that he was thrown down --

15 Q And I'm not --

16 A -- in my -- in my report.

17 Q No; I'm --

18 A I didn't say that.

19 Q This morning, verbally, you said "thrown."
20 And so I was making sure we agree, there's a
21 difference --

22 A I think that's a figure of speech that may be
23 taken too literally.

24 Q Sure.

25 A Yeah.

1 Q And --

2 A Thrown. Dropped. You know.

3 Q You knew Kayden --

4 A To some extent --

5 Q -- was asleep --

6 A -- it's semantics.

7 Q You knew Kayden was asleep when Shelby first
8 got there and realized -- the fire?

9 A Yes. That's what she told me. But then he
10 woke up in the middle of it.

11 Q Right.

12 A Visibly shaking --

13 Q Right.

14 A -- with fright.

15 Q Do you know when that timeline was? Do you
16 know when he was visibly shaking?

17 A At the time that she was preparing him to be
18 lowered down to the friends and they're clamoring to --
19 for her do so. And, at some point, he -- he's waking up.
20 I mean it's a very, you know, terrorizing situation, so.
21 We don't know the exact timeline when he wakes up, but he
22 woke up during the process --

23 Q Right. And --

24 A -- and became very frightened.

25 Q You understand he woke up during that process

1 and became very afraid?

2 A That's what I understand; yes.

3 Q Okay. And if Shelby testified differently,
4 then you would agree with Shelby's deposition testimony?

5 A I don't know. I'd have to see what the
6 discrepancies --

7 Q Would you have Shelby change your
8 recollection? I mean you weren't there to see it; were
9 you?

10 A I can't comment on something I don't know
11 about.

12 Q Sure. And all I'm saying is that you would
13 defer to Shelby, who was the individual experiencing it,
14 not what you may have heard through complaints or
15 records, hearsay-wise? You would defer to the actual
16 person's eyewitness firsthand account of it; correct?

17 A Yes.

18 Q Okay. What type of post-traumatic symptoms
19 did Kayden develop immediately after the fire?

20 A Are you referring to a point -- a point in my
21 report?

22 Q Yes, sir. Just a little lower down, the next
23 little -- the same large first paragraph, about halfway
24 through the page. Kayden developed post-traumatic
25 symptoms almost immediately after the fire.

1 A So I -- I indicate including marked anxiety
2 and preoccupation with whether his mother was all right.

3 Q Do you know how -- what's "immediately?" The
4 next day, a week later, a month later?

5 A Soon after. I -- I can't give you minutes,
6 hours, days. But soon after, that he was -- she was not
7 immediately there because she was over -- being taken
8 care of by the Red Cross and then taken to the hospital,
9 and so she was separated from her child, but. So upon --
10 after her treatment, upon, you know -- you know, upon him
11 coming back to her.

12 Q When was that?

13 A I -- I don't know, exactly.

14 Q Was it before -- so -- okay.

15 A However long she needed to be in the -- in
16 the hospital.

17 Q Okay. So you just don't know the answer to
18 that?

19 A I don't.

20 Q And you understand -- so you have here that
21 Kayden refused to sleep alone until recently. So you
22 acknowledge Kayden's now able to sleep by himself and no
23 longer wakes up and gets in bed with him mom, like she
24 discussed?

25 A Repeat the question, please.

1 Q Sure. Your statement, as he developed a
2 sleep disturbance characterized by frequent recurrent
3 nightmares during which he would scream and cry with
4 fright and grief. He refused to sleep alone until
5 recently.

6 A Uh-huh.

7 Q So you acknowledge that he's now able to
8 sleep by himself? The sleep problems with the nightmares
9 are no longer existing?

10 A Well, he's not doing a whole lot of sleeping,
11 if you read the whole report. He's not sleeping in her
12 bed. That doesn't mean that he's sleeping.

13 Q Okay. But he's no longer --

14 A And so let me, if I could, clarify.

15 Q Please.

16 A You know, when I say that he developed
17 post-traumatic symptoms almost immediately after the
18 fire, this is in the wake of the fire, upon reunion with
19 her child after her injuries were taken care of. All
20 right? He developed, very quickly, post-fire, marked
21 anxiety, preoccupation about whether his mother was all
22 right, fight or flight response, trouble sleeping, he was
23 so activated and worried about the fire, worried about
24 her.

25 Recurrent frequent nightmares. These

1 happened very soon, in the wake of the trauma. Okay? I
2 can't give you exactly minutes, hours, days. But within
3 the certain -- with, certainly, the first few days, he
4 was developing symptoms, according to my understanding.
5 But to have a diagnosis of PTSD, you have to have
6 consistent symptoms, persistent symptoms, for one month
7 after the trauma.

8 Q Okay. What are the -- so these criteria for
9 the PTSD you're talking about, that's the DSM criteria?

10 A Yes.

11 Q What are those?

12 A I don't have them right in front of me. If
13 you'd like to go over those --

14 Q Yeah; I would like that. We're here to talk
15 about Kayden's PTSD, so I would like to know the criteria
16 that you're diagnosing him with; yeah. You're not aware
17 of them? I mean take -- I mean please look -- refer to
18 your report or anything you have with you.

19 A Before I answer, I want to be sure. I am
20 very aware of what the criteria are. But if you'd like
21 to review them in detail, I'd like to get them and look
22 at them and go over them with you --

23 Q Sure.

24 A Rather than you accuse me that I don't -- am
25 not aware of --

1 Q No; I'm not accusing you of not knowing them.

2 A Yeah. You just did.

3 Q Okay. Well, if you want to refer to your
4 report or something feel -- please do.

5 A No; I want to refer to the DSM.

6 Q Okay.

7 A Five criteria.

8 Q Okay.

9 A The first criteria is that one has to have
10 experienced a significant trauma in one's life, and these
11 kinds of accidents or disasters certainly have been,
12 classically, included as a Criteria A.

13 Q So Criteria A is a significant trauma or
14 disaster?

15 A Yes. That's right. And, in particular, one
16 that is life-threatening.

17 Q Do you know if Kayden -- does the actor have
18 to feel threatened for their life? In mean in this case,
19 would Kayden have to feel that his life was threatened?

20 A It's -- it's -- it's, really, an objective
21 observation or whether or not -- I think most people can
22 agree, if something is potentially life-threatening. And
23 I don't think people would disagree that your house being
24 on fire and burning down is not life-threatening. So
25 whether --

1 Q Well, whether this -- my question --

2 MR. TISDALE: Excuse me. Shawn -- Shawn
3 please let him finish his description --

4 MR. BEVANS: Sure.

5 MR. TISDALE: -- and response.

6 BY MR. BEVANS:

7 Q Sorry.

8 A There -- there is no doubt that fire, in
9 the -- in the great literature about PTSD and trauma
10 in -- you know, in kids, adolescents and adults, there's
11 no disagreement that fires can be life-threatening and
12 qualify as a Criteria A. And your original question is
13 what are the criteria? So, in my opinion, he meets
14 those -- he meets Criteria A.

15 Q Okay. How about Criteria B? Well, how many
16 criteria are there?

17 A Well, there is A -- let me bring this up, if
18 you don't mind --

19 Q Sure.

20 A -- so I can be accurate in my answer. Okay.
21 The criterion in DSM-5 vary, depending on one's age, and
22 there's a specific set of criteria for children six years
23 and younger. They're roughly equivalent, but slightly
24 different.

25 Now Criteria A in children six years or

1 younger, exposure to actual or threatened death, serious
2 injury or sexual violence, in one or more of the
3 following ways: Directly experiencing the traumatic
4 event. So Kayden directly experienced a fire where his
5 place was burning down -- and did burn down.

6 So it's moot whether or not you think there
7 is actual threatened death or not. It's -- it's -- it's
8 actual or threatened. It's -- it's moot, how dangerous
9 you may think that is.

10 Q So the individual doesn't need to feel
11 threatened; it just could be an outside source can
12 recognize it as a threatening situation?

13 A Yes.

14 Q Okay. So it wouldn't matter if Kayden's --

15 A You're implying -- you're implying that he --

16 Q Well, wait --

17 A You're implying that he --

18 Q Well, let me finish my question, because I'm
19 giving you that courtesy, also.

20 A I thought I was answering your question.

21 Q No; you were cutting me off because I had a
22 following --

23 MR. TISDALE: Well, y'all --

24 BY MR. BEVANS:

25 Q -- question for you --

1 MR. TISDALE: -- stop arguing, and we'll
2 start over from Ground Zero.

3 MR. BEVANS: Sure.

4 BY MR. BEVANS:

5 Q My question to you is talking about the
6 actual experience of Kayden, understanding that he was in
7 a situation of actual or threatened death. And if Kayden
8 was asleep and comes to and he's in the arms of
9 neighbors, where is he feeling the actual or threatened
10 harm or death? He's asleep during it.

11 A Were you there?

12 Q No, sir. I'm relying on Shelby's deposition
13 testimony, though.

14 A He woke up in the process of being lowered
15 down --

16 Q Okay.

17 A -- is my understanding.

18 Q Okay. So that's the basis. And if he were
19 asleep --

20 A And he realized, in that moment, that there
21 was a fire, there's fire trucks, there's alarm. Everyone
22 is alarmed, even though the alarms weren't going off.
23 Everyone is alarmed. It is a life-threatening situation.
24 The whole context is danger.

25 And as soon as he did wake up, whenever he

1 woke up, but some time in that process of being lowered,
2 he became visibly frightened. He was shaking. That is
3 evidence that he experienced it as a threat, as is his
4 subsequent symptomatology that began immediately after.

5 Q Okay.

6 A Now if you'd like me to continue on with your
7 answer to what is PTSD or what the criteria are, I'd be
8 happy to.

9 Q Yeah. I mean I'll just continue to ask
10 questions, and I'd like for you to answer them as I ask.

11 A Well, you asked me what the criteria are, so.
12 I haven't finished that ans -- that question.

13 Q Okay. And what would the criteria be,
14 Dr. Brewerton?

15 A Presence of one or more of the following
16 intrusion symptoms, and this typically refers to
17 flashbacks and/or nightmares. Recurrent, involuntary,
18 intrusive distressing memories of the traumatic event or
19 distressing dreams around the traumatic event. And he
20 clearly had intrusive imagery.

21 Talking constantly about the fire. He's
22 maneuvering it. He's thinking about it. Even during the
23 interview, he's worried about his house burning down and
24 about his cat burning up, about his toys burning up.

25 He has a marked sleep disturbance which began

1 very quickly after the event, that he did not have
2 before. That is evidence that he's having nightmares and
3 distressing content, intrusive in his mind.

4 Criteria C is one or more of the following
5 avoidance symptoms or negative alterations in cognitions
6 and mood associated with the traumatic event, so
7 avoidance of or efforts to avoid people, conversations or
8 interpersonal situations that arouse recollections of the
9 traumatic event.

10 Criteria D involves alterations in arousal
11 and reactivity associated with the traumatic event,
12 beginning or worsening after the traumatic occurred,
13 which we know happened. And that can manifest as sleep
14 disturbance, being on guard, hypervigilant, irritable or
15 angry outbursts with little or no provocation, physical
16 aggression towards others -- and that -- you see that in
17 kids, especially.

18 Problems with concentration. And that's
19 where these symptoms can begin to overlap with attention
20 deficit hyperactivity disorder because PTSD impairs
21 concentration -- and memory, as well.

22 Criteria E is that the symptoms last for at
23 least a month.

24 Criteria F is that the disturbance causes
25 significant distress or impairment in relations with

1 others or with -- you know, with parents or at school or
2 other caregivers.

3 And G, it's not due to a substance or other
4 medical condition.

5 And so those are the criteria.

6 Q Okay. Where did you just --

7 A For kids.

8 Q Where are you getting that information from;
9 from your computer?

10 A This is just right out of the DSM-5.

11 Q What's the website? Or is it a --

12 A It's not a website. It's the DSM-5,
13 Diagnostic and Statistical Manual of Mental --

14 Q Can you turn your screen around so I can see
15 what you're reading from?

16 A [Complying.]

17 Q Okay. And these highlights on here; is that
18 notes you have for -- that -- what are these highlights?

19 A Those are highlights that I think he meets --

20 Q Okay.

21 A -- at some point, things that -- that, you
22 know, I wanted to remind myself about.

23 Q Is that something you produced --

24 A It's --

25 Q -- in your subpoena response?

1 A It's -- it's on my web -- it's on my flash
2 drive.

3 Q Okay.

4 A In the Articles section. Yeah.

5 Q So is this an article you cited in your
6 report, what you were just referring to?

7 A I'm sure I did, but let me just doublecheck
8 on that.

9 Q Sure.

10 A Yes. Reference No. 2.

11 Q Okay.

12 So let's go back through these criteria then.
13 You talked about it's different for children versus
14 adults.

15 A Yes.

16 Q What's the difference for the adults? You
17 just read off children criteria?

18 A Correct.

19 Q And what's the difference for adults? Yo
20 don't have to read through it all. Just if you can, tell
21 me what the difference is.

22 A Okay.

23 Q If you'd rather read through the criteria for
24 adults, that's fine. I was just trying to save us some
25 time.

1 A The criteria for children differ slightly in
2 that the reactions in children are a little more
3 undifferentiated, and, for certain of the criteria, you
4 don't need as many criteria to -- to qualify for each of
5 those criteria that you do in adults, so they're a
6 little -- little more forgiving and, you know,
7 acknowledging that kids can vary in their responses to
8 trauma more than adults.

9 Q So is it -- I don't want to say "easier." Is
10 it more likely for a child to be diagnosed with PTSD than
11 an adult who's experienced the same symptoms? That's a
12 very inartful way to say that question; I understand.

13 How about this, a better question: Are the
14 criteria more lenient for children versus adults, to get
15 a diagnosis of PTSD?

16 A I don't think so; no.

17 Q Okay. So I guess I'm still a little --

18 A So --

19 Q -- unclear as to what the difference is
20 between --

21 A Okay. Well, I'll give you a couple of --
22 they note a couple of things that are highlighted. And,
23 for example, for intrusive symptoms, in children there
24 may be frightening dreams without recognizable content.
25 That's an -- that's an example of how it might be

1 different in a child and in an adult, whereas an adult
2 would recognize that this is associated with the trauma,
3 let's say the fire. In a child, you -- they may not.
4 They may just have frightening dreams, period.

5 Another difference is that traumatic-specific
6 reenactments can occur in play. You don't see that so
7 much in adults. So children who are traumatized may
8 reenact what happened to them in their -- in the course
9 of their playing, by themselves or -- or with other
10 children.

11 Q Okay.

12 A So those are -- those are examples that are
13 specifically noted in the DSM. So it's -- it's not that
14 it's more lenient, it's just a little different in terms
15 of how it may manifest in children.

16 Q And --

17 A It doesn't imply that there's any less
18 distress.

19 Q My understanding is, at least at the time of
20 your interview with Kayden --

21 A Yeah.

22 Q -- he did not have a current PTSD diagnosis,
23 based on your findings.

24 A That's correct. He did not meet the full
25 criteria, although we had significant PTSD symptoms.

1 Q And are all --

2 A And P -- and PTSD is -- is best thought of
3 not as a black-and-white, yes or no kind of condition,
4 but on a continuum. And so it's a matter of PTSD
5 symptomatology, and he had a lot of PTSD symptomatology,
6 even at the time, even though he fell short of one of
7 the -- one of the clusters, as I recall.

8 Q Okay. And am I correct to say that all
9 five -- or all DSM-5 criteria must be met in order to get
10 a clinical diagnosis of PTSD?

11 A That's correct. But there are other
12 criteria -- there are other disorders that one can then
13 fall back on, when you fall just short. But you have
14 significant symptomatology that's clinically significant
15 but does fall short.

16 You can talk about a specified trauma and
17 stressor-related disorder that's still of -- of note
18 because it's causing problems and it's causing distress
19 and impairment. And that's, really, what characterizes
20 all psychiatric disorders, is that they cause distress
21 and impairment in functioning.

22 (Questionnaires (19 pages), Defendants' Exhibit No.
23 5 is marked for identification and made part of this
24 deposition.)

25 BY MR. BEVANS:

1 Q You sent a number of questionnaires to
2 Ms. Trehus to be completed prior to your meeting with
3 her; correct?

4 A That's right.

5 Q Do you recall when you send those to her?
6 Was it the day of the meeting, or did she have some
7 time --

8 A No.

9 Q -- to complete them?

10 A No. It wasn't -- I can tell you, if you hold
11 on just a second. I think I have those e-mails
12 somewhere. But it was approximately a week or so --
13 let's see. It was Monday, November 30th.

14 Q Did Ms. Trehus ever call you with any
15 questions --

16 A That I sent them to Mr. Tisdale, to send to
17 them.

18 Q Okay.

19 A I did not send them directly to her.

20 Q Did you have any communication directly with
21 Ms. Trehus or was it all --

22 A Actually -- actually, I did. I did send them
23 to her. I -- I'm mistaken. I sent them to all of the
24 above.

25 Q Sure.

1 A By e-mail, with instructions. And there are
2 instructions for each of the assessment instruments, on
3 the instrument.

4 Q So for the Serious Accidental Injury here --

5 A Yeah.

6 Q And what I'm looking at -- I was not planning
7 on marking this an exhibit but just so you can follow
8 along. It's your --

9 A Okay.

10 Q -- subpoena response there. It's got role --
11 you know, the victim witnessed and learned about. So is
12 that a -- the learned about aspect; is that for children,
13 specifically, where they can learn about injury to --

14 A No.

15 Q In this case, you have mother?

16 A Yes. It refers to learning about his mother'
17 injury.

18 Q Okay.

19 A Yes. As well as learning about everybody
20 else being affected by the fire.

21 Q Like displaced or?

22 A So. You know, basically, you can have PTSD
23 because of an event that happened directly to you, or you
24 can also have PTSD by witnessing it happen to somebody
25 else. And a classical example of that is combat-related,

1 you know. People -- people tend to get PTSD from seeing
2 their friend blown up --

3 Q Sure.

4 A -- or -- or shot or injured, and that can
5 happen in any kind of a tragedy. One of the highest
6 rates of -- of -- of PTSD-induced traumas is witnessing
7 the death of a friend. Right? It's not something that's
8 happening to you, directly; it's happening to somebody
9 else. But it's still, nevertheless, traumatic.

10 So -- so those are the two things about PTSD,
11 in terms of Criteria A. It's directly happening to you,
12 or you witnessed it.

13 Q Okay. And Kayden actually met -- had two
14 Criteria A categories: The death of --

15 A Yeah.

16 Q -- his father, as well.

17 A So the Criteria A is just nailed down;
18 there's no doubt about it. He -- he had a -- he
19 experienced the fire and the fright around that, as well
20 as seeing his mother, you know, injured and hauled off to
21 the hospital and separated from her at a time where he
22 really needed her, you know.

23 Very vulnerable time for him, as a, you know,
24 four-year-old kid, to have his mother injured and hauled
25 off for treatment and not know what happened to her. And

1 so he's preoccupied with how she is for some time after
2 that, and that's part of his PTSD.

3 Q Do you know the timeline of when Shelby --
4 from the time Shelby got out the window until she sought
5 treatment?

6 A She was treated very quickly. I -- I don't
7 know how many minutes. But she -- she -- she jumped, she
8 was injured. She was then attended to by the Red Cross,
9 according to her report to me, and then was taken to the
10 hospital that night for treatment.

11 Q Okay. So your report is based on that
12 understanding?

13 A Yes.

14 Q Okay. You also have -- we've skipped a third
15 trauma, being the death of Kayden's father. Do you have
16 that as a traumatic event -- or whoever completed this
17 form has that as a traumatic event.

18 A Yes. That's right.

19 Q So by the time --

20 A But that --

21 Q -- that you first met with Kayden, he had
22 experienced not only the fire event, but he had also
23 experienced the loss of his father?

24 A He learned about that; yes.

25 Q Okay.

1 A And that, decidedly, was much less traumatic
2 for him because of the sporadic nature of his
3 relationship with his father. He didn't have -- he --
4 he -- he wasn't all that close. He saw his father maybe
5 once or twice a year, and his father was not reliable in
6 terms of providing care or -- or child support.
7 Intermittent.

8 Q So it's your understanding that Kayden wasn't
9 affected by the death of his father?

10 A I didn't say he wasn't affected. I said it
11 was a secondary trauma. It's not as -- certainly,
12 nowhere near as -- an issue, as the fire.

13 Q Had you seen the NCVC records where he
14 discusses the trauma with his father and what-not with
15 the --

16 A No.

17 Q -- provider there?

18 A No.

19 Q Were you aware he was treating there for
20 trauma related to the death of his father, also?

21 A I'm sure that's something that was talked
22 about and considered since that happened in the wake of
23 this, and that he -- he was affected by, no doubt.

24 Q Do you know the nature of Ms. Trehus's injury
25 when she jumped out the window?

1 A I understand she had a cuboid fracture of her
2 ankle.

3 Q Do you know when that was diagnosed?

4 A Not exactly.

5 Q Do you know if she was able --

6 A I don't recall.

7 Q Do you know if she was able to walk around
8 the scene of the fire?

9 A No; I don't.

10 Q Would that make a difference? I mean if
11 Kayden --

12 A You know --

13 Q If his mom's walking around after --

14 A In -- in a --

15 Q -- jumping?

16 A I know that in people who are hypervigilant
17 in the midst of a trauma and where the adrenaline is --
18 is rushing, people can do things that they might not be
19 able to do, later. They can do things that they need to
20 do, particularly when survival is -- is at stake.

21 Feats of strength, for example. People
22 have -- it's -- it's well within the medical literature,
23 that -- that people can do unusual things in the midst of
24 a trauma that, otherwise, they can't do, and -- and they
25 feel less pain, as well, when their adrenaline is

1 rushing. And this -- again, we -- we have a rich source
2 of information that comes from -- from combat-related
3 injuries as well as first responders and -- and -- and so
4 on.

5 So that -- that doesn't mean anything, to me.
6 It doesn't mean that she wasn't injured or that she's not
7 disabled, or it doesn't mean anything at all that you --
8 you might think on first glance, that she was walking
9 around. She might not have realized the extent of her
10 injury, at the time, or she needed -- you know; I don't
11 know.

12 Q That's fair. And I'm more looking at it --

13 A Yeah.

14 Q -- from Kayden's perspective. I mean he's
15 not going to understand that his mom may be hurt but has
16 adrenaline and so she's fine. He sees her walking
17 around.

18 A I -- I don't know what Kayden saw.

19 Q Okay.

20 A I didn't ask him about that.

21 Q Well, and that's what I'm -- because you have
22 him as a witness to seeing his mom injured, so that's why
23 I'm asking. Is that --

24 A I --

25 Q Is seeing his mom wearing --

1 A Maybe --

2 Q -- a boot, later on --

3 A Maybe you're -- maybe that's -- let me
4 clarify then. It's not just the moment where she jumped
5 and was injured in that night. It's -- it's all of the
6 sequelae after that he learned about. He -- he then
7 learned -- you can have delayed PTSD reactions. Once it
8 dawns on you, cognitively, what the injury is and the
9 damage is, then it becomes more traumatic. Right? It
10 doesn't necessarily mean that he felt that or thought
11 that at that moment, that night.

12 It -- but he subsequently found out that she
13 was injured, she's limping. I think she needed a boot,
14 to wear a boot for a while. You know, he -- he -- she's
15 -- he's -- she's in pain. He sees all of that in the
16 sequelae. Okay? So that's a process rather than a
17 specific event at one point in time. It's a process of
18 learning about the trauma in toto of -- that his mother
19 sustained.

20 Q Would you expect symptoms to be more or less
21 severe or pronounced versus an instance such as a
22 firsthand account of witnessing -- of direct injury,
23 versus learning about an injury in time like in this
24 case?

25 Did -- to set up a hypothetical for you, if

1 Ms. Trehus had jumped and, when she jumped, her leg
2 immediately snapped -- you know, compound fracture,
3 stretcher from the scene, versus the situation we have
4 where she fell, may have moved around some, taken some
5 pictures, got treatment the next morning and, later, was
6 put in boot?

7 A I'm not sure. I mean that's a hypothetical.
8 I'm not sure exactly what you're asking.

9 Q Just would you expect the symptoms to be more
10 severe if he had actually witnessed the firsthand severe
11 injury?

12 A Perhaps.

13 Q When you talk about the marked anxiety and
14 the preoccupation with whether Ms. Trehus was all right
15 that Kayden experienced right after the fire, is that
16 information that you pulled directly from Shelby, or do
17 you know where that information came from, if not?

18 A It's -- it's based on information I gleaned
19 from Shelby, largely; yes.

20 Q Okay. So there's no records indicating --

21 A And -- and when you are evaluating a child
22 who was four or five at the time, this is what is the
23 standard of care to rely upon most importantly, most
24 directly, is the report of the parent.

25 In a sense, he only had a single parent.

1 There was no father -- or no one else taking care of him
2 who was there. She is the only, but yet reliable,
3 source. And I -- in my assessment, she was a very
4 reliable informant. There was no indication, in my view,
5 that she was trying to exaggerate symptoms or tell me
6 things that didn't happen. She seemed to be very
7 straightforward, open, authentic and honest.

8 Q Okay. And my question was a lot more simpler
9 than that. I appreciate the answer.

10 A Yeah.

11 Q It was just simply the evidence of
12 post-traumatic symptoms immediately after the fire, the
13 marked anxiety --

14 A Yeah.

15 Q -- and preoccupation with whether his mother
16 was all right, that was strictly stuff you gleaned from
17 Shelby telling you, not from any of the records that you
18 identified prior, in your report?

19 A Correct.

20 Q Okay. The reoccurring nightmares during
21 which Kayden would scream and cry with friend and grief;
22 is that another bit of information that came directly
23 from Shelby in your interview with her or is that found
24 in any of the records you reviewed prior to making your
25 report?

1 A It's largely from my structured interview
2 using the UCLA PTSD Reaction Index as a -- as a basis,
3 which pretty much follows the DSM-5 criteria verbatim.

4 Q And during that interview, you actually were
5 able to ask Kayden directly if he had nightmares; right?

6 A Yes.

7 Q And what did he say?

8 A I don't recall, exactly.

9 Q At some point he told you no; didn't he?

10 A I don't recall.

11 Q What are -- so I --

12 A And whether a five-year-old understands what
13 the word "nightmare" means is -- is up for grabs,
14 particularly one who may be intellectually challenged.
15 And so when I said "bad dreams," then, yeah; he endorsed
16 bad dreams.

17 Q Okay. Did he tell you what those dreams
18 were, in any detail?

19 A No.

20 Q Did he describe them to you?

21 A You've seen the video. He has a language
22 disorder.

23 Q Uh-huh.

24 A He's very, very difficult to understand.
25 Much of what he said, I didn't understand. And I had to

1 rely on Shelby to translate for me, and she didn't
2 understand half of what he said --

3 Q Okay.

4 A -- given his disability.

5 Q Was Shelby able to give any detail or insight
6 as to what his bad dreams were?

7 A No. But as I indicated in the DSM, it's
8 well-known that children often have distressing
9 nightmares without necessarily being able to identify the
10 content. So that's not at all unusual in a child with
11 PTSD.

12 Q Are nightmares normal? I mean you and I --

13 A Normal?

14 Q Yeah.

15 A No.

16 Q I mean does someone have to have PTSD to have
17 experienced nightmares?

18 A No. Usually, they are associated with
19 distressing experiences, though. But this -- this isn't
20 like once in a blue moon. These are recurrent symptoms
21 that -- that, again, are highly distressing and
22 disruptive to sleep.

23 Q Do you know -- at the time of your interview
24 with Shelby on December 3rd, 2020, was she still
25 reporting that Kayden was having these ongoing

1 nightmares?

2 A She was still reporting that he was having an
3 ongoing sleep disturbance. Now, she would go to bed.
4 He -- he's no longer sleeping in her bed; he's sleeping
5 in his own room. But she would find evidence that she
6 talked about of him being up all night and not sleeping
7 well, even though he's taking guanfacine, which is a very
8 sedating medicine, for his ADHD.

9 So even though -- you know, he's -- he's
10 sleeping by himself. So there's evidence that he's
11 having disturbed sleep. He's up and he's getting into
12 stuff, and sometimes she's awakened by him. So in terms
13 of the content, she didn't know. But the evidence that he
14 was having disturbed sleep; yes.

15 Q After the fire, Shelby indicated -- I believe
16 it may have been in records with you -- she was letting
17 Kayden look at his -- look at a TV screen a little more
18 at night. Do you recall seeing that?

19 A I don't recall, but okay.

20 Q Do you have any opinion about too much screen
21 TV time at night, looking at an iPad before bed?

22 A It depends on the content.

23 Q Okay. Expand on that --

24 A And what --

25 Q -- a little more.

1 A Whether or not -- you know; it depends on
2 what content he might be looking at and whether there
3 were any parental controls over that content.

4 Q Okay.

5 A Because, obviously, certain things that you
6 can find off the internet could be disturbing.

7 Q Certainly.

8 A Yes.

9 Q And I believe Shelby talked about she would
10 find Kayden where he'd be up watching TV in the middle of
11 the night. Sometimes she'd wake up and see him watching
12 TV. Is that what she reported --

13 A I recall that.

14 Q -- to you, the sleep disturbances?

15 A Yes.

16 Q Did she ever tell you what he was watching?

17 A No.

18 Q Was there any discussion about what he was
19 doing?

20 A Not that I recall; no.

21 Q Is that something you asked her, to tell you
22 what he was watching?

23 A I don't think I did.

24 Q How about the evidence that Kayden's speech
25 disorder worsened; where did you find that?

1 A Again, much of the history is, largely,
2 coming from Shelby Trehus.

3 Q Do you -- I'm sorry. I didn't mean to cut
4 you off.

5 A And I -- as I recall -- let me just say what
6 I wrote about that, if you don't mind.

7 Q Please.

8 A So two things. It's definitely from Shelby's
9 report, that he regressed in terms of his progress in
10 his -- in his language development. And it also seemed
11 to be due, in part, to COVID-19 disrupting his ongoing
12 speech therapy.

13 Q At the beginning of your deposition, you
14 mentioned that you may not have had the Berkeley County
15 elementary school or Berkeley County School District
16 records, prior to your meeting with Shelby. Is that
17 something you looked at afterwards, then?

18 A Yes.

19 Q And did you see any evidence or any notes
20 from his speech therapists or his school providers,
21 whoever they may be, about a regression, to kind of
22 corroborate Shelby's opinion to you?

23 A Let me take a look at --

24 Q Sure. And we can take a break. It's been an
25 hour and a half, also.

1 MR. BEVANS: I'll just offer that to
2 everybody.

3 A Well, she -- she did -- repeat the question,
4 please.

5 MR. BEVANS: Could you repeat the question?
6 I forgot what I asked. It was about looking at school
7 records.

8 (The last question is read back.)

9 BY MR. BEVANS:

10 Q So I know you didn't have the records prior
11 to the interview, but did you look at any records
12 afterwards from the School District that corroborated
13 Shelby's statement about a regression in Kayden's speech?

14 A I did get his Berkeley County School District
15 report card.

16 Q From --

17 A From 2020 to 2021, and for the first quarter.
18 And there were several areas of concern noted. He is
19 having some difficulties giving details about a story and
20 understanding concepts of print.

21 In math, he can recognize five out of five
22 flat shapes and can count to 11; 25 is the quarter one
23 expectation. He knows his numbers to 10 and can write
24 his first name.

25 Please continue to read with him daily and

1 add these books to the reading log in his folder. Kayden
2 continues to receive his speech and resources services.
3 Please see the included reports for his progress on
4 meeting these goals.

5 Q So that's the 2021 first quarter report -- or
6 '20-'21?

7 A Yes.

8 Q Did you look at the report card prior to
9 that, to see if there was a change?

10 A I don't remember. I -- I'm not sure if I had
11 that.

12 Q Okay. If you had it --

13 A I --

14 Q -- you would have --

15 A I'm --

16 Q -- written it down into your review?

17 A I'm not sure that there was a report card
18 since he was in preschool. And there's limited
19 information when kids are that young, in terms of their,
20 you know, school performance and progress.

21 But what I think is important is that since
22 the fire, she has received five or six -- Shelby told me
23 that she had received five or six notes from Kayden's
24 school about problematic behavior and is not following
25 directions.

1 Q And did she tell you how many notes she had
2 received before the fire?
3 A Few to none.
4 Q Because Kayden wasn't in school?
5 A Okay.
6 Q Same reading on report cards?
7 A I --
8 Q Did you review the IEP?
9 A I didn't have that.
10 Q Well, you have two of them that looks like

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

14 IEP from previous years' IEPs?

15 A There's -- there's -- yea. And there's --
16 there's, basically, a -- a -- a lack of -- of progress.

17 Q Any specific areas you can point to, just
18 regarding his speech, without --

19 A Just regarding his speech, just -- he remains
20 very -- you know; his speech remains very unintelligible.

21 Q And do you think that's affected by the fire
22 or it's something that he was dealing with since he was
23 diagnosed with a speech delay in 2017?

24 A I -- I think it's affected by any number of
25 factors. It's not just all or nothing. I think the fire



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1 is one factor that caused him to regress and to not do as
2 well.

3 Q What are some other factors?

4 A You know, as I said, PTSD impairs one's
5 ability to concentrate. It causes emotional
6 dysregulation. It -- it decreases one's motivation.

7 If one is preoccupied with anxiety about the
8 past event, about your house burning down, your toys
9 being destroyed, your cat burning up, it distracts you
10 from being productive in whatever activities one is, you
11 know, supposed to be engaged in, at the time. So it --
12 it -- that's how -- you know; that's one way how it
13 impairs function and growth.

14 Q The speech therapy?

15 A That's how the PTSD impairs -- yes. In this
16 case, the language disability that he had.

17 Q Impairs the PTSD?

18 A The PTSD impairs the development, his
19 language development and progression.

20 Q Okay.

21 A And ability to do that kind of work and --
22 and learn.

23 Q And as we're sitting here, the impairment
24 isn't that there was a marked decline in his speech
25 communication skills; it was just that there wasn't any

1 improvement?

2 A Based on the reports that I see; yes.

3 Q Are you aware of -- another concern that
4 Ms. Trehus expressed to you is the aggressive behavior
5 and hyperactivity?

6 A Right.

7 Q And those are concerns she expressed to you
8 as being after the fire?

9 A Yes.

10 Q Are you aware of any expression by
11 Ms. Trehus --

12 A Well, let me clarify. They got worse, after
13 the fire.

14 Q Okay.

15 A Significantly worse, after the fire. It's --
16 it's -- it's not that there were never any signs
17 whatsoever before the fire, but they got decidedly worse,
18 after.

19 Q Specifically, how did Kayden's aggressive
20 behavior become worse from before and after the fire?

21 A Getting in -- into fights with kids. Being
22 more attentive -- inattentive in school.

23 Q Hold on a second. Let's just go before the
24 hyperactivity, just strictly the aggressive behavior.

25 A Okay.

1 Q So fights, plural, after the fire?

2 A Yes.

3 Q And that came from Ms. Trehus?

4 A Yes.

5 Q Have you seen any notes from the school or
6 any records indicating Kayden being in fights?

7 A No.

8 Q Do you know why many fights Kayden was
9 involved in, prior to the fire?

10 A No.

11 Q So you don't know if Kayden was an aggressive
12 child, baseline, before the fire?

13 A No; I don't. But there was no history of
14 that. She denied that, that these behaviors were new
15 onset after the fire, based on her history.

16 Q Just a minute ago --

17 A Yeah.

18 Q -- I thought you said these behaviors were
19 made worse by the fire, that they existed, prior.

20 A Well, he's -- you know, three or
21 four-year-old boys can -- will have some degree -- they
22 may have some degree of aggression. It's not usually
23 never, ever, that they might get in conflict with another
24 kid. But to have a marked aggravation of that is
25 significant.

1 Q How about to get away from the general three
2 to four-year-old boys, Kayden, specifically? I mean what
3 was his history of aggression with other children, prior
4 to the fire?

5 A I'm --

6 Q Or if you don't know?

7 A I'm not aware that he had any significant
8 problem with aggression, prior to the fire.

9 Q Are you aware that Ms. Trehus saw --

10 A I'm just not ruling out -- ruling it out.
11 But I have no data to say that he was aggressive, before
12 the fire.

13 Q If you did, would that change your opinions?

[REDACTED]



[REDACTED]



[REDACTED]



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[REDACTED]



[illegible]

[REDACTED]





DEPOSITION SOLUTIONS

A horizontal bar chart consisting of 20 rows. Each row contains a single black bar of varying length. The bars are arranged in a single column, with each bar's length corresponding to a value on an implicit scale. The lengths of the bars vary significantly, with some being very long and others being very short. The bars are arranged in a single column, with each bar's length corresponding to a value on an implicit scale.

[REDACTED]

15 did not have any clinically significant depressive
16 symptoms or dissociative symptoms.

17 So we focused more on the PTSD symptoms and
18 the ADHD symptoms. And, yes; I went over those in
19 detail.

20 Q Okay. Was it one questionnaire that you went
21 over in detail or was it the --

22 A The UCLA; yes. Sorry.

23 Q That's okay. You knew where I was going, I
24 guess. I hadn't finished my question.

25 Just the UCLA one, you went over?

1 A I went over, in detail, the -- the UCLA PTSD
2 Reaction Index for Kayden, in terms of his -- his current
3 symptomatology as well as his lifetime symptomatology.
4 And I also went over the -- the Vanderbilt, in terms of
5 his ADHD symptomatology.

6 Clearly, there were a lot of things that
7 Shelby didn't understand by just reading it. Again, I
8 think that's, to some degree, related to her educational
9 level. And so -- and -- and that's not uncommon, anyway,
10 that you -- you do a self-report measure, and then you go
11 over it in detail and use this as a basis for a
12 structured interview.

13 Q And that's for this exact purpose, right, so
14 that --

15 A Yes.

16 Q -- if the questions aren't understood, you
17 can -- as the clinician --

18 A That's right.

19 Q -- you can explain the question --

20 A That's right.

21 Q -- to get the correct answer?

22 A Yes.

23 Q These -- what I'm looking at is, I just want
24 you to confirm. Your subpoena responses would have your
25 writing versus Shelby's writing?

1 A They would have both.

2 Q Okay.

3 A Yeah.

4 Q And now I'm sitting here remembering, we
5 had -- do you have the original, or do you have a copy in
6 front of you? Because I think Shelby -- one was in blue
7 ink and one was in red ink. Do you remember that?

8 A Uh-huh.

9 Q You used a different color pen than Shelby?

10 A I did.

11 Q Do you remember what color you used and what
12 color Shelby used, looking at your notes?

13 A I used blue and red to distinguish, although
14 there were -- there was a couple of things I wrote that
15 are, obviously, my writing, like reviewed with mother,
16 12/3/20, and I initialed it. And -- and then when I
17 changed an answer after careful reviewing with her, I
18 used blue or red ink.

19 Q Do you remember which one? Because I think
20 Shelby may have used the opposite to complete the
21 questionnaire. And I think she testified, too, that
22 was -- we had your notes. We did not print them out in
23 color so I'm not able to show you a clean copy.

24 A So what's -- what's important here is the
25 PTSD Symptom Scale, the actual questions here. And,

1 here, blue is current and red is lifetime.

2 Q Gotcha. Okay.

3 A Okay?

4 Q And so lifetime -- my understanding is that
5 he had PTSD at some point in his life?

6 A Yes.

7 Q And then --

8 A Since --

9 Q -- current --

10 A Since the fire.

11 Q Okay.

12 A Specifically, since the fire, because that's
13 the basis -- we've established the Criteria A, and then B
14 through -- B through E are symptoms that relate to or are
15 a result of the Criteria A, by definition, for PTSD. So
16 that's how it went.

17 Q Okay.

18 A Yeah.

19 Q And then the current means that he has
20 exhibited all -- or he meets all those criteria within
21 the last 30 days?

22 A Yes.

23 Q Okay. Does that --

24 A He --

25 Q I just want to make sure I --

1 A Well --

2 Q -- understand it right.

3 A The question is, how many days during the
4 past month did such and such happen, and you've got none
5 to -- to most, or don't know.

6 Q And maybe I'm jumping ahead to the ultimate
7 conclusion.

8 A Oh, okay.

9 Q You concluded that he met the DSM-5 criteria
10 for lifetime PTSD; correct?

11 A Correct. That's right.

12 Q And that meant that he'd had PTSD at some
13 point --

14 A Yes.

15 Q -- between the fire -- and let me finish my
16 question, if you don't mind. I'm not jumping on you,
17 just --

18 A Okay.

19 Q -- for the reporter.

20 A All right.

21 Q Before the fire and then the time you met
22 Shelby on December 3rd?

23 A Yes.

24 Q And then the current PTSD, we talked about
25 earlier that he met several categories, but not all of

1 them; correct?

2 A Correct.

3 Q And that means that he did not -- or was not
4 exhibiting clinical definition of PTSD within 30 days of
5 your meeting with him on December 3rd?

6 A Correct.

7 Q Okay.

8 A The full syndrome; correct.

9 Q Right.

10 A But partial PTSD.

11 Q Sure. You have partial remission, actually,
12 are the words you used.

13 A Okay.

14 Q Is that --

15 A Same thing.

16 Q Okay. From the Vanderbilt ADHD Diagnostic
17 Scale -- or back up to the UCLA --

18 A Okay.

19 Q -- test real quick. Did you go through
20 all -- the entirety of the questions, with Shelby?

21 A I did.

22 Q Okay. And --

23 A Every single one.

24 Q Okay. On the video? And that's where you're
25 going through and --

1 A Yes.

2 Q -- explaining what the words meant and
3 what --

4 A That's right.

5 Q Okay.

6 A Yep.

7 Q And then you went through the entirety of the
8 Vanderbilt Diagnostic Scale with her, as well, for ADHD?
9 Is that the other test you talked about --

10 A That's correct.

11 Q -- going through?

12 A Yes.

13 Q And, ultimately, the Vanderbilt result came
14 in as no oppositional defiant disorder or conduct
15 disorder or clinically significant anxiety?

16 A Yes.

17 Q So those are positive findings; right?
18 Kayden doesn't have those symptoms?

19 A She denied them; yes.

20 Q Okay. The next test you went through is
21 called a Child Depression Inventory.

22 A Okay.

23 Q Is that correct?

24 A Yes.

25 Q You don't have to agree with me; I'm just

1 looking at your report.

2 A Yes. Oh, okay.

3 Q And it looks like Kayden has very few
4 symptoms?

5 A Correct.

6 Q Tell me about what that test -- I mean,
7 basically, he's not depressed?

8 A Basically, he's not -- he -- he -- not at
9 that time.

10 Q Okay. How about life -- is this another
11 lifetime, or is that only a UCLA categorization, the
12 lifetime designations?

13 A There was no indication, from my interview
14 with her, that he had any sustained and serious
15 depressive symptoms. So, you know, depression was not an
16 issue.

17 Q Okay. The UCLA test we talked about with the
18 red and blue ink, lifetime/current, is that a
19 categorization, lifetime/current, you did for all of
20 these tests you ran or is that specific to the UCLA test?

21 A It's -- it's specific to the UCLA test and to
22 the Vanderbilt because -- because again, based on the
23 history and based on what I was hired to do, which is to
24 assess for PTSD as well as any relevant associated
25 psychiatric co-morbidity and how the fire has affected

1 this child, those are the -- the -- those are the
2 symptoms that jumped out at me that were being endorsed
3 and needed further in-depth assessment. So I focused on
4 PTSD and I focused on ADHD because those were the
5 problematic symptomatology areas.

6 And it is important to know whether or not
7 someone has a lifetime history of PTSD because it's --
8 it's a predictor of future problems. And it's associated
9 with a lot of other psychiatric disorders down the road,
10 even if there's partial remission.

11 Q Can you get better from a lifetime diagnosis
12 of PTSD?

13 A Can you get better? Sure.

14 Q So I could have PTSD a year ago and be fine
15 now?

16 A That's a possible; yeah.

17 Q It's not something that --

18 A One can remit.

19 Q -- one --

20 A One can remit. But it forms a groove in the
21 brain that makes one more vulnerable to subsequent
22 stressors in life, and particularly in a four or
23 five-year-old. You have no idea what's going to unfold
24 in that kid's life as he faces more obstacles and
25 stressors and hardships, so. He's going to be more --

1 more vulnerable, having had PTSD, in my opinion, and I
2 think the literature attests to that.

3 Q And so to round out the tests you did, the
4 Child Depression Inventory was normal, in the average
5 range?

6 A Yes.

7 Q And then the Child Dissociative Checklist is
8 actually very viewed associative symptoms?

9 A That's correct.

10 Q So both of those tests were normal?

11 A Yes.

12 Q So the only pertinent findings we have here
13 are related to the PTSD and the ADHD?

14 A Yes.

15 Q Did you do the current PTSD test on Shelby,
16 as well?

17 A I did another one.

18 Q What do you mean?

19 A I did another test. The UCLA PTSD Reaction
20 Index is for children, specifically. That's -- that's a
21 version that's specifically for children less than six
22 years old.

23 Q Okay.

24 A I used one that's more appropriate for
25 adults, which was the PCL-5 which is the post -- the PTSD

1 Symptom Checklist which is this.

2 Q Gotcha. PCL-5 is what it's titled?

3 A Yes. And it's the -- it's the same or
4 similar criteria, and I used the same kind of approach,
5 looking at current and lifetime. And the current
6 responses are in blue and the -- and the lifetime are in
7 red.

8 Q Did you ever look back -- I mean did Shelby
9 have ADD as a child, ADHD?

10 A She denies -- well, she was never diagnosed
11 with it.

12 Q Right.

13 A But a lot of people, in my experience, end up
14 having -- they -- they have it, and they don't even know
15 they have it. That's possible. But there -- there was
16 no indication. I mean untreated ADHD, for example, is
17 associated with like a five times higher rate of
18 substance abuse, and she's smoking a lot of pot in high
19 school and getting kicked out of high school, you know.

20 Q Sure.

21 A She ended up landing on her feet anyway, and,
22 luckily, gave up drugs, to her credit. But she may have
23 had it; I don't know. There was no -- no history of
24 that, per se, or record of that.

25 Q Okay.

1 A But the fact that she had a brother with ADHD
2 puts her -- given -- given that kind of history and --
3 and the family history, she may very well have had it.

4 Q On your report, you've got that Kayden has
5 symptoms of PTSD, ADHD and ODD. I thought that was --
6 the ODD was ruled out.

7 A Where did I -- oh, okay.

8 Q So I thought under the Vanderbilt ADHD
9 Diagnostic Scale there was no oppositional defiant
10 disorder, and then under the -- where am I? Sorry.

11 A Yeah.

12 Q On your Data and Reasoning --

13 A Yes.

14 Q -- [unintelligible], page eight --

15 A You're right. I did write that.

16 Q Is that a mis-type?

17 A It might be. Let me just check one thing.

18 Q Sure.

19 A Yeah. That is a mistake. Well, let's see.
20 So one of the things -- one of the things that did jump
21 out is that he argues a lot with adults. And on the
22 Vanderbilt question 19, sometimes he loses his --
23 occasionally, will lose his -- his temper, so. So
24 there's like one symptom that might be indicative of the
25 emergence of ODD. So I'm not giving him that diagnosis,

1 but one could say that he may have a symptom or two of
2 ODD.

3 Q Okay.

4 A If that makes sense.

5 Q Yeah. So your statement, I find --

6 A Yeah.

7 Q -- Kayden to be --

8 A Parti --

9 Q -- exhibiting symptoms of ODD, meaning that
10 he has these symptoms, they are --

11 A The fight -- the fights, the increased
12 aggression and the fights and the anger with adults,
13 that -- that concerns me. And, you know, ADHD has just
14 kind of recently emerged. And, you know, a lot of kids,
15 particularly those with learning disabilities, will also
16 develop ODD and PTSD. Kids with -- with ODD have high
17 rates of trauma.

18 So it -- it's something to just to keep an
19 eye on and emerge -- that may be emerging, but not
20 definitive at this point.

21 Q So we know that Kayden has been diagnosed
22 with ADHD currently?

23 A Yes.

24 Q That's correct?

25 A That's correct.

1 Q Kayden meets a number of symptoms for, but
2 does not meet a clinical diagnosis, of PTSD currently, as
3 a December 3rd, 2020?

4 A He does not have PTSD. He has lifetime PTSD;
5 yes.

6 Q Correct. And then for the ODD, again, he
7 doesn't have a diagnosis of ODD, but he is exhibiting one
8 or more symptoms which could lead to a diagnosis further
9 down the road?

10 A Yes. That's right.

11 Q So the only pertinent diagnosis we have is
12 the ADHD, currently?

13 A And the PTSD.

14 Q But the lifetime -- okay. So tell me how the
15 lifetime diagnosis of PTSD corresponds with the current
16 diagnosis. I mean is the lifetime that he's in partial
17 remission so he's --

18 A He --

19 Q -- okay now or --

20 A Partial remission -- you know, he -- he still
21 has significant symptomatology that are PTSD-related and
22 trauma-related. And if you -- if you look at the score
23 sheet, the Clinician Score Sheet for the UCLA, he has the
24 A criteria, he has the B criteria, he has the C criteria.
25 He doesn't meet the D criteria currently.

1 And according -- according to Shelby, there
2 is no distress or impairment. It doesn't mean that he's
3 not being impaired by this. She may be oblivious to how
4 he's really being affected. She's sleeping through the
5 night and he's up half the night, distressed, it appears.
6 And he's acting out in school and he has active ADHD
7 symptoms. And we know that PTSD aggravates ADHD.

8 Q Would --

9 A And so like I said, these kinds of symptoms
10 can -- can wax and wane, depending on the circumstances.
11 This is one point in time. And it is -- even though it's
12 a standard, it is simply through Shelby's eyes. And
13 sometimes mothers can really give a very accurate
14 assessment of their kids and what's going on with them
15 and sometimes there are blind spots.

16 Q Well, so would you agree that after you went
17 through all the questions with Shelby --

18 A Yeah.

19 Q -- and explained what words meant, you
20 know --

21 A Yeah.

22 Q -- different things like that, would you
23 agree that that's kind of the most generous responses? I
24 mean that's after you -- compared to how she responded
25 originally?

1 A I'm not sure I understand. What's generous?

2 Q To meet these criteria? So there were some
3 questions that you've changed the answers from Shelby
4 after -- or Shelby changed her answers after you
5 explained what words meant or what the question was
6 asking; correct? And that's on the video.

7 A I clarified a lot of issues and -- and -- and
8 symptoms that she didn't understand.

9 Q Were there any questions that you offered
10 clarification that Shelby said, no; I'm sticking with my
11 original answer?

12 A Yeah.

13 Q And so the ones where you clarified and
14 offered Shelby more understanding and she said, oh, yeah,
15 Kayden does have that or that -- let me change my answer;
16 I agree with you now --

17 A Right.

18 Q Those answers are reflected on this UCLA PTSD
19 Reaction Index? That's after you've gone through and
20 walked through these questions with Shelby; correct?

21 A You can see the -- her original answer in
22 black.

23 Q Yeah.

24 A The revised answer for current, in blue.

25 Q Yeah.

1 A Some are the same; some are not. And then
2 the lifetime is in red.

3 Q And so I'm saying is that we rely on the
4 version that you went through with Shelby during your
5 interview, the "final version," we'll call it, of her
6 completing this questionnaire --

7 A Right.

8 Q There's really no doubt in my mind that she
9 understood every question, by that point. Right? I mean
10 you've gone through and explained every question to her
11 and --

12 A As --

13 Q -- so that would be the most --

14 A Yes. As evidence by the tape; yes.

15 Q Okay.

16 A That's right. But you can see there --
17 there -- there are a lot of them that did not change.

18 Q I understand. I'm not --

19 A Whatsoever.

20 Q -- accusing you of changing the answers, by
21 any means.

22 A Yeah.

23 Q I understand you're explaining questions to
24 your --

25 A Clarifying. Yeah.

1 Q I understand. And all I'm getting at is, by
2 looing at the final report, I can assume Shelby
3 understood every question that was being asked of her and
4 provided answers accurately?

5 A At that time; yeah.

6 Q Okay.

7 A I -- I was satisfied with that.

8 Q Sure.

9 A Yeah.

10 Q And based on your satisfaction and all the
11 answers that y'all went through, Kayden still didn't meet
12 each and every single criteria which is required for a
13 PTSD diagnosis currently?

14 A Correct.

15 Q Okay. And so, basically, all I'm saying is
16 if I go ask Shelby a question, she can't sit here and
17 say, oh, I didn't understand that question, you know.
18 You've already explained that to her at this point;
19 correct?

20 A Well, people forget. You know, people may
21 not have it --

22 Q Okay.

23 A The best learning in the world.

24 Q Let's talk about your damages amount.

25 A Okay.

1 Q Did this come from one article? Where did
2 these numbers come from?

3 A I've referenced them all.

4 Q Okay. Well, I'm looking at the conservative
5 estimates of this cost [unintelligible] in the range of
6 \$265,000 to \$927,000, with an average being of \$596,259,
7 and I don't see any citations by that.

8 A What page are you on?

9 Q Page 13 of your report, in the Conclusions
10 section, about halfway through the paragraph.

11 A Right. That's a summary of things that I've
12 already said earlier.

13 Q Okay.

14 A Under the Estimated Cost section --

15 Q Okay.

16 A -- with references.

17 Q So the --

18 A And that's just --

19 Q -- estimated --

20 A That's all just a repeat of what I've alary
21 said and referenced.

22 Q Okay. The numbers are a little different,
23 though, where you're getting the numbers different. So
24 if you look at page 12 of your report, where, I think, is
25 where you first start talking about the major

1 peer-reviewed study, lifetime cost, non-fatal, child
2 maltreatment, is \$210,000. Do you see where I'm at now?

3 A Yes.

4 Q And you have -- I see where you have all
5 those citations. Are those the numbers that you then
6 extrapolate to get to the numbers you put in the
7 Conclusion of --

8 A So I may have adjusted -- you're right. I
9 may have adjusted it to 2021 dollars since I wrote this
10 and -- and failed to change that there.

11 Q Okay.

12 A Based on inflation. So it's -- it's an
13 inflationary difference, basically. Yeah. Based on 2021
14 rather than 2020, like I said there. And I should have
15 changed that. But ballpark, same ballpark.

16 Q Okay. So your bottom number, \$265,000, is
17 the average lifetime cost per victim of non-fatal child
18 maltreatment, in 2001 dollars?

19 A Yes. Page 12?

20 Q Yeah.

21 A Yeah.

22 Q And I'm not trying to confuse you. I was
23 just making sure we're all on the same page --

24 A Yeah.

25 Q -- with the numbers.

1 A Sure.

2 Q So that's your bottom range, is the non-fatal
3 child maltreatment: Average lifetime cost per victim of
4 non-fatal child maltreatment?

5 A Right.

6 Q Okay. And then the high range, then, is the
7 updated analysis? That's where I'm getting a little
8 confused here. However, an updated analysis, estimated
9 non-fatal child maltreatment per victim increased --

10 A So that -- the \$830,000 is in 2015 dollars.
11 Right?

12 Q Okay. I'm still confused, I think.

13 A Okay.

14 MR. TISDALE: When did that begin?

15 MR. BEVANS: No kidding.

16 A Well, this is the number they reported in
17 that analysis, in --

18 BY MR. BEVANS:

19 Q Right.

20 A In citation --

21 Q It's 2010. \$210,000, in 2010 dollars; right?

22 A That's -- that's right.

23 Q Okay. And so I see where you increased that
24 to \$250,000 in 2020 dollars, with a 19.4 percent
25 cumulative inflation rate?

1 A Right.

2 Q Then you've got an updated analysis,
3 estimated the study increased to \$830,000.

4 A Correct.

5 Q So that's -- you're relying on a different
6 report, at that point?

7 A That's a different publication, looking at
8 the same data, with a -- with an updated analysis.

9 Q Okay.

10 A Yeah.

11 Q And so that was done in 2015?

12 A Yes.

13 Q And so, really, what you're saying is that
14 the 2021 rate, then, based on the updated analysis, is
15 going to be that \$927,518 figure?

16 A Yes.

17 Q So the \$265,000 figure then you have here as
18 the bottom number is based on an outdated analysis?

19 A It's one analysis.

20 Q It's the same analysis?

21 A It's a -- it's a inferior analysis, according
22 to the literature. The updated, better analysis is
23 published in 2018. It's Reference No. 53.

24 Q So really, then, sitting here today, I can --
25 I mean the \$265,000 is what you're calling an inferior

1 analysis. So if you get on the witness stand, you're
2 going to say that \$927,518 is --

3 A I -- I'm not calling it inferior. The --
4 the -- the authors of the research are saying that that
5 figure was wrong and they've updated and republished the
6 figures using --

7 Q The same authors?

8 A Overlapping authors.

9 Q Okay.

10 A Yes.

11 Q So I just need to read whatever you have
12 cited for 51, 52 and 53?

13 A Yes.

14 Q Okay.

15 A That's right.

16 Q And you have those on your thumb drive you're
17 going to give me today?

18 A I do.

19 Q Okay.

20 A Yes. And so it's not me saying it's
21 inferior; it's -- it's what's in the literature, based on
22 just how people are progressing in terms of how they
23 figure out these kinds of costs --

24 Q Is this a case --

25 A -- and what variables they include.

1 Q Is this a case of child maltreatment?

2 A These are all kinds of -- all kinds of child
3 traumas; yes.

4 Q Do you know what kinds of child traumas
5 specifically were incorporated into the --

6 A All kinds. And, you know, there -- there is
7 very limited data about, specifically, PTSD with fires.
8 I mean this is -- this is kind of -- the best comparison
9 we have is -- so what's -- what's important to take away
10 here is that what we know is that PTSD is PTSD, and it
11 has the same kinds of biological effects on the brain and
12 the body and the psyche regardless of the type of trauma.

13 So you can think about trauma as the three
14 E's. A contemporary way of thinking about trauma -- many
15 people think about trauma simply as an event, but it's
16 not just an event, to really understand trauma, because
17 everybody may -- you know, people respond very
18 differently to the very same exact event.

19 What's important is -- is the second E:
20 Their experience of that event and the effects of that
21 experience of that event. And the effects are where PTSD
22 comes in and the psychiatric co-morbidities that result
23 from trauma, which we know -- you know, trauma is a risk
24 factor for just about every psychiatric disorder there
25 is. Right? And it's a mixture of genetics and

1 environment.

2 So whether you have PTSD or not is really
3 more the important question because it leaves a kind of
4 scar and a biological imprint on the brain and the body,
5 regardless of the type of trauma.

6 Now some traumas are more -- they cut deeper,
7 like childhood sexual abuse has a much higher rate of
8 developing PTSD than other forms of -- of trauma, for
9 example, like natural disasters. But whether or not you
10 develop PTSD is, really, the important point here.

11 Q The child maltreatment that is incorporated
12 in these figures; does that include sex abuse, domestic
13 violence, fires, car wrecks --

14 A Yes.

15 Q -- death in families, everything?

16 A Yes. It's lumped --

17 Q Do you know how many --

18 A It's all lumped together. That is a
19 shortcoming.

20 Q And do you know how many subjects were in
21 that study, that came up with those numbers? Obviously,
22 you can refer to the study itself.

23 A I'd have to look at the study.

24 Q That's fair. The numbers --

25 A It's not one study. It's -- it's a -- it's a

1 group of studies from a large data -- from very large
2 data sets.

3 Q Is it regional? Is it national,
4 international?

5 A It's -- it's national.

6 Q Okay.

7 A On these particular ones -- yeah. "Economic
8 Burden in the United States."

9 Q What makes up the numbers? I mean are you
10 looking at medications for a lifetime, therapy or
11 lifetime? I mean how do we get to that figure? And I'd
12 be happy to --

13 A I would have to bring up the -- the article,
14 then, if you want to ask me about it specifically.

15 Q I so; yeah.

16 A Okay.

17 Q While you're looking that up --

18 A Yeah.

19 Q I wanted to be clear. So the damages figures
20 we're about to discuss came from those articles or series
21 of article?

22 A Correct.

23 MADAM COURT REPORTER: Mr. Bevans, while he's
24 looking that up and we're going to start on a new --

25 MR. BEVANS: You need a break? Yeah, yeah.

1 Absolutely.

2 (At this point there is a break in the deposition.)

3 BY MR. BEVANS:

4 Q So Dr. Brewerton, before we went off the
5 record we were looking at -- again, talking about your
6 damages estimate. And it basically came from citations
7 51, 52 and 53 of your report; am I correct in saying
8 that?

9 A Basically.

10 Q Okay. What else did you use to get up with
11 those numbers?

12 A Well, I'm -- I'm talking in here just in --
13 in addition to the psychiatric morbidity that's
14 associated with trauma and PTSD, childhood adversity,
15 including life-threatening fire. That -- it's associated
16 with higher rates of all the leading causes of death,
17 these -- these types of childhood adverse events, that
18 lead to a variety of medical and psychiatric problems.

19 And particularly when you have lifetime PTSD
20 involved: You have significant subsequent medical and
21 psychiatric illnesses that ensue. Even though it may
22 appear that everything's fine, it ends up not being fine
23 down the road.

24 And there is a host of -- of literature now
25 that is attesting to that and showing how these kinds of

1 traumas are often silent -- relatively silent, and then
2 they raise their heads up at different developmental
3 points in life to produce a variety of problems that were
4 un -- that were not necessarily apparent.

5 There may have been elements, symptoms that
6 were apparent. And that's why we -- we cannot ignore the
7 PTSD symptoms that do still exist and we cannot ignore
8 the ADHD which did unfold in the wake of the trauma and
9 in the context of lifetime PTSD.

10 You can't ignore that, in terms of its
11 downstream effects. It's not just a matter of looking at
12 what's happening today. We have to -- you know. And
13 these kinds of economic analyses kind of --

14 As we get more sophisticated about
15 understanding trauma and -- and PTSD and related
16 co-morbidity and -- and higher mortality, were getting a
17 better appreciation of just how costly these experiences,
18 or that first experiences can be.

19 Not just monetarily or economically, but
20 socially and psychologically and medically, for -- for
21 the person and for their families. Employment-wise,
22 occupationally. I mean in every way that you measure,
23 we've found that there's significant impairment down the
24 road.

25 Now, yes; people can recover, and there is

1 another side to that, and we can attenuate those effects
2 with active treatment. But, still, people -- each -- I
3 mean -- for example, there have been -- the World Health
4 Organization has been studying PTSD across the world and
5 following it, actually, now, for 40 or 50 years now. The
6 first chronic study was -- was published in 1995, and at
7 that time they were following people for up to 20 years.
8 And one third of people still had chronic PTSD, full
9 syndromal, and many more had partial syndromes -- at 20
10 years.

11 A recent study by -- by David Kessler, a very
12 famous epidemiologist in the World Health Organization,
13 he studied this world over. People at 20 years, 40
14 percent still have full criteria, and many more still
15 have significant partial syndromes and associated
16 co-morbidity, and all of those with a lifetime history
17 have significantly higher co-morbidity: Things like
18 ADHD, substance abuse, mood and anxiety disorders and so
19 forth.

20 So that's kind of the broad picture that I'm
21 approaching this. And I think the picture that people
22 are taking who are trying to do these economic
23 analyses -- now I'm no economist, but I'm just borrowing
24 from the -- the literature that is the closest
25 approximation to what we have here with Kayden and -- and

1 Shelby.

2 Q Even in these subsequent studies you're
3 talking about and the stressors, the traumatic event, is
4 it my understanding that it doesn't matter? The fact
5 they have PTSD is what matters, not what the traumatic
6 event that precipitated the PTSD is?

7 A You're -- yes.

8 Q Okay.

9 A That is correct. It's -- it's -- it's not
10 that it doesn't matter. It's -- again, trauma is best
11 understood with the three E's. The event is -- it
12 matters, of course.

13 Q Okay.

14 A But it's not just an event. It's the
15 experience of the event and the effects, and whether or
16 not PTSD is produced. Then, the -- the effects are
17 multiplied.

18 Q So an event --

19 A There are some people who have the same event
20 and don't -- and don't have much of a terrible
21 experience. There's evidence that he had a terrible
22 experience in the wake -- in the immediate wake of this
23 event, and then had subsequent prolonged effects.

24 Now, yes, he's getting better, and that's a
25 good thing. But he's not all the way better. He's not

1 like he was before this happened.

2 Q Okay.

3 A Yeah. So it's the three E's that are
4 important in understanding the big picture.

5 Q Okay.

6 A Yeah.

7 Q And everybody reacts -- I guess the event
8 would be the event, no matter what. But how you're
9 experienced and how the effects are --

10 A Yes.

11 Q -- really depending on the person?

12 A And that's where those -- those prognostic
13 factors, those risk factors, come in and whether you have
14 prior psychiatric history and language disorder and low
15 socioeconomic status and support in your life and --

16 Q So it's possible you could have --

17 A -- resources and --

18 Q Same age person?

19 A Yes.

20 Q Same gender, same --

21 A And --

22 Q Same everything?

23 A And age is -- and it -- the literature is
24 mixed as to whether -- how much age -- whether age is --
25 is positive or negative in terms of prognosis, so.

1 That's unclear, from the literature. You know, some say
2 the younger the age, the worse, and some studies say that
3 younger the age, the better; you have more chance of
4 recovery, so. That's not clear, though, from the
5 literature, the scientific literature.

6 Q Are you prepared to offer testimony, to a
7 reasonable degree of medical certainty, that Kayden will
8 need -- a reasonable degree of certainty in the field of
9 forensic psychiatry, that Kayden will need \$927,518 worth
10 of lifetime treatment?

11 A No.

12 Q Okay.

13 A I -- I don't know what he's going to need.
14 We can only estimate. But I can say that this is -- this
15 is an estimate of -- this is a scientific,
16 well-thought-out, objective estimate of what other kids
17 who have been hurt, end up needing. And --

18 Q Different opinions?

19 A And costing. Some different, and some not.
20 But, yes.

21 Q Do you know if any of the subjects included
22 in those reports --

23 A Different, but similar. Let me say that.
24 Different but similar. Because they're different
25 traumas.

1 Q Okay.

2 A And these are child maltreatment. And we are
3 talking about childhood sexual, emotional, physical abuse
4 and emotional and physical neglect. Those are -- and --
5 and throw in domestic violence and so-on.

6 Q Let me stop you right there, just because I
7 want to answer --

8 A Yeah.

9 Q -- about that, what you were just talking
10 about.

11 A Yeah.

12 Q Is this long-term exposure or is this you got
13 abused once versus your step-dad abused you, you know,
14 for years?

15 A Once is enough.

16 Q Okay.

17 A The trauma dose is important in whether he
18 gets PTSD or not.

19 Q In the report, you --

20 A The trauma dose and the severity is
21 important.

22 Q Do you know what the dose and severity of the
23 trauma was in these reports that, ultimately, conclude in
24 you reaching that \$900,000 figure?

25 A It's -- it's variable.

1 Q Okay. Is it fair to say that kids that had
2 repeated exposure --

3 A But these are --

4 Q -- to the trauma --

5 A But these are documented --

6 Q Let me finish my question, if you don't mind.
7 Is it fair to say that the kids that had the
8 repeated exposure to trauma -- for example, a kid who was
9 sexually assaulted every day of his life for four years,
10 versus a child who may have been sexually assaulted once
11 or came out of a window in an apartment -- would you
12 expect more severe symptoms arising out of the repeated
13 and ongoing exposure versus the offset one time exposure
14 or --

15 A In general; yes.

16 Q Okay. Is it possible that the one time
17 exposure could still have those same severe symptoms as
18 the kid who went through everything terrible for years?

19 A It is.

20 Q Okay. And the reports that come up with
21 those figures, is there a way to say how many of the
22 subjects were subjected to repeated and ongoing long-term
23 exposure versus those subjects who may have had an off
24 moment of exposure to --

25 A I don't think they were able to sort that out

1 and in this particular study and kind of study.
2 They're -- they're looking at documented cases and
3 estimates of new victims, based on previous data of
4 documented cases. And most cases are not documented, so,
5 in some ways, it could even be an underestimate in
6 terms -- when it comes to child maltreatment, you know.
7 It's -- it's very much a hidden epidemic, you know.

8 Back when I was in medical school, people
9 didn't even think that childhood sexual abuse or incest
10 existed. They thought it was extraordinarily rare, you
11 know. In textbooks I had in 1976, when I was in medical
12 school, it was thought to be -- occur only in one in 1.1
13 million, and we know that's ridiculous now.

14 Q The numbers -- is there any way, whether it
15 adds up to the \$900,000 figure or not, I mean are you
16 able to say that Kayden is going to need monthly
17 treatment for the rest of his life, he's going to need
18 "X" medication? Are you prepared to make those opinions
19 and break it down to an economic value?

20 A I think I am willing to testify that he is
21 going to need an unspecified amount of psychiatric care
22 in his life. There's no doubt about that, in my mind. How
23 much, I can't tell you exactly. But he already needs it,
24 at four -- five -- five years old, you know.

25 Q And it's possible that -- do you know if

1 Kayden's undergoing any current psychiatric treatment
2 right now?

3 A I don't know.

4 Q Did you -- and this may have been outside of
5 the scope of what you were asked to do. But did you
6 refer or recommend that Kayden return to psychiatric
7 treatment after you met with him and his mom?

8 A I told it -- I told them that I thought that
9 was really important, that he continue his treatment;
10 yes.

11 Q Were they seeking current treatment at the
12 time, when they went to go see you?

13 A I think they were waiting to go back to
14 Developmental Pediatrics. And -- and they also felt cut
15 off from -- my understanding was they felt cut off from
16 the NCVC, the National Crime Victims Center, because of
17 the -- missing the psychiatrist appointment.

18 Q Were you able to qualify as a psychiatrist to
19 get them that -- to check that box, or is that something
20 they have to go through MUSC --

21 A No, no. I wouldn't, and couldn't, serve as
22 that.

23 Q Okay.

24 A They have to go through MUSC if they do an
25 evaluation --

1 Q Are you aware --

2 A Clinical evaluation.

3 Q Are you aware of how the NCVC works? I mean
4 how is it funded?

5 A They're -- a lot of them are funded through
6 private insurance and -- and Medicaid. In this case, he
7 has Medicaid. If they have private insurance or -- or
8 government insurance, they get paid that way. But they
9 also get paid for doing a lot of training, and they get
10 paid for the research they do through grants.

11 They get paid through the Office of Victim
12 Assistance for crimes that are reported, particularly
13 through the police. They get reimbursed for a certain
14 amount of treatment.

15 Q So, typically, dealing with PTSD from these
16 crimes; is that --

17 A Yes.

18 Q -- of their creation?

19 A That's right.

20 Q Can you get treated through the NCVC without
21 a diagnosis of PTSD following a crime or some kind of
22 traumatic event?

23 A Yes. But you have to have a -- you have to
24 have had a trauma, and, in particular, you know -- in
25 particular, a crime will definitely get you a ticket in,

1 into there.

2 Q Sure.

3 A If you report it to the police. Yeah. And I
4 think because this was a public event and this was a
5 natural disaster, they have an interest in those kind of
6 events, as well. But again, they -- they do a lot of
7 childhood treatment of PTSD.

8 Q Is there a way --

9 A For whatever reason. From whatever cause.

10 Q Sure. Is there a situation in this world
11 where Kayden ends up being fine and lives a totally
12 normal life without any ongoing treatment?

13 A Highly unlikely, in my opinion.

14 Q Okay. Why?

15 A Well, he has early onset. He -- he has PTSD
16 history. He has active PTSD symptoms. He has a language
17 deficit. And he -- he's going to need, at the very
18 least, treatment for his ADHD, ongoing. He's likely to
19 develop other behavioral problems as time goes on,
20 particularly when he's more challenged in school,
21 intellectually, interpersonally, socially.

22 A lot of times, there is delayed PTSD. And
23 until people kind of fully realize what happened to them
24 and as they get older and their cognitive abilities can
25 process events and -- you know, develops and matures,

1 then people -- it dawns on people. They realize kind of
2 what danger they were in and a resurgence of PTSD
3 happens.

4 And that happens all the time, it -- that
5 they may have PTSD for -- early on for a while, and then
6 it goes dormant or -- or gets better, and then there's a
7 resurgence upon some new stressor or exposure.

8 Q The source of the Kayden's PTSD in this case;
9 is it -- and it can be a combination of these factors.
10 Is it the fire itself, losing his home?

11 A I'm not sure that you can dissect this so
12 much, so well like that, you know. I think it's -- it --
13 you know, it's a part of the total experience of what
14 happened to him and -- and, you know, the grief and the
15 loss and horror, it's all -- it's all wrapped up
16 together. And -- and I think it's impossible to -- to
17 completely tease that part, particularly for a child at
18 that age.

19 Q During your interview with Shelby, she
20 mentioned -- and I saw in your notes maybe Kayden might
21 have mentioned to you that his new house has smoke alarms
22 that work.

23 A Yes.

24 Q Is this something that came from Kayden or
25 Shelby, or do you remember?

1 A I -- that seems to, as I recall, came up
2 spontaneously.

3 Q From Kayden?

4 A From Kayden; yeah. And I think it's
5 important in his recovery that he feels safe and secure
6 and -- and have reassurance with his -- which his mother
7 did freely give them, that, you know, he's not going to
8 catch on fire, the cat's not going to catch on fire, that
9 smoke -- the smoke alarms work. He's well aware that,
10 for whatever reason, the smoke alarms didn't go off.

11 Q How is Kayden aware of that?

12 A Well, he's -- he's expressing -- I -- I
13 don't -- I'm -- I'm not sure. He was probably told that.
14 And, you know, because he's curious and he wants to know
15 and understand, at his level, what -- why all this
16 happened and why he had to move and why he lost his toys
17 and -- and -- and so on. That's a natural curiosity.

18 Q Are you aware of the cause of the fire at
19 Santee Run?

20 A My understanding was that it was some sort of
21 a grease fire in another apartment down the other side.

22 Q Have you seen any of the -- have you looked
23 up, either prior to your role with Shelby since meeting
24 her, any of the news articles or news reports about the
25 fire?

1 A I did not.

2 Q Have you seen any of the -- since your
3 report, when you listed the materials that you've
4 reviewed, have you since added any materials to that
5 list?

6 A No.

7 Q In other words, have you seen any --

8 A No. I haven't done any work on this other
9 than this week, preparing for the dep.

10 Q Okay. Earlier, I think you said you're not
11 an economist, obviously. So you're not --

12 A No.

13 Q -- prepared to testify about present value,
14 anything like that, of damages?

15 A I can only convey what I know, that I gleaned
16 from the psychiatric literature about the -- the -- the
17 economic, social, psychological, occupational costs that
18 others report in relationship to these kinds of traumas
19 and PTSD, which is enormous.

20 Q That --

21 A So I -- I -- I don't know the analyses,
22 personally.

23 Q That figure -- is there a way, or is it
24 broken down in the report, that says, you know, \$100,000
25 of this is work force, attributed to like delays in the

1 work force, \$100,000 is delays in education, \$100,000 is
2 lifetime medication? Is that broken down any further or
3 is it just here's this big lump sum of what it will cost
4 you if you have PTSD once in your life?

5 A There is some compartmentalization or
6 breaking down of different -- different areas.

7 Q And that's in the article?

8 A Yes.

9 Q Which article is it in, when they break it
10 down?

11 A The -- the last one. I think both of them.
12 I would -- I would at look at both of them, to look at --

13 Q Is that citations 51 and 53?

14 A Yes. That's right.

15 Q Okay.

16 A It -- it goes into detail kind of exactly.
17 It's complicated, you know. But they consider, you know,
18 all the -- the different kinds of costs, long-term:
19 Medical treatment, economic, educational, so forth.
20 Cultural.

21 Q Do you have any indication, or do you have
22 evidence knowing that the smoke alarm wasn't working,
23 outside of Shelby telling you?

24 A Not that I recall.

25 Q Did Shelby tell you that she did any tests to

1 the smoke alarm after the fire, to know that it wasn't
2 working?

3 A [Laughs.] Sorry. No.

4 Q Okay. Do you know if there was enough smoke
5 in the apartment to trigger the alarm when Shelby first
6 woke up?

7 A I don't know that, firsthand. I -- I only
8 know what I was told, and it sounded pretty bad and --

9 Q Did you hear about --

10 A -- it sounded -- sounded like, based on
11 the -- my -- how my own smoke alarms work, it doesn't
12 take much. And --

13 Q Do you know what --

14 A -- it sounds like --

15 Q -- kind of smoke alarms you have?

16 A Do I know which one?

17 Q Uh-huh.

18 A No.

19 Q Do you know which one she had in her
20 apartment?

21 A No. No. But I --

22 Q Do you know if other alarms in --

23 A -- think they should be sensitive enough
24 to -- to go off when there's significant smoke going off,
25 you know, in -- in the whole compartment -- apartment

1 complex.

2 Q Okay. Do you know that Shelby had performed
3 some maintenance on the smoke alarms herself?

4 A I don't know that; no.

5 Q Did you ever look at the lease between Shelby
6 and Santee Run?

7 A I don't believe I have that.

8 Q Are you aware if Kayden has trouble currently
9 around fires?

10 A I think they've avoided fires, for the most
11 part.

12 Q Why do you think so?

13 A Because Shelby pretty much avoids fires.

14 Q So did she not tell you about sitting around
15 bonfires with Kayden?

16 A She said that she had a lot of trouble,
17 until -- not with Kayden. She was only talking about
18 herself.

19 Q Okay.

20 A I don't have any information about that.

21 Q So to your understanding, at least sitting
22 here today, did Shelby and Kayden avoid fires, as far as
23 you know, sitting here today?

24 A Yes. I know they did. I don't know about
25 now.

1 Q But it's possible --

2 A I know that she -- I remember she said that
3 she didn't go anywhere near the apartment because it was
4 triggering for her.

5 Q Do you know how often she would pass the
6 apartment on a regular day, anyway?

7 A I don't.

8 Q Do you know if she would have to go out of
9 her way to go past the apartment?

10 A I don't know.

11 Q Did Ms. Trehus tell you any more about
12 Kayden -- how Kayden's behavior changed after the death
13 of his father?

14 A She mentioned that he didn't cry at first,
15 but that he did, later, break -- quote-unquote, break
16 down, which, to me, means cry and -- and -- and grieve,
17 which is a healthy response. He did talk about his --
18 his dad being in Heaven and visiting him.

19 Q Did Shelby talk about the treatment she has
20 sought through the NCVS to help her with her husband --
21 or Mr. Montagne's passing?

22 A She told me that part of the therapy that she
23 got for Kayden included therapy for her, and that they
24 talked about a variety of things, including the fire and
25 its effects as well as the death of her -- of Kayden's

1 father.

2 Q And you haven't seen the entire package of
3 records from the NCVC?

4 A No.

5 Q One second. I think I'm almost done.

6 MR. BEVANS: Tom, do you have any questions?

7 MR. TISDALE: No.

8 MR. BEVANS: Okay. Give me a second before I
9 pass it over, then.

10 MR. TISDALE: I said "no," so you don't have
11 to pass it over.

12 MR. BEVANS: No, no. Well, I said before, I
13 was -- I was going to let you ask your questions and I
14 could hit a few after you were done. But if you don't
15 have anything, let me just run through here.

16 MR. TISDALE: No. I think you've done a good
17 job exposing the entire picture.

18 BY MR. BEVANS:

19 Q Criteria. To go back to the DSM-5 criteria,
20 are B, C and D kind of grouped together, so B is

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



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[REDACTED]

[REDACTED]

[REDACTED]

4 Q Okay. And the avoidance symptoms means
5 avoiding talking about the traumatic event, avoiding the
6 area?

7 A Any -- any reminders. Any potential
8 reminders whatsoever.

9 Q Okay.

10 A Avoiding. Yes.

11 Q What avoidance symptoms was Kayden
12 experiencing? I understand the nightmares. I mean
13 outside of avoiding the apartment, which maybe his mom
14 did. And was it difficult -- did Kayden find it
15 difficult to talk to you about the fire?

16 A He was -- I -- I wouldn't -- I wouldn't
17 characterize it as him avoiding talking about the fire.
18 In -- in some ways, it was a kind of obsession and
19 preoccupation, with talking about the fire.

20 Q He was positive for the Criteria C, though;
21 correct?

22 A Yes.

23 Q So what were the avoidance symptoms he --

24 A I'm looking; yeah.

25 Q -- was -- sorry.

1 A All right. So items eight and five -- so if
2 you look at the actual questions from the -- of the PTSD
3 symptom scale where there's the blue and red marks --

4 Q Okay.

5 A Any of the symptoms with D or -- let's see.
6 Let me doublecheck that.

7 Q Is this the page you're looking at in your
8 records?

9 A Yes.

10 Q It's Brewerton 54 --

11 A To check something out.

12 Q -- just for us lawyers to look at the Bates
13 stamp to know what scale you're looking at.

14 A So it's the Criteria C that are the avoidance
15 symptoms.

16 Q Right.

17 A And you just need one symptom.

18 Q Okay.

19 A And he endorsed item number one in C, which
20 is C-3.

21 Q More often talks about?

22 A Yes.

23 Q Okay. How is that a -- so talking about
24 something more often is an avoidance symptom, not an
25 intrusive symptom?

1 A That's what -- that's what they're saying.

2 Q Okay. If it is, I'm -- I --

3 A Yeah.

4 Q That's -- I was just making sure. Okay. So
5 your testimony, sitting here today, is the only avoidance
6 symptom Criteria C that Kayden is exhibiting is that he
7 talks about the fire often?

8 A It's not -- it's -- it's that he looks and
9 acts more scared. Okay? Which is an avoidance response.

10 Q So it's not talking about --

11 A Right.

12 Q Okay. Is that your underlining, "more often
13 talks about?"

14 A It is.

15 Q Okay.

16 A But that doesn't mean that that's what I'm
17 endorsing.

18 Q Okay. So on here -- and you have the
19 originals. I don't have the red and blue.

20 A Uh-huh.

21 Q The lifetime is what? Much?

22 A The lifetime -- the lifetime is most.

23 Q Okay. Lifetime is most.

24 A And much is current.

25 Q Okay. And then Shelby originally had marked

1 little as current?

2 A Correct.

3 Q Okay.

4 A Yeah.

5 Q Okay. And that's the only avoidance symptom
6 we have there?

7 A But this is -- this is where, you know, there
8 is some leeway in interpreting symptoms in children that
9 are more undifferentiated. And we have a kind of idea of
10 what fear looks like. But sometimes people get excited
11 when they're fear -- afeared -- afraid or fearful.
12 Right? And he gets excited. And she said that
13 repeatedly. Right?

14 And it doesn't mean that, oh, boy; my
15 apartment burned down. Right? It means that he's
16 activated. It means that he's in a fight or flight kind
17 of response, even though he may not look like what we
18 think scared looks like, if that makes sense.

19 Q Okay. So again, just to -- specific to the
20 avoidance symptom, the avoidance is that he is -- he
21 talks about it in a fearful manner?

22 A He ...

23 Q Or excited manner?

24 A Yes.

25 Q Okay.

1 A Yes.

2 Q Criteria D is what he was missing currently;
3 correct?

4 A So again, this is modified for children.

5 Q Which Kayden is a child; right?

6 A Yes.

7 Q Yeah. So doesn't that mean -- this is the
8 appropriate test Kayden should be taking?

9 A Yes.

10 Q Or should have been like --

11 A Yes.

12 Q -- diagnosed, based on?

13 A Right. That's right.

14 Q Okay.

15 A So avoidance is one of those clusters that is
16 harder to interpret in children.

17 Q For the lawyer over here, too, because --

18 A Yeah.

19 Q -- I'm thinking if I avoid something, I don't
20 talk about it, not I talk about it excessively.

21 A Right.

22 Q Okay. But in this diagnostic realm, talking
23 about a fearful event --

24 A There -- there's a -- a defense that's called
25 reaction formation, that if you're scared about

1 something, you can actually talk about it. You -- you
2 can talk about it more. And it's -- it's a kind of
3 counter-defense.

4 Q Okay.

5 A Because you're scared.

6 Q Kind of like the news when a hurricane comes?

7 A Yeah.

8 Q Just teasing. I was preparing for Elsa, and
9 then I wake up in the morning and it's like sun shining
10 and there's some leaves on my driveway.

11 (At this point there is off-the-record
12 conversation.)

13 BY MR. BEVANS:

14 Q Okay. So to kind of wrap up, Dr. Brewerton,
15 Criteria D is what Kayden was lacking currently when you
16 interviewed him December of --

17 A That's right.

18 Q -- 2020? And the Criteria D would be the
19 alterations in arousal reactivity --

20 A No; that's --

21 Q -- that we talked about earlier?

22 A That's negative alterations in cognitions and
23 mood --

24 Q Okay.

25 A -- associated with -- and that's -- that's a

1 new cluster introduced in DSM-5 that wasn't there in
2 prior definitions of PTSD.

3 Q Okay. And so that goes back to --

4 A And -- and that's harder to -- you know, he
5 didn't have depression or self-blame or thinking it was
6 his fault. Those are the kinds of things that sometimes
7 you will see in people who are traumatized.

8 Q The alteration of mood, at least at the time
9 you interviewed him?

10 A Right.

11 Q Okay. Criteria E -- sorry.

12 A Yeah. So -- so that's the one that he fell
13 short on in terms of the current symptoms. But again, in
14 order to kind of document that, you have to really get
15 inside a kid's head to know whether their cognitions are
16 altered. And he has a language impairment. And so
17 Mom -- it might be harder for Mom to know what's going on
18 inside his head because half of what, you know, he says,
19 you can't understand.

20 Q Sure. But I mean again, I --

21 A His ability to express it is impaired.

22 Q But you made sure -- and that goes to the
23 whole line of questioning I had earlier where I said --

24 A Right.

25 Q Where you kind of went through the questions

1 and explained to Shelby what certain words meant so that
2 she knew what the question asked --

3 A Yeah.

4 Q -- to then make her answer.

5 A Yeah.

6 Q So when I said this criteria is based on the
7 most generous understanding --

8 A But she still may not know whether he has a
9 certain belief or idea in his head because he hasn't
10 shared it --

11 Q Okay.

12 A -- or she hasn't asked him.

13 Q And no one else is going to know that
14 besides --

15 A And --

16 Q -- Kayden?

17 A And because of the communication problem.
18 Yeah.

19 Q Criteria E seems pretty simple: Just 30 days
20 of symptoms?

21 A That's right.

22 Q And that's ongoing?

23 A That's -- that's clear.

24 Q Is it 30 days continuous or like once every
25 30 days, you have a nightmare?

1 A No. Thirty days of these clusters of
2 symptoms is -- you know, meets the criteria for PST. And
3 then -- then you have it for life, that diagnosis.

4 Q And the next criteria is the disturbance
5 causes significant distress and impairment with others?

6 A Yes.

7 Q How did he meet that; with his mom, with
8 school?

9 A There are a series of questions at the end in
10 the UCLA Reaction Index that -- the whole section on
11 distress and impairment.

12 Q Uh-huh.

13 A And so there is, you know, how it's
14 affected -- you know, he's -- he's clearly -- was
15 distressed. He clearly showed upset by the symptoms
16 we've already gone over. And he has -- he's changed as a
17 result of this trauma, particularly with -- persistent
18 and highly relevant is his sleep disturbance.

19 Q Did you --

20 A And then there are others that have to do
21 with relationship with her, and she endorsed a number of
22 things: 2, 5 and 6. And here it is -- here is where she
23 is saying that he can be much more aggressive or angry at
24 times toward her.

25 Q Did Shelby talk about like Kayden's diet,

1 Kayden's bedtime, like any -- like her routine, I guess,
2 with Kayden?

3 A Yeah. She puts him to bed at a regular time.
4 She has to get up and go to work, and so she puts him to
5 bed. It's just that she's finding evidence that he's
6 getting up at night.

7 Q Did she talk about any medications to help
8 him sleep that he is on?

9 A Well, guanfacine is a medicine for ADHD, but
10 it's sedating. But he's not on a -- he wasn't on enough
11 of it, and he needed to go back and get that upped.

12 Q Is that something you recommended?

13 A I said that he needed to go back and be
14 reevaluated; yes.

15 Q And so do either --

16 A But by them.

17 Q MUSC Developmental Peds?

18 A And I -- and I did tell her that I thought --
19 I thought that was a low dose.

20 Q A half-milligram is what he was taking?

21 A Yes. That's a -- that's nothing.

22 Q Okay.

23 A Hardly.

24 Q Anything else Shelby was doing to help curb
25 or help treat the sleep disturbances, or she's dealing

1 with it?

2 A I -- I don't know what else you have in mind.
3 Being a single parent who is working, she does have a
4 roommate that I think kind of, at some level, you know,
5 by virtue of necessity, co-parents him. I don't know --
6 we didn't really get into that, specifically.

7 Q How about like Kayden's diet? I mean you
8 were --

9 A We didn't get into that.

10 Q Sugary foods, sweets, candy, you know? Are
11 you aware of any of those things?

12 A He -- he did say that he loved candy.

13 Q But doesn't every kid?

14 A And how much she gives him, I didn't get into
15 that.

16 Q Okay. And then to finish up, the last
17 criteria on this PTSD diagnosis is not due to substances
18 or anything?

19 A Huh-uh.

20 Q And there's nothing else that Kayden has --

21 A No. I don't think he's doing drugs.

22 Q Okay.

23 A Not yet, at least.

24 Q Yeah. Okay. Well, if he has --

25 MR. TISDALE: We'll keep him off of the drugs

1 until after the trial.

2 BY MR. BEVANS:

3 Q The -- tell me, and then I'll let you go.
4 The difference between -- or how the PTSD created or led
5 to the ADHD, or vice versa; what's the relationship
6 there? Is it because he had ADHD prior, he's more
7 susceptible to PTSD?

8 A So -- so you've got an array of PTSD
9 symptoms.

10 Q Sure.

11 A Some of which are impairing concentration and
12 memory, and some of which, you know, cause hyper-arousal:
13 Activation, high anxiety, moving around a lot. Okay?
14 And then you have ADHD, particularly hyperactive
15 impulsive type, which has to do with moving around a lot,
16 being too excited, and problems with concentration and
17 memory.

18 So you can see, just by the criteria, they
19 overlap somewhat in terms of the concentration in the
20 hyperarousal arousal and the hyperactivity. But,
21 genetically, in other larger studies, show that kids with
22 ADHD are more susceptible to trauma and more likely to
23 develop PTSD. You know, again, that -- that risk factor.

24 Any psychiatric history. And he has a family
25 psychiatric history of ADHD with his uncle. And so

1 he's -- he's more prone to develop ADHD in the face of
2 stress and trauma.

3 And then, if you have PTSD first -- and
4 studies have shown, more in the South -- that's a higher
5 risk of developing ADHD. And so we don't know all about
6 the genetics and the -- and the neurobiology that
7 underlies these disorders. But we know something about
8 them, and we know that some of the mechanisms overlap.

9 The dopamine system, for example, is highly
10 relevant in ADHD. It's also very relevant in PTSD. And
11 the noradrenergic system, the same thing. And so we know
12 that, genetically, they overlap; phenomenologically, they
13 overlap; biochemically, they overlap. And there's a rich
14 literature that I cite that -- that shows that they are
15 risk factors for each other, and so it's a kind of
16 two-way street.

17 And he fits the bill in that he has a family
18 history, but -- and he probably had some early mild
19 symptoms of ADHD. But then when the trauma happened, it
20 really kind of blossomed full -- full force and got
21 worse.

22 Q So you're --

23 A Now --

24 Q Sorry. I didn't mean --

25 A It -- you'll never be able to know whether

1 that would have happened anyway, without the fire.

2 Q So are you prepared to use the key words?
3 Are you prepared, to a reasonable degree of medical
4 certainty, to testify that Kayden's ADHD is a result of
5 the apartment fire?

6 A In part; yes.

7 Q Okay.

8 A Because that's what the literature shows.
9 That's what the research shows, that it aggravates it,
10 enhances the expression of ADHD or the emergence of ADHD.

11 Q So do you have any opinion as to whether
12 Kayden had diagnosable ADHD before the fire, that was
13 exacerbated by the fire?

14 A There's no -- there's no -- there's no formal
15 diagnosis prior to the fire. There is some report of
16 symptoms; yes.

17 Q But so again, sitting here today, your
18 testimony will be that the fire caused Kayden's ADHD?

19 A In a legal sense, if not but for -- you know,
20 if -- if not but for this, he -- he may not have had
21 ADHD; yes.

22 Q Okay.

23 A In a medical sense, we look at causation
24 differently than in a legal sense.

25 Q That's absolutely true. I'm here to ask the

1 legal sense, so.

2 A Yeah.

3 Q Okay.

4 A And -- and I will say at least that it's
5 likely he may have gotten it sooner, and he -- he
6 probably has a worse case of it as a result of the
7 trauma.

8 Q Is there anyway for you to parse out what
9 trauma or what events he -- I'm trying to ask this in an
10 artful way. Is there a way to parse out his symptoms
11 from different traumatic events; i.e., the fire and the
12 death of his father?

13 A The evidence says that he had a fairly normal
14 response to his father's death and that there was no
15 undue, out-of-the-ordinary distress or experience as a
16 result. And that had to do with the nature of his
17 relationship with his father, not being all that close.

18 Q Did he have a normal or abnormal response to
19 the fire? I mean what is the normal response of
20 losing --

21 A That's --

22 Q -- your house to a fire?

23 A That's the thing about PTSD. I mean some
24 people object to it being a psychiatric disorder at all
25 because, at some level, it is somewhat of an expected

1 response. But there -- again, what makes PTSD a
2 psychiatric disorder is that, like all psychiatric
3 disorders and anything else --

4 Q It's always there?

5 A Depression and impairment. Like depression
6 is a -- is a normal mood. It's a normal emotion. But it
7 can be a symptom of mental disorder. It could be a
8 full-on psychiatric disorder that causes severe
9 impairment and -- and distress.

10 And so that's the same with -- with PTSD.
11 The degree of impairment and distress becomes problematic
12 and -- and, we know, highly-related to a host of -- of
13 downstream effects, medically and -- and psychiatrically,
14 and -- and cost to person and society, you know.
15 Enormous -- enormously costly.

16 Q How about --

17 A And these are multiple ways.

18 Q Okay.

19 A Yeah.

20 Q Was there anything that you wanted to add
21 there?

22 A And -- and so that's what makes it a
23 disorder, is -- is my point, and not -- not normal.
24 And -- and people can be, you know, very resilient to the
25 most -- the worst traumas, you know. And we know that

1 the propensity to develop PTSD in twin studies, for
2 example, is inversely proportional to resilience. So the
3 more resilient you are, the less likely you're going to
4 develop a trauma, even in the face -- or PTSD, even in
5 the face of a significant, even life-threatening, trauma.

6 And a lot of that has to do with genetics and
7 predisposition and social support and what resources you
8 have in place and -- and -- and economics and so forth,
9 all the things that help us cope and be more resilient.
10 There's a number of them. Right?

11 Those were -- and -- and being able to --
12 intelligence is -- it -- it -- people who are more
13 intelligent can cope better and are more resilient that
14 if you're on the lower end of the spectrum.

15 Q And so looking at --

16 A People who can use language and process and
17 talk stuff out are more resilient and better able to
18 recover, you know. And he -- he has a deficit in those
19 areas.

20 Q That deficit was pre-existing the fire, too?

21 A Yeah.

22 Q But -- so to go back to the question, there's
23 no way to parse out -- I mean so Kayden did seek
24 treatment. Can we agree that Kayden did seek treatment
25 for post-traumatic stress following the death of his

1 father, some of --

2 A And --

3 Q -- his treatment from --

4 A And following --

5 Q -- the NCVC?

6 A -- the fire; yes.

7 Q Sure. Sure.

8 A It wasn't -- it wasn't the death of his
9 father that prompted him to go to NCVC. It was the fire.

10 Q Well, that's somewhat unfair because you
11 haven't seen all the records.

12 A Okay.

13 Q But there -- there are sole visits where the
14 fire's not mentioned at all in any notes, and then Shelby
15 specifically talks --

16 A Yeah.

17 Q -- 100 percent about Kayden and how he's
18 reacting to his father's passing --

19 A Yeah.

20 Q -- not the fire.

21 A Okay.

22 Q So to the extent Kayden did seek treatment
23 for PTSD related to a traumatic event, being the death of
24 his father -- in addition to the fire; I'll agree with
25 you there, both events.

1 A Yeah.

2 Q There's no way to parse out what symptoms
3 he's having from what event? Or is there?

4 A It's difficult. No; it's not.

5 Q Okay.

6 A And that's -- that's -- that's a problem in
7 treating PTSD, that you, ideally, focus on the most
8 impactful event. But it's -- it's influenced by other
9 traumas in that person's life -- multiple traumas, often.

10 Q And is there a way to --

11 A And it is hard. It is hard to parse it out.

12 Q And is it possible to parse it out?

13 A Well, there are some that are
14 trauma-specific, like avoiding -- avoiding fires and
15 being scared of fires and -- and being triggered by
16 driving by apartments. I mean that has nothing to do
17 with his father's death. I mean that -- that's a more
18 event-related or event-specific.

19 If he has a nightmare about burning up or his
20 cat burning up or is losing his toys, that's, clearly,
21 more related to the fire than it is his father's address.

22 Q And I'll agree with you 100 percent.

23 A Yeah.

24 Q What I'm getting --

25 A So that's how -- that's how you parse it out.

1 Q I'm looking for a dollar amount.

2 A Oh.

3 Q I mean because we've got a \$900,000 figure.

4 And if I say, well, this treatment is, clearly, not
5 related to the fire but this is, I mean --

6 A Well, I wouldn't expect you to pay him
7 because his dad died.

8 Q Me, neither. And that's why I'm trying to
9 figure out, how do you parse that out?

10 A I don't think it's all that relevant.

11 Q Okay.

12 A Because the fact is, he had a
13 life-threatening trauma.

14 Q Okay. But so --

15 A And he -- and there's evidence of negligence.

16 Q And if he needs counseling in his life
17 because his dad passed away and he's angry because he --
18 you know, grows up without a father --

19 A At some level, it -- it doesn't matter
20 because it's the straw that breaks the camel's back.

21 Q Okay.

22 A It's -- it's -- it's what tips over to -- to
23 get PTSD. And he didn't develop -- he developed PTSD
24 symptoms well before his father died.

25 Q But he didn't seek any treatment for PTSD

1 at --

2 A It doesn't matter. He developed symptoms.

3 Q Let me finish my sentence, please.

4 A Sorry.

5 Q He didn't seek any treatment until
6 afterwards, and he --

7 A Well, it was during COVID, so. You know,
8 that --

9 Q I would disagree with you there, Doctor. The
10 fire was in May of 2019.

11 A Okay. All right. Fair enough. My mistake.

12 Q In any event, there's not a way to parse it
13 out, dollar amount wise?

14 A You know -- you know what? Most people don't
15 seek treatment for PTSD --

16 Q Okay.

17 A -- or their psychiatric disorders.

18 Q Okay. And --

19 A That doesn't mean that it's not impairing or
20 distressing or a problem.

21 Q Any way pull out Kayden's symptoms in the
22 traumatic event of going out the window versus the
23 traumatic event about the fire?

24 A Not to my knowledge.

25 Q I mean does Kayden talk about one more than

1 the nother?

2 A He didn't mention going out the window, per
3 se.

4 Q He's upset about his house burning down and
5 the actual act of the fire itself?

6 A Yes.

7 Q Okay.

8 A And whether his mom's all right.

9 Q Did Shelby tell you those thoughts increased
10 after the death of his father?

11 A I don't recall specifically hearing that.

12 Q Okay.

13 A I think ...

14 Q Would that be a natural reaction for a child
15 who lost a parent: To be more worried about the parent
16 who's living still?

17 A It could.

18 Q Okay.

19 Dr. Brewerton, I think I am all done. I
20 appreciate your time.

21 A Thank you.

22 Q Thank you, sir.

23 MR. TISDALE: I have no questions. And I'd
24 like the record to reflect this is the first deposition
25 that I can recall being in that I have no objected to a

1 single question.

2 MR. BEVANS: Thank you, Tom. I'll take that
3 as a compliment, one way or another.

4 (The deponent was explained his right to read and
5 sign the transcript of the deposition and chose to waive
6 that right.)

7 (The deposition concludes at 1:26 p.m.)
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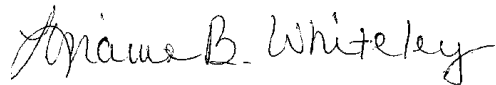
CERTIFICATE OF REPORTER

I, Lorraine B. Whiteley, Court Reporter and Notary Public in and for the state of South Carolina, do hereby certify that the aforementioned deposition of TIMOTHY D. BREWERTON, M.D. was recorded by me and transcribed through computer-aided transcription by me to the best of my ability.

I FURTHER CERTIFY that the foregoing transcript is a true and correct transcript of the testimony given by the said deponent at the time and place specified.

I FURTHER CERTIFY that I am neither attorney nor counsel for, nor related to nor employed by any of the parties to the action in which this deposition is taken, neither am I financially interested in this action.

IN WITNESS WHEREOF, I have set my hand and seal this 18th day of July 2021.



Lorraine B. Whiteley
Notary Public for South Carolina
My Commission Expires: 4/7/2027

1 understand just a little bit better.

2 A. So on the outside of the foot --

3 Q. Is it the left foot?

4 A. Her left foot, correct. So on the
5 outside of her left foot in the mid -- probably
6 the midportion behind. So if I were to describe
7 it on the hand, these are the metacarpals. In
8 the bones -- in the foot, it's a metacar -- or a
9 metatarsal. So on the lateral aspect or the
10 outside of the foot in between the metatarsals
11 and the calcaneus, there is a bone that's shaped
12 like a cube. And that's where it get it -- gets
13 its name, the cuboid.

14 Q. Cuboid?

15 A. Correct.

16 Q. Now, did she -- was -- was there a
17 fracture there at that place, the site that you
18 just described?

19 A. She had an MRI prior to seeing me, and
20 she was being treated by Dr. Marino, a
21 podiatrist, and had been diagnosed with a cuboid
22 fracture. And I was seeing her sometime after
23 the injury.

24 Q. Did you confirm that she did have a
25 cuboid frac -- fracture?

1 A. I did not have the MRI available to me.
2 I had the MRI report, which confirmed a cuboid
3 fracture.

4 Q. Cuboid -- boid frac -- fracture?

5 A. Correct.

6 Q. Now, did she -- did you obtain a
7 history --

8 A. I did.

9 Q. -- of what happened? And would you
10 describe what that is for the benefit of the
11 jury, please?

12 A. Yes. I'll read it from me -- from my
13 independent medical exam directly. 26-year-old
14 female who -- she stated that she jumped out of a
15 second-story building due to a fire. It was at
16 Moncks -- in Moncks Corner at the Santee Run
17 Apartments. She stated that there was a grease
18 fire. She said the fire started at midnight.
19 She woke up at 12:35 in the morning. States that
20 there was no access to the stairs at the time.
21 She said there was a lawsuit due to the fact the
22 smoke detector did not go off. She states that
23 she had to toss her son out of the window to her
24 neighbors, and then she jumped out of the -- out
25 herself.

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) 2019-CP-08-02808

COUNTY OF BERKELEY)

SHELBY TREHUS,)
) PLAINTIFF,)

vs.) TRANSCRIPT OF RECORD
)

SANTEE RUN APARTMENTS, A)
) SOUTH CAROLINA CORPORATION,)
) AND SHELBY JEAN COLLEY,)
) DEFENDANTS.)
)

)
) K.M., a minor, By His)
) Guardian Ad Litem SHELBY)
) TREHUS,)

) PLAINTIFF,)

vs.)
)

SANTEE RUN APARTMENTS, A)
) SOUTH CAROLINA CORPORATION,)
) AND SHELBY JEAN COLLEY,)
) DEFENDANTS.)
)

April 18, 2022
Berkeley, South Carolina

B E F O R E:

THE HONORABLE BENTLEY PRICE, JUDGE

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

THOMAS S. TISDALE, JR., ESQ
Attorney for the Plaintiff

SHAWN M. BEVANS, ESQ.
Attorney for the Defendant

Transcribed by:
CHERYL A. SMITH
Circuit Court Reporter
from DCRP, Digital
Courtroom Recorder
Project

INDEXPAGE

There were no witnesses called.

EXHIBITSNODESCRIPTIONIDEVD

There were no exhibits introduced.

P R O C E E D I N G S

(WHEREUPON, proceedings commenced at 10:09 AM.)

THE COURT: All right. This is your motion for a new trial, so be happy to hear from you.

MR. TISDALE: Thank you very much, Your Honor. Good morning.

THE COURT: Good morning, sir.

MR. TISDALE: I'll stand if it's agreeable.

THE COURT: Sure. Just state your name for the record.

MR. TISDALE: Thomas Tisdale on behalf of the moving party, the plaintiff in this action.

Your Honor, we have made a motion for a new trial from a verdict by the jury in this case, Shelby Trehus versus the apartment complex in Berkeley County.

The verdict rendered by the jury we do not believe reflects the evidence in the record of the case and is incomplete. A new trial should be granted, and I ask myself and hope to persuade the Court that it should be for these reasons.

First, there is a breach of contract cause of action in this complaint, and the breach of contract was instructed by Your Honor in the charge to the jury. The jury did not make any finding on that, and has not decided at all one way or the other about the breach of contract

1 action.

2 Another thing we excepted to and objected to, Your
3 Honor, is Your Honor's -- when Your Honor declined to
4 charge gross negligence in the case as we believe there is
5 substantial evidence to support a charge to the jury on
6 gross negligence which was pled in a separate cause of
7 action in the complaint. We think the evidence -- the
8 evidence reflects substantial evidence that gross
9 negligence could have and should have been found by the
10 jury. And I will say in a comment later that certainly
11 they found evidence of negligence but were not allowed to
12 consider the question of gross negligence.

13 Now, Your Honor, the whole case involved negligence
14 surrounding the failure to maintain and replace an
15 out-of-date smoke alarm. And if Your Honor, who will
16 remember, I'm certain, from the trial, the plaintiffs --
17 minor plaintiff and his mother's lives were saved only
18 because they found it necessary to jump out of a window,
19 second floor, to avoid dying in the smoke in their
20 apartment because of the failure of a smoke alarm to warn
21 them of the danger. And they are alive as we know, but
22 only because of the courage of the mother to drop them out
23 of the window.

24 There was a question the jury found the negligence of
25 the defendant was not the proximate cause of any injury.

1 Actually, in this matter, Your Honor, the undisputed
2 evidence is that it could be nothing but the proximate
3 cause of the injury because all of the evidence concerning
4 negligence was based on the failure of the smoke alarm to
5 operate on this occasion. There is no evidence otherwise
6 that it did. And the only testimony and only evidence is
7 it did not and that the defendant had a duty to maintain
8 that alarm, which they did not, and were unable to produce
9 any records that the smoke alarm was ever inspected.

10 Now, Your Honor, as I have stated earlier, the jury
11 did find evidence of negligence and submitted it in their
12 verdict, but they did not find there was any proximate
13 cause. There was only one proximate cause of this whole
14 thing, and that is what is supported by the evidence.

15 So, Your Honor, we believe that because the breach of
16 contract was not considered by a jury but charged by the
17 Court, we're entitled to a new trial. We believe that
18 we're entitled to a verdict for damages and -- from a new
19 trial on account of the -- on account of the serious
20 damages that are undisputed in the case, the absolute
21 finding of negligence. And all of this is undisputed, and
22 a verdict in the plaintiff's favor as the Court will
23 consider, I hope, the evidence and the law supports.

24 So, Your Honor, on the breach of contract matter, we
25 are certainly entitled to a new trial on that because it

1 was pled, it was argued, it was instructed to the jury,
2 and the jury did not consider it.

3 And so, Your Honor, we were not asked, unfortunately,
4 to review the verdict form before it was undertaken by the
5 jury, in fact, we weren't -- until after the jury was
6 discharged and we were finally able to get a copy of the
7 verdict form after asking the clerk of court to send it to
8 us, which they did the week after the trial.

9 So I think that if Your Honor considers all of the
10 evidence and all of the evidence in the case, there is
11 nothing in there to support the verdict of the jury, and
12 we ask for a new trial be granted for those reasons.

13 Thank you.

14 THE COURT: Thank you, sir.

15 MR. BEVANS: May it please the Court. Shawn Bevans
16 for the respondents, Santee Run Apartment Complex in this
17 case.

18 First, from, I guess, a paperwork standpoint, I want
19 to point out we filed a memorandum in opposition to the
20 plaintiff's first short memorandum kind of by the Court's
21 deadline they gave us for the 15 days after trial. After
22 that time frame, plaintiffs then supplemented with a more
23 detailed memorandum. I filed a reply in response to that.
24 I just want to make sure the Court has everything for the
25 record more than anything else.

1 Addressing plaintiff's points, as the Court knows, a
2 jury trial -- a jury's decision should not be disturbed
3 unless it's wholly unsupported by the evidence. The main
4 factor here, Your Honor, that I argue to the Court and to
5 the jury, at least during our three-day-long trial, was
6 they didn't have the smoke alarm to prove it didn't work.
7 That was a main factor in this. Ms. Trehus, if you'll
8 recall, came in after the fire, was able to get back into
9 her apartment which was not destroyed by any -- the fire
10 at all. There was a firewall in between her unit and the
11 remainder of the unit that the two Moncks Corner Fire
12 Department officers, Captain Corey Denny and chief Robert
13 Gass, both testified to.

14 She took a picture of the alarm, never took a video,
15 never pressed the button. She had testified herself that
16 she had changed the batteries in it prior to the fire. So
17 there's simply no evidence the alarm didn't work. Coupled
18 with the pictures from inside her fire [sic], there's
19 nothing to show that the smoke threshold inside
20 plaintiff's individual unit would have risen to a level to
21 even trigger the alarm prior to her exiting the building.
22 Testimony from the plaintiff herself indicated that she
23 was standing upright walking through her apartment for
24 several minutes before opening the door to try to figure
25 out what the cause of the fire was thinking it might be

1 something in her apartment.

2 She then opened the exterior door of the apartment
3 which is when she saw smoke in the exterior hallway. If
4 you'll recall, this apartment complex is more like a motel
5 where the front door opens to the outside breezeway.

6 Smoke came in then. She immediately shut the door,
7 went to her son's room where she testified there was no
8 smoke at all in his room, opened the window and then she
9 lowered herself out.

10 So to address the points there, Your Honor, I think
11 the evidence supported -- the evidence presented at trial
12 strongly supports a verdict in favor of the defendants
13 from both plaintiffs. And for those reasons, we think
14 plaintiff's motion should be denied.

15 But to address the specific points brought up by
16 plaintiff, they're really set forth in detail in my reply
17 memorandum filed April 7th. Just to save the Court's
18 time, I'll refer to that but hit the key points.

19 Quite simply put, the failure to charge gross
20 negligence doesn't warrant a new trial. Again, the facts
21 here simply don't warrant a charge of gross negligence.
22 Gross negligence is ordinarily a question -- a mixed
23 question of law, in fact. But if the evidence supports
24 one reasonable inference, the question becomes directly a
25 matter of fact for the Court to draw.

1 Here all the inferences we know of showed that my
2 client provided tenants the alarms in their buildings,
3 instructed tenants on the importance of changing the
4 alarms. Ms. Trehus knew to do so by evidence of her
5 actually testifying that she did so. There's evidence
6 that other tenants would come to my client with a
7 complaint about the alarms not working. She would
8 immediately fix them. In this case, Your Honor,
9 Ms. Trehus provided no notice, written or verbal, to my
10 client about the alarms not working.

11 And then most importantly from a gross negligence
12 standpoint in my mind, Ms. Trehus's granddaughter and
13 great grandchildren live in the apartment as well. She
14 was managing these apartments with her family in there.
15 There's no evidence to show that she lacked any care, any
16 evidence of due care whatsoever. In fact, the evidence
17 showed that she did take due care and she just wasn't
18 provided any instructions by the plaintiff about the alarm
19 being wrong -- being faulty.

20 Similar, Your Honor, the failure to address the
21 breach of contract action in the jury verdict form doesn't
22 warrant a new trial either. This is quite patently so
23 because there was no objection raised during any point in
24 trial about any imperfections with the verdict form. We
25 looked through the transcript. I recall your clerk coming

1 and asking the parties to submit verdict forms. I don't
2 recall any objections or any questions being raised by
3 either party about the content of the verdict forms, your
4 reading of the jury charges, your explanation to the jury.
5 And if I remember correctly, Your Honor even took some
6 extra time with the foreperson of the jury to make sure it
7 was unanimous. It was all walked through with the jury.
8 They responded affirmatively, the forelady did directly to
9 you. I believe all the other jurors were nodding in
10 agreement that that verdict was their rendering and their
11 decision as to the whole details of the case. And at no
12 point in time did plaintiffs ever raise any objections
13 about the content of that.

14 Your Honor, I think a contemporary objection is
15 required to preserve that issue here. Simply an objection
16 to a jury -- to a jury charge or a verdict form cannot be
17 raised for the first time by a motion for a new trial
18 because orderly procedure requires that objections be
19 timely made. That's a quote from a South Carolina case
20 Munn v. Assett, 226 S.C. 54. There's a whole line of
21 cases. Again, I won't go through them all, but they're
22 all in my reply brief, Your Honor. We would create a
23 reference to those today.

24 For those reasons, Your Honor, we think that
25 plaintiffs are now -- after he heard the verdict and

1 didn't like it, instead of raising it at the time, he's
2 now seeking to raise it at a posttrial motion that he
3 didn't preserve for evidence. So therefore, we believe
4 he's precluded to raise it at this time.

5 Furthermore, Your Honor, onto the proximate cause
6 issue, it's very possible that the jury found the
7 defendant, my client, was negligent in not replacing the
8 alarm, but they found that it wasn't the proximate cause
9 because the smoke alarm wasn't defective. You heard both
10 fire chiefs, Captain Corey Denny and -- Captain Corey
11 Denny testified that although it's recommended, not
12 required, the smoke alarms be replaced, it's quite
13 possible the alarm in Shelby's apartment, though old, was
14 still functional. That's quoting Captain Denny's
15 testimony from trial, Your Honor.

16 In addition to Captain Denny, he was also testifying
17 that the smoke alarms were placed so high up so that it
18 has a chance to alert you before the smoke gets down to
19 the level that would be breathed by any person. Again,
20 there's no evidence the alarm was functioning or not. We
21 don't have the alarm. And that's something argued to the
22 jury that the plaintiffs have the burden of proof it
23 wasn't functioning, not -- not my client. And, in fact,
24 there's evidence from the fire department personnel that
25 it could have been working.

1 Another point to address on the proximate cause
2 issue, Your Honor, is that the jury could have very well
3 determined that Ms. Trehus's decision to jump out the
4 window versus trying to run to the stairs, while not
5 negligent, was a cause of her child's injuries. We don't
6 have a res ipsa in South Carolina just because there is
7 injury means that a party has to be negligence. You can
8 still have injuries sustained by nonnegligent actions and
9 a jury could have determined that. I'm not saying they
10 did, Your Honor, but it's something they could have
11 determined which would support the decision of my client
12 not being the proximate cause.

13 Regarding Kayden's injuries, if you'll recall, I
14 think a better half of a full day if not a day and a half
15 of trial focused on the two competing expert testimonies
16 about Kayden's injuries. Kayden had a number of issues
17 that were well documented to be pre-existing prior to this
18 fire. In fact, Kayden didn't even seek treatment for any
19 alleged PTSD symptoms until I believe it was February of
20 2020 -- well, it was February. I don't know if I've got
21 the year right here. But it was only weeks after his
22 father was killed in a motorcycle accident that he learned
23 about as well. And so there's evidence of a litany of
24 other factors that have nothing to do with the apartment
25 fire that could have had effects on the minor's life, and,

1 in fact, that's what our expert testified to live at trial
2 after he had met with Kayden and conducted an in-person
3 IME with Kayden.

4 Lastly, Your Honor, just in closing, as to
5 plaintiff's argument about inconsistent verdicts, we don't
6 believe there was an inconsistent verdict here. We
7 believe that in this case both -- the jury found for the
8 defendants in both cases. We think there is case law that
9 says an impermissibly and inconsistent verdict where both
10 plaintiffs should have won or both plaintiffs should have
11 lost, here, the jury found that both plaintiffs lost. We
12 don't think that's an impermissibly inconsistent verdict.

13 Anything else, Your Honor, we would just simply hold
14 as harmless error. For example, with the breach of
15 contract, the plaintiffs -- or the jury still came back
16 and found no proximate cause and no damages. So anything
17 that the remainder of plaintiff's arguments we believe
18 would rise to the level of harmless error that wouldn't
19 warrant a new trial in this case, and so we would
20 respectfully request you deny plaintiff's motion.

21 THE COURT: Do you have a copy of the verdict form?

22 MR. BEVANS: Not with me, Your Honor, but it's filed.

23 MR. TISDALE: Your Honor, I think we do, if it's not
24 all marked up.

25 THE COURT: Okay.

1 MR. TISDALE: I believe we do. In fact, I do, but,
2 Your Honor, it has a few of my notes on it. Would you ---

3 THE COURT: Well, I mean, does it got a ---

4 MR. TISDALE: Sir?

5 MR. BEVANS: There's a clean copy e-filed. I don't
6 know how quickly you can pull it up.

7 MR. TISDALE: Mine does have notes on it, and other
8 than that, it's -- let me see if I've got a better one in
9 here. I'm sorry mine's cluttered. You can -- you can
10 look at it but ignore my handwriting. It's not --
11 handwriting's pretty sorry anyway.

12 THE COURT: Okay. I'll take a look at it.

13 MR. TISDALE: We can have a clean copy to
14 replace . . .

15 (Pause in proceedings.)

16 THE COURT: All right. Anything else, Mr. Tisdale?

17 MR. TISDALE: Your Honor, If I could just very
18 briefly.

19 THE COURT: All right.

20 MR. TISDALE: One thing I did not mention is on the
21 matter of the finding of negligence by -- against the
22 defendant, they found that the defendant was negligence as
23 to Shelby Trehus, the mother of the infant, but for some
24 reason, they did not find the same negligence after for
25 both the 3 or 4-year-old son. And that in itself is a

1 defect in their verdict.

2 THE COURT: How so? I mean, they could figure --
3 they could just determine that the child didn't do
4 anything negligently. I mean, mom threw him out the
5 window.

6 MR. TISDALE: Well, I mean, but if the negligence
7 applies to the mother, how could it not apply to the son?
8 There's a --

9 THE COURT: Because he had no intent of being thrown
10 out the window. She picked him up, threw him out. Oh,
11 you're talking about the negligence of the -- got it.
12 Okay. I see what you're saying.

13 MR. TISDALE: Negligence. Yes, sir. The negligence.
14 And that is a definite conflict in the verdict of the jury
15 that should warrant a new trial in and of itself. But I
16 think the most important part that does -- of this that
17 does warrant clearly a new trial is that the jury simply
18 did not consider the cause of action for breach of
19 contract by the defendant which the Court instructed them
20 to do.

21 THE COURT: All right.

22 MR. TISDALE: And we did not know that was omitted on
23 the verdict form until the following week after trial.

24 Now, just very quickly, we did not get a copy of the
25 verdict form until a week after the trial, and we, within

1 the rules, our Rule 59, I believe, filed a motion for a
2 new trial on the several grounds as soon as we were able
3 to see what the problems had been.

4 So, Your Honor, we think that the negligence is
5 clear. This is one case in which the facts are almost
6 100 percent undisputed. And there's nothing in this
7 record that will show any conclusion to any reasonable
8 person other than the plaintiff was entitled to a verdict,
9 which they did not get, especially on the breach of
10 contract which was not even considered.

11 Thank you very much, Your Honor.

12 THE COURT: All right. Anything as a follow-up?

13 MR. BEVANS: No, Your Honor. Just to restate again
14 my brief. Everything's written in there.

15 MR. TISDALE: Our brief, too. We've got all the
16 authorities in there.

17 THE COURT: All right.

18 MR. TISDALE: I failed to mention that.

19 MR. BEVANS: Yeah. We think the lack of objection,
20 the harmless error are key determinative issues in this
21 matter.

22 THE COURT: All right. You'll have my answer by the
23 end of the day.

24 MR. TISDALE: Thank you, sir.

25 MR. BEVANS: Did you want to hear -- we had a second

1 motion as well. Did you want to hear that now or ---

2 THE COURT: Yes.

3 MR. BEVANS: This will be very brief, I believe.

4 THE COURT: Okay.

5 MR. TISDALE: Oh, yeah. Excuse me.

6 MR. BEVANS: Your Honor, if it please the Court, this
7 -- again, Sean Bevans on behalf of the defendants, Santee
8 Run Apartments.

9 This is a posttrial motion for costs. My clients
10 filed offers of judgment in this case ahead of trial. The
11 first round of offers of judgment were filed on
12 October 7th of 2020. We had filed an offer of judgment on
13 behalf -- in favor of Ms. Trehus for \$50,000 and benefit
14 of the minor for \$10,000. Right before trial on January
15 -- those offers were allowed to -- those were rejected,
16 allowed to expire. Two years -- almost two years later
17 right before trial, January 10, 2022, we had filed an
18 offer of judgment for Ms. Trehus in the amount of \$75,000
19 and an offer of judgment to the minor in the amount of
20 \$50,000. Both of those offers were, again, rejected. And
21 as the Court's heard, the jury came back with a verdict
22 favorable to the defendants.

23 In my motion for cause, I set forth not anything
24 related to attorneys fees, Your Honor, but administrative
25 filing and other court costs from the date of judgment. I

1 have with me and I submitted up to the Court and filed as
2 exhibits all of our invoices for various court reporter
3 fees such as that. They're broken down. It's 14 items.
4 I went and dated them back to after the date of the first
5 offer of judgment, the October 7, 2020, offer of judgment.
6 Adding up all those, the total is \$7,507.45. And we would
7 request that, pursuant to Rule 68, my client be awarded
8 cost in the matter for those administrative items, filing
9 fees and transcripts and whatnot that we had to order to
10 prepare for trial.

11 THE COURT: All right. I'll take that under
12 advisement.

13 MR. BEVANS: Thank you, Your Honor.

14 MR. TISDALE: Your Honor, thank you very much.

15 THE COURT: All right.

16 (WHEREUPON, proceedings concluded at 10:34 AM.)
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25

1
2
3 CERTIFICATE OF REPORTER

4 STATE OF SOUTH CAROLINA)

5 COUNTY OF BERKELEY)
6

7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South
9 Carolina, do hereby certify that the foregoing is a true,
10 accurate and complete Transcript of Record, to the best of
11 my ability based on the audio and notes provided, of the
12 digitally recorded proceedings had from the DCRP, Digital
13 Courtroom Recorder Project, and evidence introduced in the
14 trial of the captioned case, relative to appeal, in the
15 Court of Common Pleas for Berkeley County, South Carolina,
16 on the 18th day of April, 2022.

17 I do further certify that I am neither of kin,
18 counsel, nor interest to any party hereto.

19
20 July 30, 2022

21
22 Cheryl A. Smith

23 Cheryl A. Smith, CVR-M

24 Court Reporter
25

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

COURT OF COMMON PLEAS
2019-CP-08-02808

Shelby Trehus)

) TRANSCRIPT OF RECORD

-vs-)

) February 22, 2022 - Day 1

Santee Run Apartments)

) Moncks Corner, South Carolina

B E F O R E:

The Honorable Bentley Price, Judge

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

Thomas S. Tisdale, Jr., Esquire
Salvatore Giancarlo Davi, Esquire
Attorneys for the Plaintiff

Shawn M. Bevans, Esquire
Attorney for the Defendant

Reported By:

Yvestre Torres, OCR
Circuit Court Reporter for the
Ninth Judicial Circuit

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
P-1	Smoke Alarm Photo	44	47
P-2	Fire Photo	48	48
P-3	Apt. After Fire Photo	51	51
P-4	2nd. Fl. Window Photo	53	53
P-5	Roof After Fire Photo	56	56
P-6	Kayden Montagna's Photo	57	58
P-7	Kayden & Shelby Photo	58	58
P-8	Fire Extinguisher Photo	122	122
D-1	Kayden's Medical Record	94	94
D-2	Kayden's School Records	4	4
D-3	Brewerton Retainer Agreement	4	4
D-4	Kayden's School Records	4	4
D-5	Shelby's Rental Agreement	117	117

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

INDEX

<u>OPENING STATEMENTS</u>	<u>PAGE</u>

Mr. Tisdale	12

Mr. Bevans	18

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>

Shelby Trehus

Mr. Tisdale	38			

Mr. Bevans		63		

Mr. Tisdale			121	

1 (Defendant's Exhibit Nos. 2 through 4 were marked for
2 identification.)

3 (Defendant's Exhibit Nos. 2 through 4 were entered into
4 evidence.)

5 THE COURT: All right. Thank you very much.
6 So let's just talk about a plan of attack. Be seated
7 please. What is -- who do you think your first witness
8 is going to be after opening statements?

9 MR. TISDALE: Ms. Trehus, the Plaintiff --
10 one of the two Plaintiffs.

11 THE COURT: All right. And then who's next?

12 MR. TISDALE: Your Honor, I believe who will
13 be next is -- if we -- that's what we planned any way.
14 Ms. Trehus, two people from the local fire department
15 who put out this fire that occurred in her apartment
16 building. So that would be four witnesses -- I mean,
17 three. Then Dr. Corey by video, and then Dr. Timothy
18 Brewerton by video, and that's it.

19 THE COURT: Okay. All right. Do any
20 of the first three witnesses have any of these motions
21 that would need -- except for the chief, was the only
22 one that I saw in there, correct?

23 MR. BEVANS: That's right, yes, sir.

24 THE COURT: All right. And so ---

25 MR. BEVANS: And Dr. Brewerton is a subject

1 to a few motions, but he's the expert for video
2 tomorrow.

3 THE COURT: Right. So we don't have to
4 worry about that just yet. And so are the firemen here?

5 MR. TISDALE: They're on call, but we got
6 them ready.

7 THE COURT: Okay.

8 MR. TISDALE: Right?

9 THE COURT: All right. Let's see how far
10 we can get. I don't want to sit here and do all the
11 motions because everybody is here already.

12 MR. BEVANS: That's fair.

13 THE COURT: I didn't know that there were
14 all these motions out there. I would have come back
15 a little sooner. All right. Anything else before
16 we get started?

17 MR. TISDALE: We're ready to go, Your Honor.
18 Could you tell us where in the courtroom where the jury
19 will be seated?

20 THE COURT: I have no clue. This is the
21 first courthouse I've seen this happen. Every other
22 courthouse I've been to they sit in the jury box,
23 so I don't know.

24 MR. TISDALE: I've never seen it this way.

25 THE COURT: I don't know how they do it.

1 MR. TISDALE: I would just like it to be
2 kind of a cluster, if possible, so we could speak to
3 them as a group.

4 THE CLERK: They'll be seated like they were
5 this morning, on both sides.

6 MR. TISDALE: We can't sit them on one side?

7 THE CLERK: That will be up to the clerk.

8 THE COURT: I can't override the clerk on
9 that part of it.

10 THE CLERK: They'll be able to see you
11 because the TV will be turned to them -- or the
12 witness rather. They'll be able to see the witnesses,
13 and you'll have the microphone.

14 MR. TISDALE: The witness is going to be up
15 here?

16 THE CLERK: The witness will be here, but
17 they will be able to see them on the TV, on the monitor.

18 THE COURT: Okay.

19 MR. BEVANS: Your Honor, there's one thing
20 I want to address before the jury comes in. One of
21 the -- one of the jurors, looking during lunch, she
22 works at Berkeley Community Health -- Berkeley Mental
23 Health. Kayden is a patient there and treats there.
24 Kayden, the minor Plaintiff.

25 MR. TISDALE: Well, if he hasn't had

1 anything to do with him, doesn't know about him,
2 that wouldn't be a problem.

3 MR. BEVANS: We don't know. I just saw
4 she worked there. So, I don't know if she's going
5 to be familiar with his injuries, or if she's going
6 to hear that he treated there, and then, you know,
7 hold her practice in regard if he treated there.

8 THE COURT: All right. What's his name?

9 MR. BEVANS: It was a female, Your Honor.
10 Juror No. 20, Iris Hood.

11 THE COURT: All right. She works where?

12 MR. BEVANS: She works for Berkeley Mental
13 Health, and that's where I believe Kayden did some
14 treatment for this fire afterwards.

15 THE COURT: All right. Kayden Montagna.

16 MR. TISDALE: Montagna, I think.

17 MR. BEVANS: And I apologize for not
18 bringing it to the Court's attention. I didn't catch
19 it.

20 THE COURT: We'll ask her. All right.
21 Anything else?

22 MR. TISDALE: Judge, I think that's about
23 it. We're ready for opening statements.

24 THE COURT: All right. Y'all can bring them
25 out.

1 MR. BEVANS: Judge, you're going to hear the
2 pretrial motions when?

3 THE COURT: As needed at this point, you see
4 what I'm saying. Well, there's not even a pretrial
5 motion as to her.

6 MR. BEVANS: No, there's not. Yeah,
7 I'm with you.

8 THE COURT: So, I'm just going to see how
9 far we get.

10 MR. BEVANS: Well, there's some pretrial
11 motions about photographs and some different evidence.
12 I don't know if Ms. Trehus is going to try to bring
13 it in or not.

14 MR. TISDALE: She's going to testify about
15 some of our photographic exhibits that show the building
16 that burned up with her in it.

17 MR. BEVANS: That's one of my motions.

18 THE COURT: You don't want to show the
19 building that burned up?

20 MR. BEVANS: Well, I don't see if she's --
21 the crux of their case is that she is jumping out of the
22 fire -- out of the building that's on fire.

23 THE COURT: Okay.

24 MR. BEVANS: So once she's out of the
25 building, she's on the ground, then she's walking around

1 taking pictures. Presumably, the fire is growing,
2 continuing to spread, and she's totally out of danger
3 with her son. So, I feel that the probative value
4 is pretty much nothing if she's already out safely
5 on the ground.

6 The prejudicial value shows the conditions
7 continually different than what they were when, one,
8 Ms. Trehus woke up, and, two, when she got out of the
9 building, and then is walking around taking pictures
10 of a fire that engulfed the building, but she's already
11 out beforehand.

12 THE COURT: I don't have a problem with
13 you making that argument. But, I mean, obviously,
14 I still think the relevancy is certainly more probative
15 than it's prejudicial. So, I will allow them to show.

16 MR. BEVANS: Okay.

17 MR. TISDALE: Thank you.

18 THE COURT: Bring them out.

19 (Jury enters the courtroom at 2:03 p.m.)

20 THE COURT: All right. Thank you very much.
21 Ms. Simmons, have you thought about whether you ---

22 THE FORELADY: I'm good.

23 THE COURT: You're okay with it?

24 THE FORELADY: Yes.

25 THE COURT: All right. I just don't want

1 to force you to do anything that you don't want to do.
2 Y'all can be seated. All right. Madam Clerk, swear
3 them in.

4 THE CLERK: Ladies and gentlemen of the
5 jury, please stand to be sworn.

6 THE COURT: I'm sorry. I told y'all to sit
7 down too early.

8 THE CLERK: I need you to raise your right
9 hands, please.

10 (Whereupon, the jury panel was duly sworn.)

11 THE CLERK: Thank you. Please be seated.

12 THE COURT: All right. All right. Thank
13 you so very much for being back on time. So just real
14 briefly, I just want to kind of give you the lay of the
15 land. Obviously, this is the Plaintiff's side; this is
16 the defense's side, and so you'll hear me refer to them.

17 These are our five deputies and bailiffs
18 that are here to help out. You met some of the
19 wonderful bailiffs that we have here in Berkeley County.
20 They'll be responsible for taking you in and out and
21 whatever needs that you may have, what we'll do for
22 lunch maybe one day and those types of things.

23 This is our wonderful clerk, Ms. Valerie,
24 and our wonderful court reporter. If you hear me yell
25 at people, telling them to slow down or whatever the

1 case may be, that's because she has to take down
2 everything verbatim. So that's why sometimes I'll do
3 that.

4 This is Amy, my law clerk, and she is in
5 charge of basically just getting whatever we need
6 to allow the trial to continue to flow smoothly.
7 You'll see -- her and I pass a lot of notes, 99.99
8 percent of the times it's what do you want to do for
9 lunch. But the other 0.01 percent of the time it's
10 never about this case. It's, hey, somebody called the
11 office that needs to speak with you at a break,
12 or, hey, you know, a juror raised their hand and wants
13 a break, whatever. So don't think that by us
14 communicating whatsoever has anything to do with this
15 trial because I guarantee you it does not.

16 Right now what I'm going to allow
17 the parties to do is give their opening statements.
18 That's simply just a statement by the parties indicating
19 what they believe the evidence is going to show during
20 this trial. It's not to be considered as evidence by
21 yourself, just simply what they believe that this trial
22 is going to show, all right.

23 I'm going to allow the Plaintiff to go first
24 and then the defense to go second. And at the close
25 of that, I'll allow the Plaintiff to begin their case

1 by calling their first witness, all right. And just
2 for planning purposes, we never stay past five, all
3 right, so don't worry about that in the slightest.
4 I always err on the side of leaving early so we can beat
5 the traffic, so don't worry about that at all.
6 All right.

7 MR. TISDALE: Your Honor, thank you very
8 much. Do you have any preference where I should not
9 stand for this?

10 THE COURT: This is y'all's courtroom for
11 the remaining balance of the trial. Y'all can go freely
12 as you want. I've got no problems whatsoever.

13 MR. TISDALE: I don't want to walk out among
14 the crowd.

15 THE COURT: Not a problem.

16 MR. TISDALE: I want to be heard.

17 THE COURT: I understand.

18 MR. TISDALE: My name is Thomas Tisdale.
19 As you heard me say a little while ago I think,
20 we represent Shelby Trehus, who's sitting next to
21 us at this table. What -- this is a new thing for us.
22 As the judge might have said, this is the first time in
23 my career, which is now reasonably long, that the jurors
24 sat in the courtroom. Now they're usually in the jury
25 box, but here we are. I get accused sometimes of

1 talking too loud. So, I think you'll be able to hear
2 me. But if you don't, just let me know because I would
3 like to be heard.

4 What I would like to do, number one,
5 is thank you for serving on this jury. And I want to
6 take a few minutes now in what the judge has described
7 as an opening statement just to tell you why we are
8 here, what this case is about, and what is some of the
9 evidence we expect you will have.

10 As the judge also said, the evidence is from
11 the witnesses who are going to be on the witness stand
12 right up there and through questions throughout this
13 trial. We don't think this is going to be a very long
14 trial. Perhaps, we can finish up tomorrow or soon
15 thereafter.

16 Now we are going to have Shelby Trehus --
17 there are two cases which are put together. Shelby
18 Trehus is one of the two claimants or Plaintiffs.
19 The other one is her son, who right now is between five
20 and six years old.

21 What occurred, and it occurred on May the
22 29th, 2019. She lived in an apartment with her son
23 called Santee Run Apartments here in Moncks Corner.
24 We will be showing you some exhibits when her testimony
25 takes place in a little while, showing you some of the

1 facts about what happened on this night of May 29th,
2 2019.

3 She and her son rented it -- she rented it,
4 and it was a home for her son and her, rented it from
5 Santee Run Apartments, represented by Mr. Bevans.
6 And they were asleep on this night, pretty much in the
7 middle of the night. And all of a sudden, Ms. Trehus
8 awoke in the middle of the night, and her apartment was
9 filled with smoke, with the fire in the hallway so that
10 she could not open the door to get out of the door.
11 So she had to find another way to escape the fire with
12 her son.

13 Now what the judge said, it was very
14 important, what I say is evidence is not evidence, it's
15 what I think is the evidence. The real evidence comes
16 from the witnesses on the witness stand. So, I'm doing
17 my best not to say anything that is not what the
18 evidence will show, but it's the witnesses who give you
19 the evidence.

20 So what happened? In the middle of this
21 night, she awoke. You could imagine what she must have
22 felt like. The smoke, I think she would say you
23 couldn't see across the room there. There was no smoke
24 alarm in this apartment. In fact, the testimony is
25 going to show, I think, that smoke alarm hadn't been

1 replaced in over ten years, and she said it was never
2 inspected while she was living there.

3 So there was nothing to warn her about
4 the smoke. She went to the door, trying to get out
5 of the apartment by going down to the stairway, but it
6 was filled with fire. There was no fire alarm in this
7 place.

8 The judge, of course, when the testimony
9 is finished he's going to explain to you what the law
10 is. And it's what he says is the law that applies to
11 the facts that you have from the witnesses who are going
12 to tell the truth.

13 So what was Shelby, Ms. Trehus, to do to
14 save her life and the life of her son? She could see
15 barely through the smoke to a window in the apartment.
16 The window was about 20 feet above the ground; it was
17 a second-floor apartment. And she rushed to the window,
18 took her four-year-old son, and saw some people standing
19 down below the window 20 feet below.

20 She dropped him into the arms of people
21 standing there at the bottom of the drop. Then she
22 herself jumped out of the window, the same window,
23 down 20 feet. And she -- in the course of all of this,
24 you will have evidence about a very serious injury to
25 her ankle, her left foot.

1 And then her son, his name is Kayden,
2 who unfortunately from some of the medical testimony
3 you will hear, both of these injuries sustained by
4 Kayden, mostly psychological, because now he can't sleep
5 on account of this experience of being dropped out
6 of this window. You heard about what PTSD, there will
7 be testimony about that and how it will affect him for
8 the rest of his life.

9 And one of the physicians, Timothy
10 Brewerton, is a wonderful child psychiatrist. He's
11 going to testify on video for you to see about the
12 extent of young Kayden's injury, as he says, it will
13 be with him for the rest of his life.

14 Now, Shelby was more fortunate than her son
15 in terms of injury, although she has serious injuries
16 to her left ankle. The physicians will testify that she
17 has a permanent injury to that foot that will be with
18 her for the rest of her life. She works in manual labor
19 to support herself and her child. The father of her
20 child died before all this happened in a motorcycle
21 accident, so she is the sole care person for her son.

22 So the evidence, I think, is going to also
23 show you that Dr. Brewerton, Timothy Brewerton, will
24 testify by video that Kayden's injury is also permanent
25 for the rest of his life. Dr. Brewerton is an expert

1 in analyzing the cost of treatment for this young man
2 that he will have to be responsible for, or somebody
3 to be responsible for, for the rest of his life.

4 And you will hear that testimony from Dr. Brewerton.

5 So that's what this case is about.

6 It's about compensating Ms. Trehus, Shelby, and her son,
7 and the person will who be here for her son as his
8 guardian until he gets to a place where he can handle
9 his own affairs and help.

10 Now -- excuse me just a minute. I think the
11 question will, of course, have to be as to -- in South
12 Carolina, and the judge is going to explain the law
13 to you at the end of the testimony. I think the judge
14 is going to try to do -- in South Carolina the law says
15 that when a person rents an apartment, the law requires
16 that that apartment be a safe place to live. This was
17 not a safe place to live, turns out to be supported by
18 the evidence.

19 No smoke alarm; no fire alarm. Nothing.
20 No warning about any fire in the building. And if it
21 hadn't been for the courage of Shelby Trehus to get her
22 son and herself out of this place, we would not be here
23 today because, as Dr. Brewerton says, of the smoke
24 asphyxiation, even if the fire didn't hit them.
25 When I asked him, and you will see in the testimony,

1 what would have happened had she not been able to avoid
2 this smoke in this apartment. One answer. Dead.

3 So if it hadn't been for her courage to get
4 out of there, we would not be having this conversation
5 today. So the only thing I can ask you to do is to pay
6 close attention to the evidence, pay close attention
7 to what's the damages that these people have sustained
8 as a result of this unnecessary fire and make a decision
9 as to how can they be compensated for what they have
10 been through in this horrible -- smoke and fire.

11 Thank you very much for serving on this
12 jury. We appreciate your presence here today, and we
13 look forward to presenting the evidence to you, and
14 we're very excited to be able to finish it in a fairly
15 expedited way, and I hope that's true too. Thank you
16 very much. Thank you, Your Honor.

17 THE COURT: Yes, sir.

18 MR. BEVANS: Thank you, Mr. Tisdale,
19 Your Honor. Ladies and gentlemen of the jury, that
20 was quite a story Plaintiff's counsel just told you,
21 and that's really exactly what it was. It was a story.
22 And Plaintiff's counsel had to make up that elaborate
23 story to tell you because, quite frankly, it's more
24 compelling than the facts of this incident.

25 My name is Shawn Bevans, and I represent

1 Santee Run Apartments and Ms. Shelby Jean Colley.
2 Ms. Colley is one of the owners of Santee Run, but we're
3 not here to tell you a story at all about this fire.
4 There was a fire that went through the apartment
5 complex, destroyed one of the buildings and forced
6 a handful of tenants -- a number of tenants to all
7 evacuate and move out.

8 What we are going to tell you, ladies and
9 gentlemen, is simply the facts of that fire, what
10 happened on the night of May 29, 2019. Not that the
11 fire started in the middle of the night; the fire
12 started about midnight on May 29th, 2019.

13 From there, ladies and gentlemen, I would
14 like you to make your own conclusions about how the
15 events transpired and let you form your own story.
16 And I trust that one of the conclusions you'll reach
17 after hearing the evidence is quite simply that Ms.
18 Trehus and her son are not suffering from the lingering
19 effects of this incident whatsoever any longer.

20 What they are doing rather is taking
21 advantage of a very unfortunate situation for all
22 and using it for their own individual gain. Now Santee
23 Run is managed by Ms. Colley and her husband, Robert
24 G, who goes by Bobby. You'll hear that Ms. Colley
25 and her husband both live right here in Moncks Corner,

1 and they've operated Santee Run Apartments since 1997
2 to provide affordable housing for other members of the
3 community.

4 Santee Run is a two-building structure.
5 There are ten apartments on the bottom floor; there's
6 ten apartments on the top floor. There's an identical
7 building that runs parallel, two buildings run parallel,
8 like an 11, ten units on the bottom, ten on top.

9 Ms. Trehus and her son, Kayden, were in the
10 far end unit of Santee Run. They were in the corner
11 unit. In between, separating her apartment from the
12 other apartments, was a staircase, an exterior
13 staircase, that ran down to the courtyard below.

14 Now, Ms. Trehus first moved into Santee Run
15 Apartments February 2018. She signed a month-to-month
16 rental agreement. Not a year lease; not a two-year
17 lease. She was there month to month. And what that
18 means, ladies and gentlemen, is she has renewed that
19 lease, that month-to-month rental agreement, she renewed
20 it 15 times before this fire happened. So if the place
21 was unsafe, Ms. Trehus had 15 chances to safely not
22 break her rental agreement, just not re-sign a new
23 agreement, move somewhere else with her son. She never
24 did that.

25 You'll also hear importantly, ladies and

1 gentlemen, that during those 15 months Ms. Trehus never
2 once made any complaints about the smoke alarms that
3 were located in her unit. Now Plaintiff's counsel wants
4 you to believe there weren't any smoke alarms. Simply
5 not true.

6 In fact, ladies and gentlemen, let's preview
7 the facts because right now Ms. Trehus and her lawyer
8 wants you to believe that the smoke alarms, one, weren't
9 in her apartment. They also want you to believe that if
10 there was one, they didn't work.

11 Well, first, ladies and gentlemen, we don't
12 know if the alarm worked or not. What we don't have
13 is the alarm itself. Rather, what I believe you'll see
14 is pictures that Shelby, the Plaintiff, took herself
15 inside of her apartment that she jumped out of, which
16 wasn't burned by the fire at all.

17 In fact, ladies and gentlemen, the day after
18 the fire, Ms. Trehus was one of the lucky residents
19 who was able to return back to Santee Run, get access
20 to her unit, which was not destroyed by flames
21 whatsoever. The only damage to Ms. Trehus' apartment
22 was smoke that was getting sucked in from the HVAC units
23 and water from the fire suppression hose.

24 No smoke alarm to know if it didn't work,
25 but you'll hear that Ms. Trehus had the wherewithal to

1 go into her apartment, get some limited belongings that
2 she was allowed to take, then she reached up, grabbed
3 her smoke alarm from her apartment and just took
4 a picture of it, ladies and gentlemen, just a picture.

5 A picture doesn't have any sound, any video.
6 She doesn't say whether she tested it or not. She just
7 took a picture, and then she left the alarm. So we're
8 here having to now come today to find out the truth
9 of the situation based on a photograph that may or may
10 not have been the alarm from her apartment. And most
11 importantly, a photograph, ladies and gentlemen, of an
12 alarm that very well could have worked. We don't know,
13 and we'll never know because we don't have that alarm
14 today because Ms. Trehus didn't keep it, nor did she
15 ever tell my client, Ms. Jean Colley or anyone at Santee
16 Run, that she had any issues with her smoke alarm.

17 Now what you'll hear, after the fire from
18 Ms. Colley is that Ms. Colley was in Florida visiting
19 a daughter of hers. She's got a couple of kids, and
20 while she stays in town to maintain Santee Run with her
21 husband, just like we all do, she takes vacation from
22 time to time. Her vacation at this time was to go visit
23 her daughter in Florida. Ms. Colley gets a phone call
24 the night of the fire from her granddaughter.

25 Now, Ms. Colley's granddaughter lived in

1 Santee Run Apartments at the time of this fire. She was
2 in Ms. Trehus' same building. Ms. Colley's
3 granddaughter was displaced, as were her great
4 grandchildren, by the same fire. Ms. Colley gets a
5 phone call. She comes directly back to South Carolina
6 from Florida. She's at Santee Run Apartments by ten
7 o'clock the next morning after getting a phone call
8 around midnight the night before. She does that because
9 she cares. She cares a lot about her tenants. They're
10 family to her. Quite literally in this sense, her
11 tenants are her family. She spoke to Ms. Trehus, asked
12 her if she was okay, what she could do to help, tried
13 to put on a yard sale, some fundraisers. She lost her
14 livelihood in this fire as well. Her building burned
15 down as well.

16 Now what's important, ladies and gentlemen,
17 about the fire is that you'll also hear about the smoke
18 alarms, you'll also hear that Ms. Trehus herself,
19 she changed the batteries to the smoke alarm in her
20 apartment, ladies and gentlemen, six months after moving
21 in. She knew that was something she had to do. She did
22 it herself.

23 She understands that you had to replace
24 batteries and smoke alarms, and she did that. But
25 she never told Ms. Colley or anyone at Santee Run about

1 any issues with the smoke alarm, ladies and gentlemen.
2 As a landlord, how is Ms. Colley supposed to know?
3 Her tenants have to advise her of things in their
4 apartments in order for them to get fixed.

5 Now you will hear that Shelby had done that
6 on numerous occasions and filed maintenance requests
7 at Santee Run. She knew how to do that. She had a sink
8 clogged, reported it to Santee Run. It got fixed.
9 Ms. Colley got it fixed.

10 She had problems with her unit, she thought
11 her unit was too warm at night, had some problems with
12 the HVAC. It is an old apartment complex after all.
13 Ms. Colley let her -- attended to it right away. Had
14 an air-conditioning unit put in, allowed Ms. Trehus to
15 put an air-conditioning unit in her apartment. As soon
16 as she knew about this, Ms. Colley was quick to react,
17 ladies and gentlemen. You've got to give her a chance
18 to react. In this case, we were not afforded any notice
19 that anything was wrong with the smoke alarms, and
20 that's something that Shelby herself knew to do.

21 Now, of course, ladies and gentlemen, I told
22 you that you will hear about the fire at Santee Run on
23 May 29, 2019, and what you haven't heard yet is how that
24 fire started. It's pretty important to you all to make
25 your decision. That fire wasn't started by anything

1 Ms. Colley did. It wasn't started by anything that
2 happened at Santee Run.

3 It was started by a tenant at the opposite
4 end of Ms. Trehus' complex who fell asleep after a long
5 day at work with some French fries, a stove on the --
6 a pot on the stove. That pot ended up, as unattended
7 pots do, created a fire. All the other residents
8 managed to safely evacuate the apartment. All other
9 residents, except for Ms. Trehus.

10 Now, you'll hear that when Ms. Trehus woke
11 up, she woke up to the smell of smoke. You'll also hear
12 that she first opened up her front door. Plaintiff's
13 counsel just told you that she opened up -- she was able
14 to open the front door, actually. And then he said when
15 she did open it up, well, the hallway was full of
16 flames, and she wasn't able to escape.

17 Ladies and gentlemen, that's part of
18 a story. It's just simply not true. The evidence
19 you will hear today from the Plaintiff herself is that
20 she opened up the front door to her apartment. She
21 wasn't crawling down low because the smoke was so thick
22 above her. She was walking, standing up straight.

23 She didn't have to get a mit and grab the
24 door handle because it was so hot because the flames
25 were so fierce on the other side. No, that's not what

1 she did at all. She walked up to the door and opened
2 it with her normal hands, all the while her son is still
3 asleep at this point in his bedroom.

4 When she opened up the door, she did testify
5 that more smoke came into her apartment. I remind you,
6 ladies and gentlemen, the door to Ms. Trehus' apartment
7 opens up to an exterior hallway. It's outside. There's
8 smoke being blown around the air outside. Some of the
9 smoke comes into her apartment.

10 What she doesn't see when she opens up
11 the door are flames. Ms. Trehus will testify to that.
12 She has before. She saw smoke, and she saw fire trucks
13 too, ladies and gentlemen. That's hugely important to
14 our case. The fire department was already on the scene
15 by the time Ms. Trehus opened up the door to her
16 apartment. She didn't see flames; she saw smoke,
17 and she saw the fire trucks.

18 Now, you will hear from Captain Corey Denny,
19 who was the driver of the engine that came, the first
20 guy to respond to the Santee Run Fire Department -- the
21 Santee Run Apartment fire. Captain Denny is driving
22 a big fire engine. We've seen them all. They are loud;
23 they have lights; there's sirens flashing. Captain
24 Denny drove his engine with lights flashing, other
25 trucks behind him, right down the street outside of

1 Ms. Trehus' bedroom window. Right outside. The same
2 window that she jumped out of.

3 Now Plaintiff's counsel will say it's 20
4 feet. No one has measured it. It's a second-floor
5 window, I'll give you that. But what it is, is
6 a second-floor window, maybe 20 feet from the road that
7 a loud fire engine drove down, sirens blaring, lights
8 flashing. Yet, Ms. Trehus says she never heard it.
9 But we do know that they were already on the scene by
10 the time Ms. Trehus woke up, opened the door to her
11 apartment, and just didn't think, because there was
12 smoke in the stairs, she went back in.

13 Now Captain Denny will also describe that
14 the configuration of Santee Run Apartments is important
15 because what there is are firewalls, ladies and
16 gentlemen. Firewalls help to stop the spread of a fire
17 through a building. There's a steel staircase, brick
18 walls, and brick that ran up to the ceiling.

19 Now, unbeknownst to Ms. Trehus, that's where
20 the firefighters established camp to fight the fire
21 in the hallway right outside of Ms. Trehus' apartment.
22 That's where they found was their safe spot where they
23 were able to fight the blaze, knowing that it was going
24 to stop before it hit that firewall. It was going
25 up through the roof some, but were not damaging any

1 of the building. And that, ladies and gentlemen, is why
2 Ms. Trehus' apartment had no fire damage whatsoever,
3 not a drop of fire damage, just water and smoke.

4 Now after, you'll hear Ms. Trehus lowered
5 Kayden down to the outstretched arms of neighbors below.
6 Kayden never hit the ground. He got right in the arms
7 of the neighbors. And, very importantly, Kayden didn't
8 have a scratch on his body. He was physically
9 uninjured. Physically, totally unharmed.

10 In fact, ladies and gentlemen, we don't even
11 know if he was awake. There's testimony that Ms. Trehus
12 grabbed him and let him go to her neighbors below, and
13 she thinks he might have woken up during it but doesn't
14 really know. He was sound asleep. We don't know if
15 he was awake to experience any of it.

16 Now after the fire, ladies and gentlemen,
17 you'll hear after Ms. Trehus jumped out, after she
18 lowered her son to the neighbors below and got her son
19 back and everybody's safe, not burned, not severely
20 injured, Ms. Trehus walked around the Santee Run
21 Apartments and took pictures of the fire.

22 Now, ladies and gentlemen, you might see
23 some of those photos today. I'll tell you when you look
24 at those, remember who took the pictures and where she
25 was when she took them. She wasn't trapped in her

1 apartment; she wasn't trapped in the hallway surrounded
2 by flames because she was safely on the ground walking
3 around with all the other residents who were out.
4 Walking around, taking pictures of the fire that's still
5 growing and still being put out by the fire department
6 with her two-year-old son as well, who is now seeing
7 the fire for the first time after having gone out his
8 window, after he's safely on the ground.

9 You'll also hear her son fell back asleep.
10 As she was walking around, he just got comfortable and,
11 you know, sat down and just went back to sleep for the
12 rest of the evening, for some time that evening.

13 Now, as Mr. Tisdale did describe to you,
14 Shelby did injure her foot in the process. She ended
15 up having a fracture of her left ankle. We'll agree to
16 that, certainly. But what we will point out in agreeing
17 to that is Ms. Trehus didn't seek any emergency
18 treatment at the scene. They looked at her and said,
19 well, you should probably go to -- you know, go to your
20 doctor.

21 The next day, Ms. Trehus went to an urgent
22 care, to a doctor, had X-rays of her foot. Those X-rays
23 were negative, ladies and gentlemen. She was told
24 that she sprained her ankle, went on with her day.
25 Now, that day included -- the morning after the fire,

1 that day included going to her work to talk to her
2 co-workers about what happened. She gave a news
3 interview too, ladies and gentlemen. Not once did
4 she mention to anyone, at least not to Santee Run,
5 about the smoke alarm not going off.

6 Now after Ms. Trehus had her X-ray, she did
7 complain of pain to her foot. She went and got an MRI
8 some weeks later. The MRI did reveal a small fracture
9 that wasn't picked up by the X-ray. So what did the
10 doctor do? Dr. Marino put Ms. Trehus in a walking boot,
11 and she had to wear a walking boot for I think six
12 weeks, maybe up to a couple of months. She went to
13 work, was on light duty. Actually, got paid her full
14 salary on light duty. She didn't have to do all the
15 hard work, relax, got to wear the boot, and then she was
16 fine, ladies and gentlemen. After that, she was fine.

17 She returned back to work full duty.
18 She hasn't missed any time off work. Her foot fracture
19 is healed. Another doctor said that he doesn't expect
20 it to ever get any worse. Ms. Trehus' medical bills are
21 just under \$6,000, ladies and gentlemen. She's healed
22 from her injuries.

23 Now what's important is who didn't seek
24 any treatment during this time; that's Kayden. Kayden
25 didn't seek any treatment during this time at all.

1 Instead, Kayden started treating with the National Crime
2 Victims Center at MUSC in February of 2020. Now, that
3 was eight months after the Santee Run Apartments fire.

4 Also what that was, and here's another fact
5 that I'm going to correct in the opening, Kayden's
6 father had passed away a month prior, three weeks prior
7 to the starting of treatment after the fire. Kayden
8 lived with his father for the first six months of his
9 life, and then Kayden's parents separated. Kayden lived
10 with his mom, still saw his dad from time to time.
11 And after the apartment fire, before Kayden started
12 treating for any grief or PTSD-type symptoms, Kayden's
13 father died in a tragic motorcycle accident. He was hit
14 by a car and killed while he was riding a motorcycle.

15 Now Kayden learned about that as well.
16 He learned why his dad is not home, and he sought
17 treatment for why his dad is not home, and it's covered
18 in the records that you'll hear about today. That
19 treatment, ladies and gentlemen, is related to the
20 passing of his father. It is not related to this fire.
21 It was eight months after the fire and days and days
22 where Kayden only spoke about missing his dad, not about
23 the fire.

24 Eventually though, Kayden was released
25 within about three months, and he continued back to

1 school. He played with his half brother; he played with
2 his friends. As Shelby said prior, he just turned into
3 a normal little kid.

4 Now, importantly, Plaintiff's counsel isn't
5 going to let you hear from any of those treating doctors
6 that treated either Shelby or Kayden. He's going to
7 let you hear from experts they hired for the purposes
8 of this litigation to look at and provide opinions about
9 Kayden and Ms. Trehus.

10 Now those experts know what story they're
11 supposed to tell. They reviewed the records; they know
12 what's going on. To be fair, my office has retained
13 the services of an expert witness as well. Our expert's
14 name is Dr. Patrick Wiita. He is a board-certified
15 adolescent, child and forensic psychologist. He readily
16 works in the state of South Carolina and does child
17 trauma victims, provides counseling to them.

18 Dr. Wiita reviewed all of Kayden's medical
19 records; he reviewed all of Kayden's school records.
20 He also met with both Kayden and Shelby face to face,
21 in person, to do a full evaluation on Kayden. And
22 Dr. Wiita formed opinions from work, an opinion that
23 Kayden processed the loss, just like any normal person
24 would, just like anybody would. He's not particularly
25 grieved by the action. And from all accounts, he is

1 on his way to being a perfectly fine, normal little boy.

2 Importantly, no doctor will tell you
3 anything about Kayden going out of a window. That's
4 important as well, ladies and gentlemen, as the
5 allegations against my client, Ms. Colley and Santee
6 Run, aren't for lighting the building on fire. It's
7 not for starting a fire; it's just for not having --
8 allegedly, not having smoke alarms that function,
9 which again, ladies and gentlemen, remember we've never
10 seen the smoke alarms, so we don't know if they function
11 or not.

12 But what we do know is that my client didn't
13 start the fire, the fire would have started without my
14 client's involvement from a grease fire, and the fire
15 department came and put out that fire, and it would have
16 forced everyone to evacuate, move out of the building
17 because of the amount of smoke and water damage, in
18 addition to the fire damage. All of that would have
19 occurred, regardless of whether the alarm was
20 functioning or not. And again, you just won't know
21 that.

22 Now, ladies and gentlemen, again no doctor
23 will tell you anything about Kayden going out the
24 window. And it's also questionable whether he even was
25 awake and aware of what was going on when he went out

1 the window. For all we know, Kayden might not have seen
2 anything about the fire until he's already safe on the
3 ground, being walked around the scene with his mom as
4 she's taking pictures of the fire. That's when he sees
5 it, safely from a distance as he's on the ground.

6 And it's certainly questionable, at best,
7 whether he did wake up while he was going out the
8 window. And, quite frankly, ladies and gentlemen,
9 questionable doesn't cut it in a court of law.
10 The Plaintiffs have the burden of proof, and it can't
11 be just questionable.

12 Those are the facts, ladies and gentlemen.
13 From there, you will be asked to make a determination
14 on liability. Now in doing so, for liability, you may
15 want to consider whether Shelby, Ms. Trehus herself,
16 contributed to the fact the smoke alarm didn't work.
17 Remember, you'll hear that she changed the batteries
18 on at least one occasion, had smoke alarms in the
19 apartment, was aware they were there. And despite
20 all that, never alerted my client to any issues with
21 the smoke alarms.

22 That's what the law requires, ladies and
23 gentlemen. Mr. Tisdale talks about the law requiring
24 you a safe place to live and it does. But also what
25 the law requires is that the tenant has to advise

1 the landlord about any issues and provide the landlord
2 with a reasonable time to correct those defects.
3 South Carolina Landlord-Tenant Act finds that reasonable
4 time to be 15 days within which Ms. Colley would have
5 had time to replace any smoke alarms that were needed,
6 had she known.

7 There's a little bit of burden on Ms. Trehus
8 there to point out the smoke alarm that she's aware
9 of, and that she knew, at least, to change the batteries
10 on one occasion by her own testimony. And you might
11 also want to question, as I have, if the smoke alarm
12 was really dysfunctional, if it really didn't work.
13 Or is it possible that when Ms. Trehus returned to her
14 apartment, she -- that's why she left it there. We just
15 don't know. Again, ladies and gentlemen, we're robbed
16 of that opportunity to test the alarm in questions
17 because the Plaintiff did not keep it.

18 Now, lastly, when you're considering and
19 deliberating about this case, understanding the extreme
20 nature of the situation, it might also -- question
21 to find out if it was necessary for Ms. Trehus to jump
22 out of the window.

23 Now, Plaintiff's counsel described to you
24 now there were flames everywhere. Part of the story,
25 ladies and gentlemen. Ms. Trehus will tell you there

1 weren't flames. She didn't see any flames. She's
2 already testified to that, that she did not see any
3 flames until she was out of the apartment, on the ground
4 with her son. Maybe she could have gone down the
5 staircase. It was right there. We just don't know.

6 Also, ladies and gentlemen, you might want
7 to ask yourself if Kayden is surely suffering from
8 long-term effects of this incident. Kayden was two or
9 three at the time. Does he remember the incident even?
10 We don't know. Those are things that you need to
11 suspect. Kayden is not able to get up and talk about
12 his memories to us. Or, ladies and gentlemen, is this
13 a situation where Shelby, the Plaintiff, has been
14 telling her son over and over again?

15 This fire was in 2019. All of the rest
16 of that year, all of 2020, all of 2021, as Kayden grows
17 older, he's been told a story, ladies and gentlemen.
18 A story about the fire, a story that was told to you
19 by Plaintiff's counsel, a story that might be based
20 on fact, but it's not 100 percent fact. Now maybe
21 that story is just simply concocted to create profit
22 and financial gain out of a situation that was tragic
23 for everybody involved.

24 Ladies and gentlemen, I don't need to tell
25 you any more of my story. I could just tell you the

1 facts. I will continue to outline those facts for you
2 throughout the day today and tomorrow and maybe into
3 Thursday. And once I do, I really trust that you'll
4 come back with a correct verdict, and that will be
5 a verdict for the Defendants. Thank you for your time.

6 THE COURT: Briefly, I told the parties that
7 I would inquire and I forgot to. Ms. Hood, would you
8 come here, please?

9 (Off-the-record conversation held at sidebar.)

10 (Back on the record.)

11 THE COURT: All right, Mr. Tisdale, call
12 your first witness.

13 MR. TISDALE: Thank you very much, Your
14 Honor. Ms. Trehus, you can -- if you're comfortable
15 without your mask, it might be easier for the jury
16 to hear you -- the judge and the jury. Come sit right
17 up here. Your Honor, I don't know how to raise it --
18 I want to be fairly close to her, but also I want all
19 the jury people -- the jury members to be able to hear
20 her.

21 THE COURT: Yeah, you probably -- they'll
22 be able to hear her, but if you need to be heard -- you
23 can pull that microphone a little bit closer. They'll
24 be able to hear her pretty good.

25 MR. TISDALE: I think she can hear me.

1 MS. SHELBY TREHUS, was called as a witness,
2 being duly sworn, was examined and testified as follows:

3 THE CLERK: Thank you. Please be seated.
4 State your full name for the record, and please spell
5 your last name.

6 THE WITNESS: Shelby Trehus. That's
7 T-R-E-H-U-S.

8 MR. TISDALE: Can everybody hear her okay?

9 THE COURT: Speak up if you can, okay?

10 THE WITNESS: Okay.

11 THE COURT: All right.

12 MR. TISDALE: Now -- if I stand in the way
13 of anybody, could you just tell the judge, so I can
14 figure out where's the best place to stand.

15 DIRECT EXAMINATION

16 BY MR. TISDALE:

17 Q. Ms. Trehus, Shelby, if I may call you, how old
18 are you?

19 A. I am 28.

20 Q. All right.

21 MR. TISDALE: Can you all hear her?

22 THE JUROR: No.

23 MR. TISDALE: You can't? All right.

24 BY MR. TISDALE:

25 Q. Where do you live now?

1 A. In Ridgeville.

2 Q. Where?

3 A. Ridgeville.

4 Q. Ridgeville?

5 THE COURT: I don't think her microphone
6 is up. Tap on it. Okay. It's up. You're just going
7 to have to lean a little closer.

8 MR. TISDALE: You'll have to lean a little
9 closer, okay?

10 THE WITNESS: Okay.

11 MR. TISDALE: That sounded better.

12 THE WITNESS: All right.

13 BY MR. TISDALE:

14 Q. How long have you lived in your Ridgeville
15 apartment?

16 A. It's a house.

17 Q. It's a house?

18 A. Yes, sir.

19 Q. And how long have you lived there?

20 A. Since November of last year.

21 Q. All right. I want to ask you a little bit about
22 your background. Are you employed?

23 A. Yes, sir.

24 Q. And where do you work?

25 A. Raycap.

1 Q. How do you spell that?

2 A. R-A-Y-C-A-P.

3 Q. What is your job there?

4 A. I am a hardware specialist.

5 Q. A what?

6 A. A hardware specialist.

7 Q. A hardware specialist?

8 A. Yes, sir.

9 Q. I'm going to come a little closer so I can hear
10 better. Ms. Trehus, when did you move into the Santee
11 Run Apartments that we've been talking about?

12 A. February of 2018.

13 Q. And how long did you -- was it before the fire
14 occurred?

15 A. A year and three months.

16 Q. All right. Who lived in the apartment at Santee
17 Run?

18 A. It was me and my son, Kayden.

19 Q. Kayden?

20 A. Yes, sir.

21 Q. How old was Kayden roughly at the time -- during
22 the time you all lived at Santee Run Apartments?

23 A. When we first moved in he was three. And then
24 his birthday was August, so he turned four that year.

25 Q. Now just going back to your employment for

1 a minute, what kind of work do you do where you were
2 employed?

3 A. We do custom manufacturing. We hide cell phone
4 antennas.

5 Q. And what do you do specifically in connection
6 with that process?

7 A. I get all of the hardware for the jobs together
8 to ship.

9 Q. And do you have to wear boots in that connection?

10 A. Yes, sir, I wear steel-toed boots.

11 Q. Okay. Now going to the apartment at Santee Run,
12 how much rent did you pay?

13 A. It was \$600 a month.

14 Q. Did the amount of rent ever change while you were
15 living there?

16 A. I don't think so.

17 Q. All right. Describe to the Court and jury,
18 if you will, just a little bit about the layout of the
19 apartment.

20 A. Like inside my apartment, or like the complex?

21 Q. Your apartment.

22 A. All right.

23 Q. And then we'll talk about the complex for
24 a minute.

25 A. You go up a flight of stairs, you go around the

1 stairs and come down, and my apartment was the very last
2 one on the end wall. You walk in through the front
3 door, you had a living room to your left, a kitchen
4 to your right, a small little hallway, then there was
5 the master bedroom, a closet, the second bedroom and
6 then the bathroom.

7 Q. Did you occupy the master bedroom?

8 A. Yes, sir.

9 Q. And did Kayden sleep in the other bedroom?

10 A. Yes, sir.

11 Q. Ms. Trehus, how many smoke alarms were in the
12 apartment?

13 A. There was one.

14 Q. One?

15 A. Yes, sir.

16 Q. And where was it located?

17 A. It was at this little awning between the kitchen
18 and the living room.

19 Q. Okay. On the night that this fire occurred,
20 did you ever hear the sound of a smoke alarm?

21 A. No, sir.

22 Q. Had you ever witnessed and felt a smoke alarm
23 operate in this apartment?

24 A. No, sir.

25 Q. Did, in fact, you tried to change the batteries

1 on one occasion?

2 A. Yes, sir.

3 Q. Okay. Did anyone from the management of this
4 apartment ever inspect the smoke alarm?

5 A. Not to my knowledge.

6 Q. Were you ever informed of any inspection
7 of a smoke alarm?

8 A. No, sir.

9 Q. Was -- on the night of the fire, did you ever
10 hear a fire alarm?

11 A. No, sir.

12 Q. All right. Now after this fire, did you look
13 at the smoke alarm?

14 A. It was the following day.

15 Q. The following day. And were you able to tell
16 by looking at that fire alarm -- smoke alarm how long
17 it had been there or how old it was?

18 A. Yes, sir.

19 Q. Huh?

20 A. Yes, sir.

21 Q. Okay. And what did you discover?

22 A. On the back of it, it said July of 2016 it was
23 to be replaced.

24 Q. July of 2015?

25 A. Sixteen.

1 Q. 2016?

2 A. Yes, sir.

3 Q. And when did the fire occur?

4 A. May 2019.

5 Q. Okay. Now do we have a picture of the -- did you
6 take a picture of the smoke alarm?

7 A. I did.

8 Q. I think we have it here, but I want you to
9 identify it. This is that photograph, and I want you
10 to look at it and tell us whether this is a photograph
11 of the smoke alarm that you took.

12 A. Yes, sir.

13 Q. And what is the date on this?

14 A. June 2nd, 2006.

15 Q. June 2nd, 2006. Do you know of any time that
16 the -- that you know of that this smoke alarm was ever
17 replaced?

18 A. No, sir.

19 Q. Okay.

20 MR. TISDALE: Can we mark this as an
21 exhibit?

22 (Plaintiff's Exhibit No. 1 was marked for
23 identification.)

24 MR. TISDALE: Thank you. Your Honor,
25 this is Exhibit 1.

1 THE COURT: All right. Any objection?

2 MR. BEVANS: No, Your Honor.

3 THE COURT: All right, without objection.

4 BY MR. TISDALE:

5 Q. I might have asked you this, and I apologize
6 to the Court if I did, but at any time during your
7 residency in this apartment was this smoke alarm ever
8 replaced by anyone?

9 A. No, sir.

10 Q. To your knowledge, during the entire time you
11 used this place as a residence, was this smoke alarm
12 ever inspected?

13 A. Not to my knowledge.

14 Q. Did anyone ever ask you to be certain to get it
15 inspected?

16 A. No, sir.

17 Q. Did the people who owned Santee Run ever inspect
18 it, to your knowledge?

19 A. No, sir.

20 Q. All right. In terms of -- had this apartment
21 place ever caught on fire during the time that you were
22 living there until this?

23 MR. BEVANS: Objection, Your Honor.

24 THE COURT: I'm sorry. What was the
25 question?

1 MR. TISDALE: The question was, to her
2 knowledge, had there ever been another fire before the
3 one in question at this apartment building while she was
4 there as a tenant?

5 THE COURT: I'll overrule it. She can
6 testify as to what personal knowledge that she has with
7 anything that is associated with the apartment complex.

8 BY MR. TISDALE:

9 Q. Was there ever any?

10 A. No, sir.

11 Q. Okay. Ms. Trehus, let's talk for a few minutes
12 about the night of this incident. Well, first of all,
13 if I may, you have a picture of the fire, and I want you
14 to describe a little bit about the layout of the
15 buildings on the apartment complex. Ms. Trehus, at this
16 apartment complex, how many buildings were there?

17 A. Twenty.

18 Q. Twenty?

19 A. Twenty. Twenty apartments.

20 Q. Twenty apartments?

21 A. Yeah.

22 Q. But were there more than one building?

23 A. Yes, there's two.

24 Q. Two buildings?

25 A. Yes.

1 Q. All right. And on this night of the fire was
2 the building that your apartment was in the one where
3 the fire occurred, or was it another one?

4 A. No, sir, it was my apartment building.

5 Q. Okay. And did you take this picture?

6 A. I did not take that photo.

7 Q. Okay. Do you know who did?

8 A. Joe. He was a resident in the other building.

9 Q. All right. Your Honor -- does this photograph
10 accurately display the fire in the building that you saw
11 on the night of the fire?

12 A. Yes, sir.

13 Q. And where were you when this picture was taken?

14 A. I was actually sitting in Joe's car with my son.

15 Q. All right.

16 MR. TISDALE: Your Honor, I will submit.

17 THE COURT: And Joe took the photo?

18 THE WITNESS: Yes.

19 THE COURT: Okay. All right. That's enough
20 self-education. I'll let it in over the objection.

21 (Pleading's Exhibit No. 1 was entered into evidence.)

22 MR. TISDALE: Thank you.

23 MR. BEVANS: The objection, is that it,
24 Your Honor?

25 THE COURT: Yes, sir.

1 MR. BEVANS: Thank you.

2 MR. TISDALE: We'd like to mark this as
3 Exhibit 2.

4 (Plaintiff's Exhibit No. 2 was marked for
5 identification.)

6 (Plaintiff's Exhibit No. 2 was entered into evidence.)

7 MR. TISDALE: Thank you.

8 BY MR. TISDALE:

9 Q. Ms. Trehus, would you look at the flames across
10 this photograph, Exhibit 2. Point it out, if you will,
11 for the jury where your apartment was in relation to the
12 flaming building?

13 A. My apartment is not shown in that photo.

14 Q. It's not? Where would it be?

15 A. It would be further down that way.

16 Q. Then to the right of the photograph?

17 A. Yes, sir.

18 Q. Okay. Now let's talk for a minute about what
19 happened when you woke up during the night, okay?

20 A. Okay.

21 Q. When you awoke that night, do you know roughly
22 what time it was?

23 A. It was after 12:30 in the a.m.

24 Q. All right. And did -- what was the -- what did
25 you find when you woke up?

1 A. When I had awoke, I turned on my hallway light,
2 and there was a lot of smoke in my apartment.

3 Q. In your apartment?

4 A. Yes, sir.

5 Q. All right. And would you describe the intensity
6 of the smoke? Was it a light smoke, medium smoke,
7 or heavy smoke?

8 A. In the hallway it was medium. I was trying
9 to fan it out of my face to no avail, didn't work.
10 I didn't know what was going on. I had looked around in
11 my apartment to see if it was something in my apartment.
12 I had opened up the front door not knowing what was
13 happening, and a whole bunch of smoke barreled in.
14 I shut my apartment door, and I went straight for my
15 son.

16 Q. Where was your son?

17 A. He was asleep in his bed.

18 Q. Did you awake him?

19 A. I did not, not until I grabbed him out of bed
20 to drop him out of the second-story window.

21 Q. Okay. Now explain to the jury, please, where
22 the window was and what was the smoke like when you went
23 across the room to drop him from the window?

24 A. After opening up my front door and having the
25 smoke barrel in, it got pretty thick in my apartment.

1 I went straight through the hallway into my son's room.
2 I ripped everything off of the window that I could.
3 I opened up the window and stuck my head out. A lot
4 of bystanders came up. I held my son out of the window,
5 they told me to drop him. I lowered him as low as
6 I could to them, and then I let go.

7 Q. Now, Ms. Trehus, what was the vision -- did the
8 smoke impair the vision from one side of your apartment
9 to the other?

10 A. It did, in the living room and in the hallway.

11 Q. Okay. And what did you have to do to get the
12 window open to drop your son out of the window?

13 A. I had to get the blinds out of my way, and then
14 I just lifted it up, and I popped the screen out.

15 Q. All right. Why did you not go down to use the
16 stairway from the apartment to below?

17 A. I couldn't see out of my front door.

18 Q. You could not see?

19 A. No, sir.

20 Q. Out of the front door?

21 A. Yes, sir.

22 Q. What impeded your vision?

23 A. The smoke.

24 Q. Was the smoke light, medium, or heavy?

25 A. It was very heavy.

1 Q. Very heavy?

2 A. Very heavy.

3 Q. Okay. Now how -- well, let's go to this
4 photograph, if I may. Did you take this picture or not?

5 A. That one, yes, I did.

6 Q. You did? All right. We're going to show it to
7 the jury. I want to mark this as an exhibit. What does
8 this photograph show?

9 A. That is the -- where we parked for our apartment
10 complex in the back.

11 Q. All right. Can you point out kind of where your
12 apartment would be in this photograph?

13 A. (Indicating.) My apartment is this very top one
14 right here.

15 Q. Okay.

16 MR. TISDALE: And I would like to mark this
17 Exhibit 3, if I may.

18 MR. BEVANS: Same objection to the
19 photograph, Your Honor.

20 THE COURT: I understand, over the
21 objection.

22 (Plaintiff's Exhibit No. 3 was marked for
23 identification.)

24 (Plaintiff's Exhibit No. 3 was entered into evidence.)

25 MR. TISDALE: I want you to come down here

1 a minute because we're going to show the jury what you
2 just showed me. Thank you. Come down here.

3 BY MR. TISDALE:

4 Q. Is this the building after the fire had calmed
5 down?

6 A. Yes, sir.

7 Q. Now on Exhibit 3 -- now show us on this where
8 your apartment is.

9 A. (Indicating.) My apartment is this top floor
10 right here.

11 Q. Top floor right there. And you are pointing
12 to the far left of the photograph, right?

13 A. Yes, this would be the master bedroom right
14 there.

15 Q. Is that -- where is the window, if it is shown,
16 that you dropped Kayden from?

17 A. It is not shown.

18 Q. It's on the other side of the complex?

19 A. Yes, sir.

20 Q. On the other side of the building?

21 A. Yes, sir.

22 Q. All right. And when did you take this picture?

23 A. It was probably a couple of days after the fire.

24 Q. Okay. This hasn't been admitted yet, I want to
25 ask what it is so we'll know whether it can be admitted.

1 I'm showing you another picture. Who took this picture?

2 A. I did.

3 Q. All right. And when did you take it?

4 A. A couple of days after the fire.

5 Q. What does it show?

6 A. That is my son's window at the very top where
7 I threw him out of.

8 Q. Was this fence there then?

9 A. No, sir.

10 Q. The fence came on after the fire?

11 A. Yes, sir.

12 Q. All right.

13 MR. TISDALE: Your Honor, I would submit
14 this as Exhibit 4.

15 THE COURT: All right. Over the objection.

16 (Plaintiff's Exhibit No. 4 was marked for
17 identification.)

18 (Plaintiff's Exhibit No. 4 was entered into evidence.)

19 BY MR. TISDALE:

20 Q. This has been marked as Exhibit 4. Is this your
21 apartment building?

22 A. The top one, yes.

23 Q. All right. But this building is your apartment
24 building?

25 A. Yes, sir.

1 Q. Does this show the window that you dropped Kayden
2 from?

3 A. Yes, sir.

4 Q. And point out the window just so the jury
5 will ---

6 A. (Indicating.) The top window.

7 Q. It's the top window right below the roof on the
8 apartment; is that correct?

9 A. Yes, sir.

10 Q. And the fence, I think I asked you a few minutes
11 ago, the fence appears to be a chain-linked fence,
12 was not there when the fire occurred?

13 A. No, sir.

14 Q. How long after the fire was it put there, do you
15 know?

16 A. A couple of days.

17 Q. Okay. And did you drop -- were people standing
18 below the window on the ground?

19 A. Yes, sir.

20 Q. And did -- is that who you dropped Kayden to,
21 hoping that he would be caught?

22 A. Yes, sir.

23 Q. And was he caught?

24 A. Yes, sir.

25 Q. Okay. Thank you. Ms. Trehus, I'm showing you

1 one other illustration here. What does this show?

2 A. That's the roof of the apartment.

3 Q. After the fire?

4 A. After the fire.

5 Q. Now does it accurately depict what the roof
6 of the apartment looked like after the fire?

7 A. Yes, sir.

8 Q. Did you take this?

9 A. No, sir.

10 Q. Do you know who did?

11 A. SLED.

12 Q. SLED, S-L-E-D?

13 A. Yes, sir.

14 Q. South Carolina State Law Enforcement Division?

15 A. Yes, sir.

16 Q. All right.

17 MR. TISDALE: Your Honor, I would submit it.

18 THE COURT: And how did you come in ---

19 MR. TISDALE: Sir?

20 THE COURT: How did y'all come into contact
21 with that?

22 MR. TISDALE: We got it from SLED.

23 THE COURT: All right.

24 MR. TISDALE: They gave it to us.

25 THE COURT: All right.

1 MR. TISDALE: Exhibit 5.

2 (Plaintiff's Exhibit No. 5 was marked for
3 identification.)

4 (Plaintiff's Exhibit No. 5 was entered into evidence.)

5 BY MR. TISDALE:

6 Q. Is your apartment shown here?

7 A. The roof, yes.

8 Q. Where's the roof of your apartment?

9 A. (Indicating.) It would be all the way right
10 here.

11 Q. Okay. So, I will show this to the jury. This
12 is what the apartment looked like, according to SLED.
13 Ms. Trehus, I asked you a few minutes ago where -- do
14 you want to come down and point it out? Where -- hold
15 on just a minute. Let me ask. Where on this
16 photograph, Exhibit 5, I think 5, is your apartment?

17 A. (Indicating.) Right here.

18 Q. Okay. That's good. Now -- would you stand right
19 here just a minute, if you would. Was your apartment,
20 like, burned up inside in the fire or was it only smoke?

21 A. It was only smoke.

22 Q. Okay. Why couldn't you go down the stairs,
23 did you say, instead of jumping out of the window?

24 A. There was a lot of smoke, a lot of heavy smoke.

25 Q. Heavy smoke?

1 A. Yes, sir.

2 Q. All right. Thank you very much. I'll show you
3 two more.

4 MR. TISDALE: We'll try to get through these
5 pretty soon, Judge.

6 (Plaintiff's Exhibit No. 6 was marked for
7 identification.)

8 BY MR. TISDALE:

9 Q. I'm showing you one now and ask you to identify
10 this photograph.

11 A. That is my son, Kayden.

12 Q. Who took the picture?

13 A. I did.

14 Q. All right. And when did you take it?

15 A. After visiting with you.

16 Q. After what?

17 A. Visiting with you.

18 Q. Okay. And how long ago was -- I mean, seriously,
19 how long after the fire did you take this?

20 A. It was about a year and a half, two years.

21 Q. Okay.

22 MR. TISDALE: I would submit this as Exhibit
23 6.

24 THE COURT: All right. Any objection?

25 MR. BEVANS: No objection.

1 THE COURT: Without objection.
2 (Plaintiff's Exhibit No. 6 was entered into evidence.)
3 (Plaintiff's Exhibit No. 7 was marked for
4 identification.)
5 BY MR. TISDALE:
6 Q. And then, finally, I would ask you who took this
7 picture?
8 A. Joelle [ph.] Long took that photo.
9 Q. And who is Joelle Long?
10 A. She was a resident in the other building for
11 Santee Run.
12 Q. Okay. Did you know her?
13 A. I did.
14 Q. Did this photograph depict you? Is that you?
15 A. Yes, sir.
16 Q. And who's the little boy?
17 A. That's my son, Kayden.
18 Q. Okay.
19 MR. TISDALE: Would submit it as the next
20 exhibit, Your Honor.
21 THE COURT: All right. Without objection.
22 (Plaintiff's Exhibit No. 7 was entered into evidence.)
23 BY MR. TISDALE:
24 Q. When was the picture of you and Kayden taken?
25 A. That was just a day or two after the fire.

1 Q. A day or two after the fire?

2 A. Yes, sir.

3 Q. Do you know who took it?

4 A. Joelle Long.

5 Q. You testified to that, Joelle Long. Ms. Trehus,
6 what was Kayden's health before this fire?

7 A. He was a healthy little boy.

8 Q. Any particular illnesses?

9 A. No, sir.

10 Q. Now would you explain to the jury, please and to
11 the Court, what affect -- how is his behavior affected
12 by the experience of the fire and being dropped out
13 of a window?

14 A. He doesn't sleep like a normal little kid
15 anymore.

16 Q. Has he had trouble sleeping ever since the fire?

17 A. Yes, he has.

18 Q. And has it caused any other problems physically
19 or mentally or psychologically that you have observed?

20 A. Yes, he's very irritable because he doesn't sleep
21 very well. He always wants to sleep with me. So that's
22 about it.

23 Q. And would you explain to the jury, please and to
24 the Court, what treatment he has received and where
25 since the fire occurred?

1 A. He has been seen at MUSC Crime and Trauma
2 Victims. He's been seen there twice.

3 Q. Seen where now?

4 A. MUSC Crime Victims and Trauma.

5 Q. Crime victims and what?

6 A. Trauma.

7 Q. Trauma. Trauma. Okay. Has he been treated
8 anywhere else?

9 A. Berkeley Mental Health.

10 Q. Berkeley Mental Health?

11 A. Yes, sir.

12 Q. Anywhere else?

13 A. He has transferred to Dorchester Mental Health
14 now.

15 Q. Now this fire was back in 2019. Is he now
16 exhibiting any symptoms that he did not exhibit before
17 this experience?

18 A. Can you clarify?

19 Q. Yes. You've described that he is having trouble
20 sleeping, he's irritable, he's various other things.
21 Has that still persisted since the fire until now?

22 A. Yes, sir.

23 Q. All right. And has he been evaluated and
24 analyzed by a physician named Timothy Brewerton?

25 A. Yes, sir.

1 Q. Okay. Now how about you? It's been suggested
2 that you had a foot injury and an ankle injury.
3 Was that -- was that a result of the evening of having
4 to jump out of the window to save your life?

5 A. Yes, sir.

6 Q. And do you still have any symptoms from that?

7 A. Yes, sir.

8 Q. Would you explain what the symptoms are?

9 A. Every now and again, I get a tight pinching pain
10 in my ankle. Sometimes when I'm just getting off of
11 work, and I'm sitting in my car I'll have a throbbing
12 pain. Sometimes I have to sit down in the middle
13 of walking at work because it starts hurting, throbbing,
14 and it just happens occasionally, randomly.

15 Q. Okay. Have you been treated by a physician for
16 your physical problems?

17 A. I was while I was in the boot and I had the IME,
18 but since then, no, I have not.

19 Q. How long have you worn the boot for?

20 A. I think it was about two months.

21 Q. Two months after the fire?

22 A. Yes, sir.

23 Q. Okay. And have you had an independent medical
24 examination by Dr. Corey?

25 A. Yes, sir.

1 Q. Okay. Does Kayden still have trouble sleeping?

2 A. Yes, sir.

3 Q. Even in a new apartment or a different house?

4 A. Yes, sir.

5 Q. Now at the risk of repeating myself, but I hope
6 not, was there any way, to your knowledge and belief,
7 that you and Kayden could have escaped this building
8 fire, other than the way you had described?

9 A. Would you clarify?

10 Q. I will. You have testified that you dropped
11 Kayden out of the window and that you followed him.

12 A. Yes, sir.

13 Q. Correct?

14 A. Yes, sir.

15 Q. Was there any other way for you and Kayden to get
16 out of the apartment?

17 A. If the smoke alarm had gone off, and I had
18 a warning before it had gotten bad, yes, I could have
19 went down the stairs.

20 Q. All right. But why couldn't you go down the
21 stairs?

22 A. There was way too much smoke.

23 Q. What?

24 A. There was too much smoke.

25 Q. Too much smoke.

1 MR. TISDALE: Your Honor, bear with me one
2 second.

3 THE COURT: Sure.

4 (Pause.)

5 MR. TISDALE: Shelby, would you answer any
6 questions that Mr. Bevans has for you, please.

7 THE WITNESS: Yes.

8 CROSS-EXAMINATION

9 BY MR. BEVANS:

10 Q. Pardon me while I move some furniture. Shelby,
11 where do you and Kayden live currently?

12 A. In Ridgeville, South Carolina.

13 Q. And it's a house in Ridgeville?

14 A. Yes, sir.

15 Q. Who do y'all live with?

16 A. My mother.

17 Q. Where did y'all live before moving in with your
18 mother?

19 A. 105 Assembly Lane, Moncks Corner.

20 Q. And what was that property?

21 A. It was a house.

22 Q. That was a house?

23 A. Yes.

24 Q. When did you move to 105 Assembly Lane?

25 A. About -- a month after the fire, so July of 2019.

1 Q. Where did you live -- where did you stay
2 immediately after the fire?

3 A. With my sister.

4 Q. Okay. Did you also spend the night at Santee Run
5 after the fire?

6 A. I did for three nights.

7 Q. Okay. And so was Kayden with you at Santee Run
8 after the fire?

9 A. Yes, sir.

10 Q. Okay. So you and Kayden both stayed in the
11 apartment complex when it burned down for three nights
12 immediately after the fire?

13 A. Yes, sir.

14 Q. And what time was that fire on May the 29th
15 of 2019?

16 A. I was told by the fireman it started at midnight.

17 Q. What time did you fall asleep?

18 A. Shortly after 8:00 p.m.

19 Q. And you testified that you awoke to the smell
20 of smoke?

21 A. Yes, sir.

22 Q. Did any noises wake you up?

23 A. No, sir.

24 Q. Did you hear any noises at all?

25 A. No, sir.

1 Q. Did you sleep with any loud noises in your
2 apartment, like a sound machine or an air conditioner
3 or anything?

4 A. No, sir.

5 Q. You sleep with quiet?

6 A. Yes.

7 Q. Any reason you didn't hear the fire engines come
8 down your street?

9 A. No, sir.

10 Q. So after you woke up, did you first turn on
11 a light in your apartment?

12 A. I did.

13 Q. Was it a bedroom light?

14 A. No, sir.

15 Q. Which one?

16 A. The hallway.

17 Q. And you were able to see smoke when you turned
18 on the hallway light?

19 A. Yes, sir.

20 Q. How long before you opened the front door?

21 A. A couple of minutes.

22 Q. Of looking through your apartment?

23 A. Yes.

24 Q. And during that time where was Kayden?

25 A. Asleep in his bed.

1 Q. While you were walking -- while you were looking
2 through your apartment for a couple of minutes before
3 opening the front door, were you crawling around?

4 A. No, sir. I didn't know what was going on.

5 Q. Okay. So you're walking -- you were able to walk
6 around normally in your argument?

7 A. Yes.

8 Q. And when you went to go open the front door,
9 was it hot, the door handle?

10 A. No, sir.

11 Q. It didn't prevent you from opening it up with
12 your bare hands?

13 A. No, sir.

14 Q. Did you see -- when you opened the door to your
15 apartment, did you see fire trucks or firemen?

16 A. No, sir.

17 Q. When did you first see the firefighters on scene?

18 A. When I got out.

19 Q. How were you able to tell they were on scene
20 before?

21 A. I didn't. I didn't know what was happening.

22 Q. Do you remember providing deposition testimony
23 in this matter?

24 A. Yes.

25 Q. And do you remember testifying at that point

1 that you saw fire trucks outside when you opened the
2 door to your apartment?

3 A. No, sir.

4 MR. BEVANS: Bear with us, Your Honor.
5 One moment, Your Honor. We've got two depositions.
6 I'll be right there.

7 (Pause.)

8 BY MR. BEVANS:

9 Q. All right, Ms. Trehus, if you'll open that for
10 us, and if you'll go to Pages 43 and 44, and that is
11 a sealed transcript of the first deposition you provided
12 in this matter back on June 22nd, 2020, just about
13 a year after this fire.

14 MR. TISDALE: Your Honor, should we go out
15 to call the next witness?

16 THE COURT: Sure. No problem. Take your
17 time.

18 THE WITNESS: What page?

19 BY MR. BEVANS:

20 Q. Yeah, if you'll look at Page 43, and let me know
21 when you're there.

22 A. Okay. I'm at Page 43.

23 Q. Okay. If you'll just go ahead and read the
24 entire paragraph, starting at Line 16 and ending on
25 Page 44 at Line 3.

1 A. You want me to start at 16?

2 Q. I would because that's the whole paragraph,
3 that way you're not, you know, cutting what you were
4 saying off, tell the jury the whole entire paragraph
5 for context.

6 A. Okay. "Well, I was sleeping. I ended up waking
7 up to a very awful smell and sore throat ---

8 THE COURT: You have to slow down when
9 you're reading, okay?

10 THE WITNESS: Oh, I'm sorry.

11 MR. TISDALE: What line is she starting
12 from?

13 MR. BEVANS: 44 -- Page 43, Line 16 to
14 Page 44, Line 3.

15 MR. TISDALE: Got it. Thanks.

16 THE WITNESS: "Well, I was sleeping.
17 I ended up waking up to a very awful smell and sore
18 throat, nasty taste. Wasn't really sure what was going
19 on. I walked out of my bedroom, turned on my hallway
20 light, seen a bunch of smoke in my apartment, wasn't
21 really sure what was really going on, started looking
22 around to see if it was coming from my apartment. I had
23 opened up my front door. I had a bunch of smoke roll
24 into my apartment. I really couldn't see anything."

25 Q. Keep going. And that lines up with exactly

1 what you said so far, right, Shelby?

2 A. Yes, sir.

3 Q. Okay. Well, keep going and continue reading
4 the next three lines for us to finish that thought out.

5 A. "I had looked kind of around. It was really hard
6 to see. I had seen some of the fire trucks out there,
7 and I assumed something -- I assumed that we were on
8 fire."

9 Q. Okay. Thank you. So you testified in this case
10 back on June 22nd, 2020, and your testimony back on June
11 22nd, 2020, was identical to what you just said today,
12 with the exception of the one line about seeing fire
13 trucks outside, right?

14 A. Yes, sir.

15 Q. So were you lying then or now?

16 A. No, sir.

17 Q. Okay. Did you see fire trucks?

18 A. I do now remember seeing that faint fire truck
19 in the corner.

20 Q. Okay. So the fire trucks were on scene by the
21 time you opened up the door?

22 A. Yes, sir.

23 Q. Okay. Thank you. And your front door, does
24 it open up to the outside or is it an interior hallway?

25 A. It goes into my apartment.

1 Q. Okay. The hallway outside, is it temperature
2 controlled or is it open air?

3 A. No, it's open air.

4 Q. Okay. So if the wind blows, the wind is blowing
5 through that exterior hallway outside your front door?

6 A. Depending on the direction of the wind, yes.

7 Q. Okay. So where is the staircase?

8 A. It is a little down from my front door, in front
9 of the neighbor's door.

10 Q. Can you estimate how many feet?

11 A. Ten.

12 Q. Okay. So about half the distance of -- from your
13 apartment window down to the ground?

14 A. Yes, sir.

15 Q. So ten feet to get to a staircase that goes
16 to the outside of your apartment complex?

17 A. Yes, sir.

18 Q. And what is that staircase made from? Do you
19 know the material that it's constructed out of?

20 A. Concrete.

21 Q. Is it wood? Concrete?

22 A. Concrete.

23 Q. Is there metal as well to it?

24 A. Yes, sir, there's metal railings.

25 Q. And so you didn't hear the fire trucks pull up,

1 and you opened the door to the outside, right?

2 A. Yes, sir.

3 Q. And you only saw smoke?

4 A. Yes, sir.

5 Q. You didn't see flames in the hallway at that
6 point, right?

7 A. No, sir.

8 Q. Okay. So tell me what you did then. After
9 you opened the door, see the fire trucks outside,
10 but you didn't hear them, and then you see the smoke
11 but not flames, what did you do then?

12 A. I shut my front door and went to my son's room.

13 Q. Was there any smoke in Kayden's room at the time?

14 A. No, sir.

15 Q. There wasn't any smoke in Kayden's room?

16 A. No, sir.

17 Q. Okay. So all the smoke that you saw, but somehow
18 in Kayden's room didn't have any smoke in it whatsoever?

19 A. I kept his door shut at night.

20 Q. Okay. And when did you wake Kayden up?

21 A. I'm not sure about the time.

22 Q. Okay. And you're not sure if he was awake until
23 he was outside of your apartment?

24 A. Yes, sir.

25 Q. And Kayden -- now Kayden wasn't physically

1 injured at all in the fire, was he?

2 A. No, sir.

3 Q. He was caught by the neighbors that you handed
4 to below?

5 A. Yes, sir.

6 Q. Now how long did you and Kayden stay
7 at the Santee Run Apartments on scene that night?

8 A. Until about 5:30 a.m.

9 Q. Okay. So from 12:30 to 5:30?

10 A. Yes, sir.

11 Q. You were out of your apartment by that point
12 waiting on scene?

13 A. Yes.

14 Q. Okay. And that's when you took some of these
15 photographs that your lawyers showed the jury?

16 A. I did not take any active fire photos.

17 Q. Okay. And that's right. Thank you for
18 correcting me. That's when these photographs that
19 you're aware of and you testified to recognizing,
20 all those photographs were taken after you were already
21 outside of your apartment, correct?

22 A. I have no idea.

23 Q. Okay.

24 A. Well, the ---

25 Q. Let's go through them. No, that's okay. We'll

1 just go through them. So this first photograph your
2 lawyer showed you, Exhibit 1, here's the smoke alarm
3 we don't have, right? It's the smoke alarm you didn't
4 keep?

5 A. It's not mine to keep.

6 Q. It was the one in your apartment that you took
7 a picture of?

8 A. Yes.

9 Q. And you're using this picture as the sole proof
10 you have that the alarm was malfunctioning?

11 A. Yes, that was taken inside the apartment.

12 Q. Okay. So is this the wall, this white corner
13 back here?

14 A. Yes, that is the corner where the fire
15 extinguisher hung in the kitchen.

16 Q. Okay. And is that your carpet ---

17 A. Yes.

18 Q. --- in the photograph?

19 A. Yes, sir.

20 Q. Is it burned?

21 A. No, sir.

22 Q. Okay. And did you even take a full picture
23 of the smoke alarm so you can see the whole thing?

24 A. No, sir.

25 Q. Okay. Did you test the alarm to see if it was

1 working at the time?

2 A. After the fire?

3 Q. Yes.

4 A. No.

5 Q. Okay. So all you've done was take a picture
6 of an alarm, it's not even the entire picture in a house
7 that has no fire damage. And you want this jury to
8 believe that that alone is sufficient proof to show
9 that this alarm wasn't working at the time? That's what
10 you're trying to do today, right?

11 A. I'm not trying to prove that it didn't work.
12 I'm trying to prove that had it went off in time or
13 at all, I could have gotten out safely down the stairs.

14 Q. And why wouldn't it have gone off because it
15 didn't work?

16 A. Yes.

17 Q. Okay. Do you know -- did you ever take time to
18 read this?

19 A. I have.

20 Q. Do you know what the sensitivity of the alarm is?

21 A. No.

22 Q. Do you know what amount of smoke is required to
23 trigger this alarm?

24 A. I know it doesn't take a lot.

25 Q. Do you know for sure, or are you guessing?

1 A. No.

2 Q. Which one?

3 A. I just know it doesn't take a lot of smoke.

4 Q. How do you know that?

5 A. I used to do the firefighting training.

6 Q. With these alarms?

7 A. Not with those.

8 Q. Do you know who the manufacturer of the alarm
9 is that you have in your apartment?

10 A. No.

11 Q. Do you have any background education, training
12 wise, in functioning smoke alarms?

13 A. No.

14 Q. Do you know if this is a heat-activated or
15 a smoke-activated alarm?

16 A. No.

17 Q. Do you have any idea what the triggering amount
18 of heat and/or smoke would be to set off this alarm?

19 A. No, sir.

20 Q. But you changed the batteries at least once ---

21 A. I did.

22 Q. --- right? Now when you changed the batteries,
23 can you show the jury where did you open the alarm
24 to change the batteries?

25 A. Right here, says to replace battery, open.

1 Q. Yeah, right below the sticker that has June 2nd,
2 2006?

3 A. Uh-huh, yes, sir.

4 Q. Is that a yes?

5 A. Yes, sir.

6 Q. So you saw that the alarm had a date of June 2nd,
7 2006, on it when you changed the batteries?

8 A. I did not read it when I changed the batteries.

9 Q. But you just said it was right here, right below
10 the battery sign. And you had it in your hand?

11 A. Yes.

12 Q. Okay. Did you ever test the alarm?

13 A. No, sir.

14 Q. Just changed the batteries?

15 A. Yes, sir.

16 Q. Okay. And you were able to take those pictures
17 after you went back into you apartment after the fire,
18 right?

19 A. Yes, sir.

20 Q. Okay. Let's look at photograph number two that
21 we took. Now this photograph was taken by a friend
22 of yours? Who?

23 A. He's not my friend. He was a resident of the
24 apartment named Joe.

25 Q. Okay. And you were aware when this photograph

1 was taken?

2 A. No.

3 Q. I said you were aware. Where were you when the
4 photograph was taken?

5 A. I don't know. I wasn't there.

6 Q. Oh, so you don't even know where you were at
7 the time?

8 A. No. I don't know when he took those.

9 Q. Okay.

10 A. I just know when I got out.

11 Q. And this picture doesn't even show your
12 apartment, does it?

13 A. No, sir.

14 Q. So this picture has no probative value to our
15 case right now because it doesn't show your apartment,
16 even though you were ---

17 MR. TISDALE: Object to that.

18 THE COURT: Yeah, show me the picture.

19 MR. BEVANS: She said she wasn't there,
20 and it doesn't even show her apartment in it.

21 THE COURT: Okay. You can keep going.

22 MR. BEVANS: Thank you.

23 BY MR. BEVANS:

24 Q. Just again so the record is clear for the jury,
25 this picture doesn't show your apartment at all, right?

1 A. No, sir.

2 Q. Okay. The third photograph that we looked
3 at today, now remind me and the ladies and gentlemen
4 of the jury, this is a photograph you took or no?

5 A. Yes.

6 Q. This is?

7 A. Yes.

8 Q. Where did you take this photograph, Exhibit 3?

9 A. A couple of days after the fire.

10 Q. After the fire was out?

11 A. Yes.

12 Q. Were you and Kayden still staying at Santee Run
13 at this time?

14 A. I want to say yes, but I'm not sure.

15 Q. Okay. So you and Kayden were at the apartment
16 complex in this condition after the fire, staying there?

17 A. Yes.

18 Q. And is your apartment depicted in here?

19 A. Yes.

20 Q. Where is it? You can point again for the jury.

21 A. (Indicating.) It is the top right.

22 Q. Where the roof is intact?

23 A. Yes.

24 Q. Okay. So you're looking in the middle of the
25 building, there's no roof, right?

1 A. Correct.

2 Q. And then your apartment has the roof totally
3 intact?

4 A. Correct.

5 Q. And there is no smoke damage or fire damage on
6 the outside of your apartment?

7 A. Correct.

8 Q. Do you know anything about firewalls?

9 A. No, sir.

10 Q. As you're training as a firefighter, did you
11 learn about firewalls?

12 A. No, sir.

13 Q. When did you train as a firefighter?

14 A. High school.

15 Q. Did they tell you about replacing smoke alarms?

16 A. No.

17 Q. For firefighter training, they didn't tell you
18 about replacing smoke alarms?

19 A. Well, they were trying to train us how to get
20 into our bunker gear and carry oxygen tanks.

21 Q. Okay. And how long -- when did you graduate high
22 school?

23 A. I didn't.

24 Q. How did you finish high school?

25 A. I didn't.

1 Q. What was the circumstances that you left high
2 school?

3 A. I got expelled.

4 Q. For what?

5 A. For drug possession.

6 Q. For drug possession?

7 A. Yes.

8 Q. Of what?

9 A. Marijuana.

10 Q. Is that before or after you tried to do
11 firefighter training?

12 A. It's during.

13 Q. Okay. Exhibit 4 that we've looked at,
14 this is your -- well, tell me what this is.

15 A. That is the back of the apartment.
16 That is Kayden's window at the very top.

17 Q. This is Kayden's window?

18 A. Yes.

19 Q. And so from the base of this window to the ground
20 below is the distance that you dropped Kayden to your
21 neighbors?

22 A. Yes, sir.

23 Q. Who was down below to pick Kayden -- to grab
24 Kayden?

25 A. I know Brian Williams was, a boy named Cody.

1 I think Donte [ph.] might have been there.

2 Q. Do you know how tall those gentlemen are?

3 A. I would say anywhere between 5'6 ---

4 Q. About my height or so, maybe a little taller?

5 A. Yeah.

6 Q. And did you -- when you lowered Kayden out
7 the window, were you hanging down out the window?

8 A. I tried, yes.

9 Q. Okay. So you're -- if I'm correct, you're
10 leaning out the window with Kayden?

11 A. Yes.

12 Q. Handing him down?

13 A. Yes.

14 Q. To men who are close to 5'6, 5'8 or so?

15 A. Yeah.

16 Q. And there was no smoke in Kayden's room when you
17 went to get him?

18 A. No, sir.

19 Q. I think the final photograph that I'll ask you
20 about is this Exhibit 5. Now you testified this is not
21 a photograph you took, right?

22 A. Correct.

23 Q. This was taken by SLED, you believe?

24 A. Correct.

25 Q. Okay. And again your apartment is depicted in

1 this picture?

2 A. Yes.

3 Q. Can you point to it for the jury one more time?

4 A. (Indicating.) Right there.

5 Q. Right there?

6 A. Yes.

7 Q. The undamaged portion of the roof?

8 A. Yes.

9 Q. Where the shingles aren't black at all?

10 A. Correct.

11 Q. The shingles aren't destroyed?

12 A. Correct.

13 Q. The fire seemingly stops right there?

14 A. Correct.

15 Q. And is that the exterior of the building,
16 the stairway?

17 A. Correct.

18 Q. Okay. When you were waiting on scene for the
19 fire crews to put out the fire, what were you doing?

20 A. I was sitting in Joe's car for a good portion
21 of the night.

22 Q. Did you call anybody else to the apartments?

23 A. I did.

24 Q. Who did you call?

25 A. I called my friend William.

1 Q. Who's William? What's his last name?
2 A. Wallace.
3 Q. Who is he to you?
4 A. He's a friend.
5 Q. How do -- your parents live in Ridgeville, right?
6 A. Yes, sir.
7 Q. Did you call them?
8 A. I did.
9 Q. Did they come?
10 A. No, sir.
11 Q. You have a sister in town?
12 A. Yes.
13 Q. Did you call her?
14 A. No.
15 Q. Okay. But William, Mr. Wallace, came to the
16 apartments and sat with you?
17 A. Yes.
18 Q. Was Kayden there as well?
19 A. Yes.
20 Q. Did you make it to work that day?
21 A. I did not.
22 Q. Did you go at all to tell them what happened,
23 make rounds?
24 A. I did.
25 Q. You did go to work that day?

1 A. To tell them what happened.

2 Q. Okay. Was that before or after you went to the
3 doctor?

4 A. After.

5 Q. Okay. So tell me about your doctor's appointment
6 the morning after the fire.

7 A. We went to Roper Express Care, and I got an X-ray
8 done of my foot.

9 Q. And what were the findings from the X-ray?

10 A. They couldn't see nothing in the X-ray.

11 Q. Okay. How long before you went back to work
12 after the fire?

13 A. A couple of days.

14 Q. And then a couple of weeks later you had an MRI;
15 is that right?

16 A. Yes.

17 Q. And tell me about your MRI.

18 A. I went and got an MRI.

19 Q. Okay. And was that with Dr. Marino?

20 A. No.

21 Q. Who was the MRI with?

22 A. It was through Roper.

23 Q. Okay. Who treated you for your foot injury?

24 A. Dr. Marino.

25 Q. Okay. Did he refer you to get the MRI?

1 A. No, my primary care doctor did.

2 Q. Okay. And you were placed in a walking boot?

3 A. Yes, by her.

4 Q. Okay. And you wore that boot for, I believe,
5 two months?

6 A. Yes.

7 Q. Have you done any other treatment since then?

8 A. I did physical therapy.

9 Q. Okay. When did you finish physical therapy?

10 A. About a month after being out of the boot.

11 Q. Okay. And you returned to work full duty?

12 A. Yes, sir.

13 Q. And your work was accommodating while you were
14 wearing the boot?

15 A. Yes, sir.

16 Q. Were you allowed to work light duty?

17 A. Yes.

18 Q. Did your pay change at all?

19 A. No.

20 Q. Okay. When did you first move into Santee Run
21 Apartments?

22 A. February of 2018.

23 Q. So you were there for 15 months before the fire?

24 A. Yes.

25 Q. Where did you live prior to moving into Santee

1 Run?

2 A. The Village Apartments.

3 Q. Is that here in town?

4 A. Yes, in Moncks Corner.

5 Q. Okay. Who did you live there with?

6 A. With a roommate named Timothy.

7 Q. What's Timothy's last name?

8 A. I have no idea.

9 Q. You don't know his last name?

10 A. Not no more.

11 Q. Okay. Was Kayden -- did Kayden live with you?

12 A. Yes.

13 Q. Okay. So you and your -- how old was Kayden

14 at the time?

15 A. Two.

16 Q. And so you and your two-year-old son were living

17 with a guy, you don't know his last name?

18 A. I did then; I can't remember who he is now.

19 Q. Okay. Prior to living with Mr. Tim, where did

20 you and your son live?

21 A. With my brother.

22 Q. Okay. How about before that?

23 A. I believe I stayed with my mom.

24 Q. Did you ever live with Mr. Montagna, Kayden's

25 dad?

1 A. Yes.

2 Q. Okay. Did Kayden ever live with his dad?

3 A. Yes.

4 Q. Okay. How many apartments did Kayden live in
5 from the time he was born and lived with dad up until
6 the time y'all moved into Santee Run?

7 A. Only the one with my friend Tim and then Santee
8 Run Apartments.

9 Q. Well, let's back up. He lived with his dad.

10 A. We weren't in an apartment.

11 Q. Okay.

12 A. You asked me how many apartments did I live in.

13 Q. Right, with Kayden prior to Santee Run?

14 A. Yeah, so one.

15 Q. You lived with Mr. Montagna?

16 A. Not in an apartment.

17 Q. How many residences did you live in prior to
18 moving into Santee Run?

19 A. Including with Mr. Montagna?

20 Q. Yes, ma'am.

21 A. Four.

22 Q. Okay. So Kayden was three when you moved in?
23 How old was Kayden when you moved into Santee Run?

24 A. Three.

25 Q. Okay. So four apartments -- four places

1 you lived by the time he was three years old?

2 A. Yes.

3 Q. And one was with his dad?

4 A. Yes.

5 Q. Okay. Now, Mr. Montagna passed away?

6 A. Yes.

7 Q. When was that?

8 A. January 14, 2020.

9 Q. I'm certainly sorry to hear of his passing,
10 but that was after the Santee Run Apartment fire?

11 A. Yes.

12 Q. And how did he die?

13 A. A motorcycle accident.

14 Q. And was Kayden aware of this?

15 A. He was.

16 Q. Tell me about Kayden's health conditions.

17 I believe you testified to your lawyer just a second
18 ago that Kayden didn't have any health conditions prior
19 to the fire?

20 A. Not health wise, no.

21 Q. Okay. What type of mental conditions did Kayden
22 have, if any?

23 A. He was just doing speech therapy.

24 Q. Okay. So Kayden -- how long was Kayden in speech
25 therapy?

1 A. I think only a couple of months.

2 Q. When did he start going to speech therapy?

3 A. A couple of months before the fire. I think
4 maybe the end of 2018.

5 Q. But before the fire though he was in speech
6 therapy?

7 A. Yes, sir.

8 Q. Was that something his teachers recommended
9 you do?

10 A. No.

11 Q. Okay. Do you have another son as well?

12 A. Yes, sir.

13 Q. And your other son, what's his name?

14 A. Jase Trehus.

15 Q. And how old is Jase?

16 A. He's nine.

17 Q. And where does Jase live now?

18 A. With me.

19 Q. Where did Jase live at the time of this fire?

20 A. With my mother.

21 Q. Okay. How long -- when did Jase start living
22 with you?

23 A. Since I moved back to my mom's.

24 Q. Okay. So Jase lives -- Jase hasn't moved,
25 you just moved back in with your mom?

1 A. Yes, sir.

2 Q. Okay. But -- so up until you moved in with your
3 mom, Jase lived there, and you lived elsewhere, right?

4 A. Yes, sir.

5 Q. And does Jase have any speech issues, or did Jase
6 have any speech issues?

7 A. Yes, sir.

8 Q. Which one, did or ---

9 A. He did.

10 Q. Okay. So he's gotten better from his speech
11 issues?

12 A. Yes, sir.

13 Q. So Jase went to therapy and has improved?

14 A. Yes, sir.

15 Q. And doesn't need therapy anymore, right?

16 A. No, sir.

17 Q. Okay. Did you have any complications during your
18 pregnancy with Kayden?

19 A. No, sir.

20 Q. Was he ever hospitalized for anything?

21 A. A kidney infection.

22 Q. And did you smoke cigarettes when you were
23 pregnant with Kayden?

24 A. Yes, sir.

25 Q. How much?

1 A. Half a pack.

2 Q. A day ---

3 A. Yes.

4 Q. --- or during the whole pregnancy?

5 A. A day.

6 Q. Okay. So half a pack a day for the whole
7 pregnancy you were smoking ---

8 A. Yes.

9 Q. --- with Kayden? And did you also smoke
10 marijuana?

11 A. No.

12 Q. You didn't smoke any marijuana while you were
13 pregnant with Kayden?

14 A. I did in the first few months, but not in the
15 last months.

16 Q. Okay. So let me ask my question again. Did you
17 smoke any marijuana while you were pregnant with Kayden?

18 A. Yes, sir.

19 Q. Okay. So the answer is yes?

20 A. Yes.

21 Q. Okay. And that was the same drug that got you
22 expelled from high school?

23 A. Yes, sir.

24 Q. Okay. How old were you when you were pregnant
25 with Kayden?

1 A. I was 21.

2 Q. Okay. When -- how old were you when you got
3 expelled from high school?

4 A. Seventeen.

5 Q. Okay. Does Kayden have any developmental
6 disabilities?

7 A. Other than his speech, no.

8 Q. Did Kayden crawl on time?

9 A. No.

10 Q. Did Kayden start walking on time?

11 A. No.

12 Q. Did Kayden start talking on time?

13 A. No.

14 Q. Okay. Did you have any concerns about Kayden
15 having what's called ADHD prior to the fire?

16 A. No.

17 Q. Was Kayden given a referral to Dr. DeBerry due
18 to concerns of ADHD prior to the fire?

19 A. Yes, that was after the fire.

20 Q. That Kayden was provided a referral or that
21 Kayden was diagnosed with ADHD?

22 A. He was provided a referral.

23 Q. After the fire, you said?

24 A. Yes.

25 Q. Who's Kayden's primary care provider?

1 A. Dr. Skye DeBerry.

2 Q. And Dr. DeBerry is with Roper Saint Francis?

3 A. Yes.

4 Q. What's Kayden's date of birth?

5 A. 8/24/15.

6 Q. Do you recognize that record, Ms. Trehus?

7 A. Yes.

8 Q. Okay. What's the date of that record?

9 A. 4/16/2019.

10 Q. And what is this record indicating?

11 A. Has concerns with developmental issues.

12 Q. For Kayden?

13 A. Yes.

14 Q. Okay. And it looks like he's also having issues
15 with eating and difficulty with foods?

16 A. Yes.

17 Q. And seen by a school psychologist?

18 A. Yes.

19 Q. What was -- what did the school psychologist
20 diagnose Kayden with?

21 A. They said for his speech it was apraxia, but then
22 they gave him the sensory processing disorder.

23 Q. The school did?

24 A. Yes.

25 Q. And then Kayden was sent by DeBerry to MUSC

1 Pediatric Developmental -- Developmental Pediatrics?

2 A. Yes.

3 Q. And that -- what's the date on this record again?

4 A. 4/16/2019.

5 Q. That's before the fire?

6 A. Yes.

7 Q. About a month before the fire actually, right?

8 A. Yes.

9 Q. Okay.

10 MR. BEVANS: I would like to admit this
11 as an exhibit, if we can, Your Honor.

12 THE COURT: All right. Any objections?

13 MR. TISDALE: No objection.

14 THE COURT: All right. Without objection.

15 (Defendant's Exhibit No. 1 was marked for
16 identification.)

17 (Defendant's Exhibit No. 1 was entered into evidence.)

18 BY MR. BEVANS:

19 Q. When did Kayden go to Developmental Pediatrics?

20 A. I want to say his appointment was that August.

21 Q. So after that fire?

22 A. Yes.

23 Q. So he was referred before the fire, completed
24 the appointment after the fire?

25 A. Yes.

1 Q. And what did MUSC Developmental Pediatrics
2 diagnose Kayden with, if anything?

3 A. It was ADHD then.

4 Q. And when Kayden started school what kind
5 of restrictions did he receive, if any?

6 A. Can you clarify?

7 Q. Yeah, sure. How old was Kayden when he started
8 school?

9 A. I want to say he was three.

10 Q. And that was before the Santee Run Apartment
11 fire?

12 A. Yes.

13 Q. Was Kayden in any of the accommodated classes?

14 A. He was. He was in a special ed class.

15 Q. Special ed?

16 A. Yes.

17 Q. And was that full time, or was that just for
18 certain subjects?

19 A. In his first year it was full time.

20 Q. And so Kayden had an individualized education
21 plan with Berkeley County?

22 A. Yes.

23 Q. And did you participate in those meetings?

24 A. Yes.

25 Q. And as part of Kayden's education, that IEP is

1 renewed every year?

2 A. Yes.

3 Q. Do you recognize this document, Ms. Trehus?

4 A. Yes.

5 Q. What is that document I just handed you?

6 A. Can you repeat?

7 Q. What's the document I just handed you?

8 A. It's an IEP.

9 Q. And is this an IEP specifically for Kayden?

10 A. Yes.

11 Q. Okay. And did you participate in formulizing
12 this IEP?

13 A. Yes.

14 Q. And if you'll flip to the last page of that
15 document I just gave you, Page 8 of 8. Is that your
16 signature on there?

17 A. Yes.

18 Q. So that's your signature that you've reviewed
19 this document?

20 A. Yes.

21 Q. And you were provided a copy of it?

22 A. Yes.

23 Q. And you took part in creating it?

24 A. Yes.

25 Q. Okay. And if you'll go with me under the

1 consideration of special factors. Do you see special
2 factor number one?

3 A. Yes.

4 Q. Now what does it read under that special factor
5 number one, Kayden also has difficulty what?

6 A. "Controlling his anger and complaining to teacher
7 direction without inappropriate behaviors."

8 Q. Okay. And the date of this IEP remind me, if you
9 will, for the jury? What's the date of this
10 individualized education plan?

11 A. It's 5/16/2019.

12 Q. And remind the ladies and gentlemen of the jury
13 what date the fire was.

14 A. May 29, 2019.

15 Q. Ten days after this was created, right?

16 A. Yes.

17 Q. Ans you testified a minute ago that Kayden became
18 -- had anger problems after the fire?

19 A. I did. He was irritable after the fire.

20 Q. He was irritable before the fire, correct?

21 A. Yes.

22 Q. How has Kayden improved -- how is Kayden doing
23 in school now?

24 A. He's doing a little better.

25 Q. He's doing better?

1 A. Yes.

2 Q. Is he still having IEPs prepared for him?

3 A. Yes.

4 Q. Is he still having accommodations?

5 A. Can you clarify?

6 Q. Is he still in special needs classes?

7 A. Yes.

8 Q. And has he integrated in the mainstream classes
9 at all now?

10 A. Yes.

11 Q. Okay. So before the fire, Kayden was strictly
12 in special needs classes?

13 A. Yes.

14 Q. And now he's -- I forget the word for it, but now
15 he goes into mainstream? He's consolidated with
16 mainstream students as well?

17 A. Yes.

18 Q. How many classes is he participating with
19 the mainstream, or the non-special needs students,
20 for my lack of a proper way to describe it?

21 A. What do you mean?

22 Q. Yeah. Do you know how -- what percentage of the
23 day or how many classes that Kayden is in special needs
24 classes versus how many classes he's able to sit with
25 the regular student body?

1 A. I think he only gets 30 minutes of the special
2 needs class a day.

3 Q. Okay. And so he's progressed quite well?

4 A. Yes.

5 Q. Okay. So, I understand you brought Kayden
6 for treatment with the MUSC -- I've been calling it
7 the National Crime Victims Center. I think you called
8 it the trauma center?

9 A. Yeah.

10 Q. We're talking about the same thing though, right?

11 A. Yes, sir.

12 Q. Okay. When did you first bring Kayden to the
13 National Crime Victims Center for any treatment?

14 A. I want to say it was February of 2020.

15 Q. Was that a couple of weeks after Kayden's father
16 passed away in a tragic motorcycle accident?

17 A. Yes.

18 Q. And that was, what, eight months after this
19 apartment fire?

20 A. Yes.

21 Q. Okay. And that was the first time you had
22 brought Kayden for any treatment regarding PTSD, grief,
23 any of these symptoms you're talking about today?

24 A. Yes.

25 Q. Who referred you to the National Crime Victims

1 Center?

2 A. My lawyer, Tom Tisdale.

3 Q. Okay. So you hadn't brought Kayden for any
4 treatment until you met with a lawyer?

5 A. Correct.

6 Q. And then that lawyer told you to go get treatment
7 through the National Crime Victims Center?

8 A. He recommended it.

9 Q. Okay. So you did it ---

10 A. Yes.

11 Q. --- you listened to his recommendation? How long
12 did Kayden treat with the National Crime Victims Center
13 starting in February of 2020?

14 A. I want to say it was maybe a month or two.

15 Q. And he was discharged?

16 A. Yes.

17 Q. And did you agree with him being discharged?

18 A. I did.

19 Q. And the discharge was because you did not --
20 or did you believe Kayden still exhibited symptoms
21 of PTSD at the time?

22 A. I did believe he still exhibited symptoms.

23 We were only doing telephone appointments because of the
24 whole pandemic, and they weren't really helpful anymore.

25 Q. But they weren't -- the calls with NCVC wasn't

1 helpful?

2 A. Not really. You can only talk to a
3 four-year-old, you know, so long on the phone.

4 Q. Okay. It was video, wasn't it?

5 A. No, they were phone calls.

6 Q. They didn't use a video sync?

7 A. They did not.

8 Q. And so by April of 2020, Kayden was done treating
9 with NCVV?

10 A. Yes.

11 Q. And you agreed to him stopping treatment there
12 for whatever reason?

13 A. Yes.

14 Q. Now after Kayden stopped treating with NCVV,
15 did they offer followup or booster sessions?

16 A. The one lady we had, she said that if I ever
17 needed her I could call her for, like, a booster
18 session, and I think I took advantage of about one
19 or two of them.

20 Q. Okay. And do you remember the subjects of your
21 calls on the booster sessions?

22 A. I know one was about his dad, and one was about
23 the fire.

24 Q. Okay. Which one was about the fire?

25 A. I couldn't tell you if it was the first or second

1 one.

2 Q. Okay. The booster session about his dad, what
3 was that about?

4 A. He asked me for a new dad. I told him it didn't
5 work that way.

6 Q. And so that benefitted -- that booster session
7 was really for you to help explain to Kayden about him
8 losing his dad?

9 A. Yes.

10 Q. Did you find that treatment helpful, that
11 counseling?

12 A. As much for a four year old, yes.

13 Q. Well, for you personally though. I mean, you
14 called for the booster session, right? Like, Kayden
15 wasn't getting treatment at that time?

16 A. Well, I called because I didn't know what to say
17 to him.

18 Q. Okay. And did they help you help him understand
19 grief?

20 A. A little bit, yes.

21 Q. And again, that treatment was related to the
22 passing of Kayden's father?

23 A. That one was, yes.

24 Q. Okay. And so his other treatment through NCVC,
25 right, you discussed the apartment fire and the passing

1 of Kayden's father?

2 A. Yes.

3 Q. How did you come to see Dr. Brewerton?

4 A. Tom Tisdale, my lawyer.

5 Q. So your lawyer sent you to another doctor to go
6 get treatment for Kayden?

7 A. I didn't go anywhere.

8 Q. Okay. Your lawyer connected you to Dr. Brewerton
9 though?

10 A. Yes.

11 Q. Did you look up Dr. Brewerton?

12 A. No.

13 Q. Did you have any intentions of meeting with
14 Dr. Brewerton?

15 A. Not until we got in contact through my lawyer.

16 Q. Okay. And when was that?

17 A. The end of 2020.

18 Q. End of 2020, so over a full year, at least,
19 after the fire, probably a year and six months,
20 at least?

21 A. Yes.

22 Q. Okay. And that would have been five or six
23 months after Kayden had stopped and had been discharged
24 by the National Crime Victims Center?

25 A. Yes.

1 Q. And that was after your lawyer referred you
2 to Dr. Brewerton?

3 A. Yes.

4 Q. Now was Dr. Brewerton providing any treatment
5 to you?

6 A. No.

7 Q. And you knew that, right? He wasn't going
8 to treat you?

9 A. Yes.

10 Q. And he wasn't going to treat Kayden?

11 A. Yes.

12 Q. What was his purpose then? What was the purpose
13 of you going to see Dr. Brewerton?

14 A. He was to evaluate Kayden.

15 Q. For what?

16 A. For PTSD.

17 Q. Was he also to evaluate you?

18 A. I believe so.

19 Q. Do you know how much you paid Dr. Brewerton?

20 A. No, sir.

21 Q. Did you sign an agreement to have Dr. Brewerton
22 work for you?

23 A. Yes.

24 Q. Do you recognize this document, Shelby?

25 A. Yes.

1 Q. What is that?

2 A. That is their retainer agreement.

3 Q. With you and Dr. Brewerton?

4 A. Yes.

5 Q. And on the re line, who's the subject matter
6 of the case?

7 A. Kayden.

8 Q. Just Kayden. And so Dr. Brewerton's treatment
9 was simply to serve as an expert witness, right?

10 A. Yes.

11 Q. He wasn't going to treat you or Kayden, right?

12 A. Correct.

13 Q. And you knew that?

14 A. Correct.

15 Q. And Kayden was already back in school, right?

16 A. Yes.

17 Q. And did you actually reach out to Dr. Brewerton?

18 A. No.

19 Q. Did you talk with Dr. Brewerton before you met
20 with him?

21 A. I don't think so.

22 Q. Did you provide Dr. Brewerton with any facts
23 of this accident or this incident prior to your meeting
24 with him?

25 A. No, I had to send him -- he asked me for all of

1 Kayden's school records and medical records that I could
2 get my hands on.

3 Q. Did you send him all of Kayden's medical and
4 school records or just a select few?

5 A. The selected he asked for. He asked for IEPs.

6 Q. Did you send Dr. Brewerton every single IEP
7 Kayden had done?

8 A. I had the school send me them, yes.

9 Q. All of them?

10 A. Yes.

11 Q. Okay. So if Dr. Brewerton didn't review all
12 of them, you would have sent it to him then?

13 A. Yes.

14 Q. Okay. Now -- so when you met with Dr. Brewerton,
15 you talked about having questionnaires. Tell me
16 about those questions that you had to complete for
17 Dr. Brewerton.

18 A. I had, like, a whole packet of questions I filled
19 out.

20 Q. When did you fill those out?

21 A. Before the video chat that we had.

22 Q. The video chat with Dr. Brewerton?

23 A. Yes, sir.

24 Q. When was that video chat?

25 A. I want to say it was December 3rd, 2020.

1 Q. And how long did it last?

2 A. About four hours.

3 Q. Was that your only time meeting Dr. Brewerton?

4 A. Yes.

5 Q. And you hadn't talked to him on the phone
6 or anything before that time?

7 A. No, sir.

8 Q. Where were you when that Zoom call took place?

9 A. I was at 105 Assembly Lane, Moncks Corner.

10 Q. That was the house you and Kayden were living in?

11 A. Yes.

12 Q. How -- what electronic device did you use
13 to connect for the Zoom call with Dr. Brewerton?

14 A. My Smart Phone.

15 Q. Is it an iPhone?

16 A. No.

17 Q. What is it?

18 A. It's an Android.

19 Q. Okay. So you and Kayden were meeting with
20 Dr. Brewerton by looking at a cell phone screen?

21 A. Yes.

22 Q. Okay.

23 THE COURT: We're going to have to take
24 a break. We've been going for two hours. I usually
25 don't like to go past an hour and a half, so other

1 people got to -- we'll take about a ten-minute break,
2 okay? Then, we'll get you back here, all right.
3 Y'all be excused.

4 (Jury exits the courtroom at 3:59 p.m.)

5 THE COURT: Ma'am, you can take a break,
6 but you're still under oath. Please don't discuss your
7 testimony with anyone, okay? All right. Mr. Bevans,
8 how much longer do you need with this witness?

9 MR. BEVANS: 15, 20 minutes max.

10 THE COURT: All right. Mr. Tisdale,
11 how much followup do you think you're going to have?

12 MR. TISDALE: I don't think very much,
13 Your Honor.

14 THE COURT: How long do you think it will
15 take to do the fireman's testimony?

16 MR. TISDALE: Well, I don't know what cross
17 is going to be. I would -- within the hour I would
18 think.

19 THE COURT: You ---

20 MR. BEVANS: He's a subject of my motion
21 in limine that you've got to hear as well.

22 THE COURT: Yeah.

23 MR. BEVANS: Which might not be long.

24 THE COURT: Yeah.

25 MR. TISDALE: I mean, he's not going to

1 be a real long witness.

2 THE COURT: Yeah, let's just go ahead
3 and excuse him. We're not going to get to him today.
4 Between the 20 minutes that he's got to go, the 15
5 minutes you're going to go and the motion in limine,
6 just tell him to come back tomorrow morning at 10:00
7 a.m.

8 (Recess taken.)

9 (Back on the record.)

10 THE COURT: All right. Thank you very much.
11 You may be seated. Ma'am, you can come back up and take
12 the stand. All right. Bring them back out.

13 (Jury enters the courtroom at 4:09 p.m.)

14 THE COURT: Y'all can be seated as you come.
15 No problem. All right. All right, Mr. Bevans, you may
16 continue.

17 MR. BEVANS: Thank you, Your Honor.

18 BY MR. BEVANS:

19 Q. Shelby, we were talking a little bit before we
20 just took a quick break about Kayden's individualized
21 education plans. Do you remember that?

22 A. Yes.

23 Q. And I had showed you what's been marked earlier
24 as Defense Exhibit 2, and that was Kayden's IEP from
25 May 2019, right?

1 A. Yes.

2 Q. And the date on that is what for us?

3 A. 5/16/2019.

4 Q. And we established that was before the fire,
5 right?

6 A. Yes.

7 Q. And is that IEP something you would have sent
8 to Dr. Brewerton?

9 A. Yes.

10 Q. Okay. Do you recognize this document that
11 we've marked as Defense Exhibit 4? Do you recognize
12 that document?

13 A. Yes.

14 Q. What is that?

15 A. That is another IEP.

16 Q. And will you flip to the last page of that
17 document and tell me if you -- if that's your signature,
18 electronic signature probably.

19 A. Yes, it was electronic.

20 Q. Okay. And why was it electronic at the time?

21 A. The pandemic.

22 Q. Okay. But that is your -- is this another
23 document that you helped formulate?

24 A. Yes.

25 Q. And you signed it as accepting it?

1 A. Yes.

2 Q. Now if you'll look at the front page, what's
3 the date on this Exhibit 4, the second IEP we have?

4 A. 5/12/2020.

5 Q. 2020, so a year after the fire, right?

6 A. Yes.

7 Q. And so that IEP was really almost a year to the
8 day, basically, after the fire?

9 A. Yes.

10 Q. Okay. And if you will look at Exhibit 2,
11 the IEP before the fire, right?

12 A. Yes.

13 Q. Now the first line under special factors on the
14 2019 IEP, what does it say?

15 A. Which line would you like me to read?

16 Q. Sure, yeah, just the first one. There's a box
17 that's checked yes or no, right?

18 A. "The student's behavior impedes the student's
19 learning and learning of others."

20 Q. Okay. And that's checked yes?

21 A. Yes.

22 Q. And that was the 2019 IEP?

23 A. Yes.

24 Q. Before the fire?

25 A. Yes.

1 Q. How about taking a look at the 2020 IEP,
2 and if you'll read that same line for the jury and tell
3 the jury what the box is checked there.

4 A. "The student's behavior impedes the student's
5 learning and the learning of others." It is checked no.

6 Q. Okay. So Kayden's behavior a year after the fire
7 is no longer impeding his ability to learn or the
8 ability of others to learn, is that what this is saying?

9 A. It's not saying anything about the fire.

10 Q. I understand. It's talking about Kayden's
11 ability to learn though, right?

12 A. Yes.

13 Q. And Kayden's ability to function in the
14 classroom?

15 A. Yes.

16 Q. Okay. And does the IEP talk anything about the
17 fire?

18 A. No.

19 Q. And you were part of making these?

20 A. Yes.

21 Q. Okay. Now we talked about the questionnaires
22 that Dr. Brewerton had you fill out, right?

23 A. Yes.

24 Q. Do you remember those?

25 A. Yeah.

1 Q. And you filled out those questionnaires prior
2 to your Zoom call with Dr. Brewerton?

3 A. Yes.

4 Q. Did you change any answers of the questionnaires
5 once you spoke with Dr. Brewerton?

6 A. Yes.

7 Q. How many?

8 A. I don't know how many.

9 Q. But you changed your answers after talking
10 to Dr. Brewerton?

11 A. Yes.

12 Q. Okay. And you changed your answers that you had
13 filled out independently after talking with the expert
14 that you're paying to testify in your case about Kayden?

15 A. Yes.

16 Q. Interesting. Okay. And one of those changes
17 was whether Kayden witnessed a serious injury?

18 A. Can you repeat that?

19 Q. No, you can strike the question. Did you --
20 tell me about Kayden's TV time and his TV access.
21 Does Kayden have access to a TV?

22 A. Yeah.

23 Q. Is it in his bedroom?

24 A. Yeah.

25 Q. Do you limit his TV at all?

1 A. Yes.

2 Q. How do you do that?

3 A. I -- when I go to bed, his TV gets shut off.

4 Q. And does Kayden ever wake up and turn his TV back
5 on?

6 A. Yes.

7 Q. And what kind of device does Kayden use? Does
8 he have a Fire Stick, an Apple TV? What does Kayden use
9 to watch?

10 A. He has Amazon Fire Stick.

11 Q. And does that give him access to the internet?

12 A. Only for Netflix.

13 Q. Okay. Have you heard of the video game Granny?

14 A. I have.

15 Q. Is that a game that Kayden talks about?

16 A. He has.

17 Q. What is that?

18 A. I don't know what it is. My older nephews play
19 it.

20 Q. What does Kayden tell you about it?

21 A. That other kids play it.

22 Q. Does he tell you anything about Granny jumping
23 out and hurting him?

24 A. Yes, he has said that.

25 Q. Okay. And is that when Kayden talks about any

1 nightmares, trouble sleeping he has is because Granny
2 is going to jump out and get him?

3 A. Yes.

4 Q. Now was Granny involved in the fire at Santee
5 Run?

6 A. No.

7 Q. Okay. I don't think so. What about Siren Head,
8 is that another video game that Kayden talks about?

9 A. Yes.

10 Q. Do you know what Siren Head is?

11 A. I have no idea.

12 Q. Okay. But your son watches it online and you
13 don't know what it is?

14 A. He does not watch it.

15 Q. Okay. How do you know about it? Does Kayden
16 tell you about it?

17 A. He's told me about it, and he has older cousins.

18 Q. Okay. So again Kayden is seeing it, hearing
19 about it?

20 A. He's heard about it.

21 Q. Does he have nightmares because of it?

22 A. Not that he's brought to my attention.

23 Q. Does Kayden sleep better when he doesn't have
24 a TV in his room?

25 A. Yes.

1 Q. And he sleeps through the night?

2 A. No.

3 Q. Without a TV in his room, does he?

4 A. He does not sleep through the night with
5 or without it.

6 Q. What's that?

7 A. He does not sleep through the night with
8 or without it.

9 Q. Okay. And is that still to this day?

10 A. Yes.

11 Q. Does he sleep in his own room?

12 A. Right now, he's sharing a room with his brother,
13 Jase.

14 Q. Okay. Prior to you moving back in with your
15 parents and your other son, was Kayden sleeping in his
16 own room?

17 A. Yes.

18 Q. Ms. Trehus, the last exhibit I'm going to show
19 you, and I promise I'm wrapping up, do you recognize
20 this document I'm handing you now?

21 A. Yes.

22 Q. What is that?

23 A. That is the lease for the Santee Run Apartments.

24 Q. And that's the month-to-month rental agreement,
25 right?

1 A. Yes.

2 Q. And so month to month, meaning you renewed it
3 every month?

4 A. I never signed anything every month. I just gave
5 her money for rent, and we went on our way.

6 Q. Right.

7 A. Yeah.

8 Q. But if you chose not to pay rent for a month,
9 you could leave?

10 A. I would have to give her 30-day notice.

11 Q. Okay. And you stayed in Santee Run for how long,
12 15 months before the fire?

13 A. Yes.

14 Q. Okay. When did you sign this ---

15 MR. BEVANS: First off, let's mark this
16 as Exhibit 5, please.

17 (Defendant's Exhibit No. 5 was marked for
18 identification.)

19 (Defendant's Exhibit No. 5 was entered into evidence.)

20 BY MR. BEVANS:

21 Q. Look at the premarked copy you already have.
22 What's the date of this document?

23 A. February 12, 2018.

24 Q. And who else signed that document?

25 A. That would be my best friend, Jillian.

1 Q. So did Jillian live with you at Santee Run
2 for some time?

3 A. She did.

4 Q. How long?

5 A. I want to say six months.

6 Q. Okay. So Jillian and you and Kayden were living
7 at Santee Run for six months together?

8 A. Yes.

9 Q. And what was the amount of the rent?

10 A. \$600.

11 Q. And Ms. Jean Colley never raised the rent on you?

12 A. No.

13 Q. Okay. Did you enter into any other agreements
14 regarding your stay at Santee Run?

15 A. No.

16 Q. Any other rules or regulations you signed, lease
17 agreements, anything like that you signed about Santee
18 Run?

19 A. No.

20 Q. That's the only document?

21 A. That is the only document.

22 Q. So that document governed your relationship
23 with Ms. Colley in Santee Run?

24 A. Yes.

25 Q. Where in that document does it mention smoke

1 alarms?

2 A. I don't think it does.

3 Q. Okay. So the document is silent on smoke alarms?
4 It doesn't talk about them at all?

5 A. I don't think it does.

6 Q. Okay. Take a second to look through it, if you
7 want to.

8 A. You want me to look through it real quick?

9 Q. If you want. I just don't want to rob you of the
10 opportunity to, if you need to, that's all. Let me know
11 whenever you're done, Shelby. See anything about smoke
12 alarms in there, Shelby?

13 A. No, sir.

14 Q. Okay. You see anything about maintenance issues,
15 how to report maintenance issues in that lease
16 agreement?

17 A. Yes, sir.

18 Q. Okay. Where -- what does it say about
19 maintenance issues? Who would you report them to?

20 A. "The maintenance staff is also employed by the
21 owners and will complete work that has been submitted
22 by the office. If you have a maintenance request,
23 complete a form and submit it to the office."

24 Q. Okay. Did you ever complete a maintenance
25 request about anything with the smoke alarms?

1 A. I have never filled out a form.

2 Q. Okay. Did you ever put anything in writing
3 to Ms. Colley or anyone at Santee Run about your smoke
4 alarms not functioning?

5 A. Only through a text message.

6 Q. When was that text message?

7 A. Well, not for the smoke alarm.

8 Q. Okay. So my question, just so the jury is clear
9 too, my question was did you report any maintenance
10 issues with the smoke alarms to Ms. Colley?

11 A. No.

12 Q. Or Santee Run?

13 A. No.

14 Q. Okay. But you did report other maintenance
15 issues to Ms. Colley at Santee Run?

16 A. Yes.

17 Q. Which other maintenance issues?

18 A. That would be the clogged sink and the AC
19 problem.

20 Q. Okay. And did Ms. Colley take some kind
21 of action in response to your messages?

22 A. She -- she did.

23 Q. Okay.

24 MR. BEVANS: One second, Shelby. I think
25 those are all my questions for you. Ms. Trehus,

1 thank you for your time and patience. Your lawyer
2 may have some followups.

3 MR. TISDALE: Your Honor, may I ask a few
4 questions?

5 THE COURT: Sure, no problem.

6 REDIRECT EXAMINATION

7 BY MR. TISDALE:

8 Q. Ms. Trehus, let me ask you this. Were you
9 at some point -- at some time told that the fire alarm
10 -- excuse me -- smoke alarms would be inspected from
11 time to time?

12 A. No.

13 Q. All right. Did anybody ever inspect the fire
14 alarm -- the smoke alarms?

15 A. Not to my knowledge.

16 Q. All right. All right. Looking at Exhibit 5,
17 Defendant's Exhibit 5, Paragraph 16, which is the lease
18 agreement, I believe. Does it mention inspections in
19 that paragraph?

20 A. Yes, sir.

21 Q. And does it say that the owners of the property,
22 the landlords, would inspect from time to time?

23 A. Yes.

24 Q. How often does it say they would inspect?

25 A. The last Tuesday of every month starting

1 at 9:00 a.m.

2 Q. The last Tuesday of every month. To your
3 knowledge, did anyone ever inspect your apartment
4 while you were living there?

5 A. No, sir.

6 Q. Okay. Now let me ask you this. What is this
7 picture that I'm showing you?

8 A. That was the fire extinguisher in my kitchen.

9 Q. Fire extinguisher in your kitchen. And who took
10 this picture?

11 A. I did.

12 Q. All right.

13 MR. TISDALE: Your Honor, I would like to
14 offer it as an exhibit, if I may, the fire extinguisher.

15 THE COURT: All right. Any objections?

16 MR. BEVANS: No, Your Honor.

17 THE COURT: All right. Without objection.

18 (Plaintiff's Exhibit No. 8 was marked for
19 identification.)

20 (Plaintiff's Exhibit No. 8 was entered into evidence.)

21 MR. TISDALE: And -- thank you. Your Honor,
22 this is marked as Exhibit 8.

23 BY MR. TISDALE:

24 Q. Now did you -- when did you take this picture?

25 A. It was after the fire.

1 Q. Huh?

2 A. After the fire.

3 Q. How long after the fire?

4 A. A day or two.

5 Q. A day or two. And the fire chief will be
6 a witness tomorrow who will likely talk about this fire
7 extinguisher. Was that same fire extinguisher in your
8 apartment the whole time you were living there?

9 A. Yes, sir.

10 Q. And did anybody come inspect it at any time?

11 A. No, sir.

12 Q. Okay. To your knowledge?

13 A. To my knowledge.

14 Q. Now, there was some question asked to you about
15 changing some answers on some sort of report that had
16 to do with Dr. Brewerton, do you recall that a few
17 minutes ago?

18 A. Yes.

19 Q. Why were those answers changed, if they were?

20 A. Because I did not clearly understand any of the
21 questions on the paper.

22 Q. Was it -- why didn't you understand it?

23 A. Because I don't know anything about psychology.

24 Q. They had to do with psychological information?

25 A. Yes.

1 Q. And did Dr. Brewerton educate you in that regard?

2 A. He did.

3 Q. And did you change the answers to correct them
4 in line with what you were taught?

5 A. Yes, once I understood what the question was
6 asking me, I did.

7 Q. All right. Thank you. Now, finally, were you
8 treated for your broken ankle?

9 A. Yes.

10 Q. And who treated you mainly?

11 A. Dr. Marino.

12 Q. Dr. Marino?

13 A. Yeah.

14 Q. How much did you have to pay Dr. Marino or anyone
15 else for the treatment you received for your ankle
16 fracture?

17 A. In total, it's almost \$10,000.

18 Q. Almost \$10,000?

19 A. Yes, sir.

20 Q. Was it less than \$10,000?

21 A. It was \$9,000 and some.

22 Q. \$9,000 and some?

23 A. Yes, sir.

24 Q. Between \$9,000 and \$10,000?

25 A. Yes, sir.

1 Q. Okay.

2 MR. TISDALE: Your Honor, I think that's
3 all.

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

5 MR. TISDALE: Come on down.

6 THE COURT: All right. Ladies and gentlemen
7 of the jury, as I indicated, I don't like to keep
8 everybody past five. Y'all have lives that I think you
9 need to get to as well, and the next witness would take
10 about an hour to an hour and a half. So, I'm going to
11 go ahead and let y'all hit happy hour early. Don't tell
12 your wives or husbands or loved ones, and be back here
13 tomorrow morning at 10:00 a.m. All right.

14 (Jury exits the courtroom at 4:28 p.m.)

15 THE COURT: All right. What is your motion
16 in limine to exclude the testimony of Chief Robert Gass?

17 MR. BEVANS: Can we start?

18 THE COURT: Yes, sir.

19 MR. BEVANS: Simply put, Your Honor, we had
20 sent discovery in this case. I don't have the dates in
21 front of me, take a second to flip to it. But long
22 story short, Robert Gass was never disclosed in
23 discovery at any point in time. Yesterday, I actually
24 got a supplement -- Plaintiff's second supplemental
25 discovery request -- responses where they disclosed

1 Chief Gass as a witness for the first time and produced
2 documents that Chief Gass will allegedly testify to.
3 Again for the first time, this was disclosed yesterday.

4 One, I have a huge problem with not having
5 them identify Chief Gass, one, as a witness. Two, what
6 I believe is they planned on having Chief Gass testify
7 as an expert to talk about fire code or building code
8 violations, things of that nature, which even more so
9 they need to disclose him if he's an expert. And the
10 prejudice is huge to me if they're, you know, sliding
11 in an expert at the last moment.

12 The way that the Plaintiff had disclosed
13 witnesses is they identified any official on the Moncks
14 Corner Fire Department police report. I had to specify
15 and ask who they were, never got an answer. So what
16 I did is I went through and I tried to depose the people
17 I thought were most involved. I mean, this report lists
18 literally -- master as an official of the, you know,
19 state.

20 So, I'm going through, and I saw a
21 deposition of Captain Corey Denny, who was the first
22 responder of the first responders on the scene. He was
23 driving engine number one, pulled up on the scene.
24 Captain Denny was the one who authored the Moncks Corner
25 report. He then testified that Chief Gass was in the

1 group that came subsequent to him, and Chief Gass
2 reviewed the report, but didn't have any preparation
3 into it. So, I went ahead and deposed Captain Denny
4 from the Moncks Corner Fire Department to try to pick
5 out who.

6 Then, I went through the Moncks Corner
7 police report still because this fire, there was
8 initially some suspects of -- like, it's not a motion
9 in limine, but some drunk lads being in one of the
10 apartments and some explosions going off, and so SLED
11 was called. And Special Agent Elrod, who's one of my
12 witnesses that I've identified, came with a drug dog,
13 an accelerant arson dog, served Ms. Colley with
14 a warrant, did his full cause and origin analysis report
15 for the fire, came back with his findings. I took his
16 deposition.

17 I also deposed the police detective,
18 Misty Roscoe [ph.], who was involved in the
19 investigation. So, I took three depositions trying
20 to identify who Plaintiff is going to call because
21 Plaintiff didn't identify any specific people. So,
22 I took who I thought would be the most likely suspects.

23 And then the first time I saw Chief Gass
24 named anywhere in any document from the Plaintiff came
25 in their pretrial brief on the eve of our first trial,

1 which admittedly was January 4th. And since then,
2 again never got disclosed. I filed a motion in limine,
3 and we kind of sat on it there.

4 To add onto that, another one of my motions
5 in limine, Your Honor, you kind of heard me arguing
6 earlier today about the past and prior fires. To the
7 extent, the records that Plaintiff's counsel showed
8 me have some reports of fires at Santee Run dating back
9 to 2011.

10 Now what's important about this is that
11 Santee Run, the apartments, the way the building
12 is dated, it's grandfathered into the building code.
13 So these apartments don't have hard-wired alarms.
14 They're literally smoke alarms, you know, stick them
15 on the wall and put batteries in. And so each apartment
16 has different smoke alarms. They're different
17 lifetimes, different batteries. You know, they're
18 not all going to die the same day, they're not all going
19 to work the same day.

20 Also, there's no indication in these reports
21 that the alarm was the cause of or a faulty alarm didn't
22 go off. And so to the extent, Chief Gass is only going
23 to come in and talk about fires that occurred five,
24 ten years before this Santee Run fire, and/or there
25 is one building code violation that got issued to Santee

1 Run in the past 10 or 20 years that we've always been
2 able to pull from all that's have been sent out.

3 That one building code was for the new
4 building. So when this building burned down, Ms. Colley
5 had to reconstruct it -- obviously, she didn't have
6 to, but she did reconstruct it. When they built it,
7 the new building, they had to upfit it per current
8 building code, obviously. So the new building does
9 have a full sprinkler system, full alarm.

10 The only building code violation that -- the
11 warning that was written was because the alarm -- sorry
12 -- the sprinkler tube on the outside of the building
13 where the water line connects didn't have insulation
14 around it. They came and put a two-foot piece of foam
15 insulation, and they passed inspection.

16 So to the extent Chief Gass is going to talk
17 about other building code violations, anything like
18 that, there's just -- there aren't any. And if he does
19 talk about these outside circumstances, I would strongly
20 argue to the Court that they're not relevant to this
21 particular Santee Run fire on May 29th.

22 THE COURT: All right. Yes, sir.

23 MR. TISDALE: Your Honor, we're not going to
24 offer any evidence with Gass about any code violations.
25 He's going to be a factual witness about what happened

1 in the fire. And we gave Shawn all the information we
2 had months ago, and there's no secret about Gass being
3 involved. In fact, right before we were going to trial
4 the last time, we listed him as a witness. He's just
5 going to be a fact witness.

6 THE COURT: All right.

7 MR. TISDALE: He's not an expert witness
8 in this case.

9 THE COURT: All right. Well, he's just
10 going to testify as to the factual knowledge that he
11 has based on the fire that he went to. And the other
12 objections, you're just going to have to make them
13 contemporaneously with his testimony.

14 MR. BEVANS: That's fine. I still, just
15 for the record, just will object to the late disclosure
16 because that's the whole point of discovery rules.
17 He wasn't named, and the Plaintiff's counsel knew him
18 all along. Why be cryptic, and, you know, give me some
19 kind of, like, I'm going to depose every member of the
20 courthouse, when I'm really trying to depose Judge
21 Price. That's all.

22 THE COURT: I get it.

23 MR. BEVANS: Thank you, sir.

24 THE COURT: Yes, sir. All right. So we're
25 going to start with him in the morning; is that correct?

1 MR. TISDALE: Suits us if it suits you,
2 Your Honor.

3 THE COURT: All right. Anything else that
4 we need to take up?

5 MR. BEVANS: I do think so. I hate to be
6 difficult and keep you, but we've got Dr. Brewerton,
7 the video. I've got a couple of motions in limine about
8 him, and that's only important because I've got to go
9 and give you my designations tonight of his video
10 deposition we took on Friday of last week. So, I would
11 kind of like to know your ruling on what he's allowed
12 to say, so I can, you know -- ahead of the video.

13 THE COURT: All right. What's your motion?

14 MR. BEVANS: So, I've got two motions
15 related to Dr. Brewerton, Your Honor. The first would
16 be to exclude Dr. Brewerton's treatment of Shelby.
17 He was disclosed as an expert witness strictly to view
18 Kayden's records. He conducted a complete review
19 of Kayden's analysis, and I'm going to -- this is the
20 motion that's in the big binder clip, so I'm really
21 going to hit the high points and rely on the record
22 written down for appellate purposes, if any.

23 But, essentially, there's no methodology.
24 I mean, he met with Ms. Trehus for a couple of hours,
25 never looked at past records, never got a family

1 history, never got a mental health history from her.
2 It's just not an acceptable standard for being able
3 to perform an evaluation of a patient or a person's
4 psychiatric well-being based on such a limited sample
5 size. It doesn't meet the standard for expert
6 qualification review and reliability.

7 THE COURT: And he's going to be a video
8 deposition?

9 MR. BEVANS: Yes, sir. We took it on
10 Friday. He's not available, so we had to take it.
11 And I had to go into it with him, but I'm hoping
12 to cut out some, you know, hours of testimony,
13 if we can.

14 THE COURT: All right. Any objection?

15 MR. TISDALE: Your Honor, I think that the
16 value of his testimony and the quality of it is a matter
17 that will have to be determined when he testifies.
18 We don't think that he did anything improper or
19 inappropriate by giving an evaluation of Shelby Trehus
20 when he evaluated her son.

21 THE COURT: What did he do now?

22 MR. BEVANS: Exactly, evaluated her son.
23 That's exactly what I'm saying. He did a three-hour
24 Zoom call that's recorded.

25 THE COURT: Right.

1 MR. BEVANS: Ends up being two hours and 40
2 minutes once he gets past his I'm an expert you all
3 hired. I'm not a doctor.

4 THE COURT: Right.

5 MR. BEVANS: And then he gave Shelby some
6 questionnaires about Kayden, and in the process of it
7 he then, like, kind of overreaches and starts making
8 opinions about Shelby that he wasn't asked to do,
9 and that's why the retainer agreement is up there where
10 he's only testifying in the Kayden Trehus case before
11 these cases were consolidated.

12 MR. TISDALE: He's taken his deposition,
13 fully cross-examined him on the whole thing.

14 THE COURT: Did you cross-examine him as to
15 her care and treatment?

16 MR. BEVANS: Only because I had to get
17 it in the video because I did not want to not do it
18 and then you allow him to come in, and then, I'm like,
19 oh, man, now I missed my chance, he's not going to be
20 here. So, I had to do it preemptively, but I definitely
21 -- I mean, these motions were filed well in advance.

22 So, I didn't waive any of my arguments
23 against his testimony, but I had to preserve my right
24 to get the cross-exam in because again the way it kind
25 of happened last week, I didn't really pull the cord

1 to get an emergency ruling on the motion before we had
2 a video deposition that I had objected to, but
3 Plaintiff's counsel did properly notice ten days.

4 MR. TISDALE: Your Honor, the cases are
5 consolidated, and I would suggest that Your Honor take
6 a look at the testimony before making a ruling to
7 exclude his testimony. He's already testified and been
8 cross-examined.

9 THE COURT: Well, the problem is that you're
10 going to need time to redact the video.

11 MR. BEVANS: That's exactly it. That's why
12 I'm just asking to have the ruling today because again
13 it really ties into my next opinion as well. I mean,
14 I don't want to merge two motions, but they're both
15 related to Brewerton and his opinions.

16 THE COURT: Okay. Go ahead.

17 MR. BEVANS: So the next one relates
18 to specifically Kayden. Dr. Brewerton came up --
19 Dr. Brewerton pulled two numbers from a report that was
20 issued, and I have copies of the report. He is prepared
21 to testify, and he did testify during his video
22 deposition that Kayden will need a value of future costs
23 somewhere in the range of, I'm going to quote the round
24 number, \$200,000 and \$900,000 of future lifetime care.

25 Now what those numbers -- those numbers came

1 from two articles published years ago about the cost
2 of child maltreatment to society as a whole. So those
3 costs, those several hundred thousand dollar figures,
4 one, are adjusted for inflation. Dr. Brewerton tried
5 to do that himself even though he is not an economist,
6 so that's a whole other area where the statistics aren't
7 valuable, I think.

8 But more importantly, there's no
9 methodology saying that Kayden is going to need X number
10 of psychotherapy visits every month or every week
11 or bi-monthly, anything like that. There's no breakdown
12 of what the costs are; there's no breakdown what
13 prescriptions that Kayden might have to have, what ADHD
14 treatment Kayden might have to have. There's zero
15 mention at all about any treatment that Shelby would
16 have to have, whether it be weekly, bi-weekly, monthly,
17 you know, quarterly, anything like that.

18 All Dr. Brewerton did was look at two
19 citations, Your Honor, that again I could pull up that
20 talk about the nationwide costs to society as a whole
21 from overall child maltreatment.

22 Now Dr. Brewerton will admit that those
23 statistics encompass things like children who are
24 victims of sexual abuse from clergy members or teachers
25 or camp counselors or step-dads, you know. They'll get

1 into everything under the sun, every area of non-fatal
2 child maltreatment.

3 This is not a case of fatal child
4 maltreatment. This is one 30-second possible instance
5 were Kayden went out a second-floor window. This is not
6 Kayden being locked in a closet and repeatedly abused
7 year and year and year over and over again. And that's
8 how Dr. Brewerton is pulling out those figures.

9 And, frankly, Your Honor, I think if he's
10 able -- one, they're not based on any methodologies
11 specific to Kayden. And I think if Dr. Brewerton,
12 who is a doctor, I'll give you that he's qualified.
13 I mean, the man is educated, has authored several
14 papers, and things of those nature. I'm not discounting
15 his qualifications. I'm discounting his qualifications
16 when it comes to formulating these figures because
17 they're not pulled out to be reflective of Kayden.

18 And if he sits here and tells the jury it's
19 between \$200,000 to \$900,000 of lifetime future care,
20 that number, Your Honor, is based on the cost to society
21 as a whole. I mean, that factors in the cost of the
22 court having to deal with a delinquent running around.
23 That deals -- that doesn't just encompass medical costs
24 alone. That encompasses the cost of the public as
25 a whole, not the cost just to Ms. Trehus, not the cost

1 to Kayden. And I think for a jury to hear those numbers
2 is extremely prejudicial to my case.

3 THE COURT: All right. Yes, sir.

4 MR. TISDALE: Your Honor, Dr. Brewerton
5 is an expert witness, listed as an expert witness,
6 gave his report to the effect that he testified
7 what he's claiming about months ago. We gave it to
8 Mr. Bevans right away, and he's fully qualified to give
9 this opinion. He testified to the authorities, how he
10 formed it, and he's testified to it in great detail in
11 his deposition, was cross-examined about it, and there's
12 no reason that he's not qualified to do it based upon
13 his professional qualifications that are in the record.

14 THE COURT: What's he being qualified
15 as an expert in?

16 MR. BEVANS: That's a great question.

17 MR. TISDALE: He's -- the treatment of this
18 sort of injury sustained by this young man, and he's an
19 expert on that and an expert on the cost of treating
20 these conditions years after the victims' injuries
21 began. And it will be clear in his testimony that
22 he is such an expert.

23 THE COURT: But he's not a life care
24 planner?

25 MR. TISDALE: He's not a life care planner,

1 but he's -- there's complete authentic basis for his
2 testimony.

3 MR. BEVANS: I have no issues with
4 Dr. Brewerton's qualifications to say that Kayden --
5 I would disagree with him, but I have no issue with his
6 qualifications to say that Kayden may need future care.
7 What I do have a problem with is Dr. Brewerton saying
8 Kayden is going to need \$200,000 to \$900,000 of future
9 care.

10 MR. TISDALE: He ---

11 MR. BEVANS: It's not based on any
12 methodology. So it's not the qualifications;
13 it's the methodology. What he did was simply pull
14 it. He didn't come up with these numbers on his own.
15 He went and copied them from someone else and placed
16 it in his report.

17 THE COURT: That's what a life care planner
18 would have done.

19 MR. BEVANS: But they still have some kind
20 of mathematical ---

21 THE COURT: Well, that's what I'm saying.
22 There's no life care planner in this case, and there's
23 no mathematical deduction as to again, as you indicated,
24 how much a therapy visit is going to cost ---

25 MR. BEVANS: That's right.

1 THE COURT: --- how much ADHD medication is
2 going to cost in the future, how many times he's going
3 to have to take it, how long he's going to have to take
4 it.

5 MR. BEVANS: Now if those were present,
6 and those numbers added up to the figures, well, I would
7 be stuck with it. I would agree.

8 THE COURT: Sure.

9 MR. BEVANS: But when it's just pulled out
10 of a hat like that.

11 THE COURT: What is he saying where he gets
12 these numbers from?

13 MR. BEVANS: Two articles, just the two
14 articles that are written about nationwide childhood
15 maltreatment over the entire country, 50 states,
16 a huge pool of children, all different types of abuse.
17 And that's why I referenced these are kids that have,
18 I mean, legitimate, like, horrible clergy abuse,
19 you know.

20 MR. TISDALE: Your Honor, he is an expert
21 in child psychology.

22 THE COURT: I'm going to let him testify
23 about all of that, but I'm not going to let the numbers
24 come out. I agree that's way too prejudicial for this.
25 I mean, if it's just pulled out of this hat, again like

1 you say, I just don't see how -- without a life care
2 planner how you can get that in, so take it out.

3 MR. BEVANS: Thank you, sir.

4 THE COURT: All right. See y'all in the
5 morning, 10:00 a.m.

6 MR. TISDALE: Thank you, Your Honor.

7 THE COURT: Yes, sir. Absolutely.
8 Thank you all.

9 (End of Transcript of Record)

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CERTIFICATE OF REPORTER

State of South Carolina)
County of Berkeley)

I, the undersigned, Yvestre Torres, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Berkeley County, South Carolina, on the 22nd of February, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 3, 2022



Yvestre Torres

Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

COURT OF COMMON PLEAS
2019-CP-08-02808

Shelby Trehus)

) TRANSCRIPT OF RECORD

-vs-)

) February 23, 2022 - Day 2

Santee Run Apartments)

) Moncks Corner, South Carolina

B E F O R E:

The Honorable Bentley Price, Judge

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

Thomas S. Tisdale, Jr., Esquire
Salvatore Giancarlo Davi, Esquire
Attorneys for the Plaintiff

Shawn M. Bevans, Esquire
Attorney for the Defendant

Reported By:

Yvestre Torres, OCR
Circuit Court Reporter for the
Ninth Judicial Circuit

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
P-9	Fire Dept. Incident Report	145	154
D-6	Google Map	166	166
D-7	Dr. Wiita's CV	193	193
D-8	Dr. Witta's Evaluation	193	193

INDEX

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Chief Robert Gass				
Mr. Davi	148			
Mr. Bevans		157		
Capt. Corey Denny				
Mr. Davi	159			
Mr. Bevans		164		
Dr. William Corey (Video Deposition)				
171				
Dr. Timothy Brewerton (Video Deposition)				
175				
Dr. Patrick Wiita				
Mr. Bevans	192			
Mr. Tisdale		204		
Mr. Bevans			214	
Ms. Shelby Jean Colley				
Mr. Bevans	215			
Mr. Tisdale		224		

1 (Plaintiff's Exhibit No. 9 was marked for
2 identification.)

3 THE COURT: All right. Thank you very much.
4 Please be seated. All right. Anything before we get
5 started?

6 MR. TISDALE: Your Honor, I j ust want to say
7 one thing.

8 THE COURT: Okay.

9 MR. TISDALE: One procedure.

10 THE COURT: Okay.

11 MR. TISDALE: Shawn, you don't have to come
12 if you don't want to.

13 MR. BEVANS: I can hear you from here.

14 MR. TISDALE: You can?

15 MR. BEVANS: I think so.

16 MR. TISDALE: Kind of embarrassing.

17 Judge, we have Kayden in here today.

18 THE COURT: Okay.

19 MR. TISDALE: And just to introduce
20 you before the jury gets in, to you and the jury.

21 THE COURT: Okay.

22 MR. TISDALE: And then his mother is going
23 to take him out.

24 THE COURT: Okay.

25 MR. TISDALE: He's sitting right here.

1 THE COURT: All right. Not a problem.
2 Kayden, how are you doing? How old are you? You can
3 take the mask off if you want to. You're six. Does
4 that mean you're in kindergarten or first grade?

5 THE MINOR CHILD: First grade.

6 THE COURT: First grade. My son is seven.
7 He's in first grade. Do you like school? He doesn't
8 either, so it's fine. I mean, I don't disagree with
9 him. All right. We can introduce him to the jury
10 whenever y'all like. All right. Bring them out.

11 (Jury enters the courtroom at 10:07 a.m.)

12 THE COURT: Y'all can be seated.
13 Mr. Tisdale, do y'all want to do that now or wait?

14 MR. TISDALE: I think it would be a good
15 idea to do that now.

16 THE COURT: Okay. Whatever you want to do.

17 MR. TISDALE: So he can leave.

18 THE COURT: Okay.

19 MR. TISDALE: Would you come up with Kayden?
20 Good right here. Your Honor, you have already met
21 Mr. Kayden Montagna, who's a Plaintiff in this suit.
22 We simply wanted you and the jury to know he's a real
23 person, and his mother brought him today so he could
24 be introduced to the Court and to you. So we appreciate
25 very much you hearing this case and meeting the

1 Plaintiff -- one of the two Plaintiffs in the lawsuit.

2 THE COURT: All right.

3 MR. TISDALE: May he be excused?

4 THE COURT: Absolutely. Kayden is six.

5 He is in the first grade, like my son. He indicates,
6 just like my son, he doesn't like school, and he's going
7 to go back to it today. So, that's the way life goes.

8 MR. TISDALE: And he's probably really glad
9 to be here.

10 THE COURT: Exactly.

11 MR. TISDALE: But he's not exhibiting it
12 right now.

13 THE COURT: Exactly. My son would rather
14 be anywhere but school, but that's the way it goes.

15 MR. TISDALE: Thank you, Your Honor.

16 THE COURT: You are welcome. Yes, members
17 of the jury, I know you're stunned that someone as young
18 as me would have a seven-year old, but I started very
19 early in life. All right. Is the witness here?

20 MR. TISDALE: We have him.

21 THE COURT: Okay. All right. You can go
22 ahead and call him in.

23 MR. DAVI: Plaintiff would like to call
24 Chief Robert Gass.

25 THE COURT: All right. Could you get

1 Mr. Gass for us?

2 MR. DAVI: We'll also bring in Captain Corey
3 Denny as well, both of them, but I'm going to be talking
4 to just Chief Gass right now.

5 CHIEF ROBERT GASS, was called as a witness,
6 being duly sworn, was examined and testified as follows:

7 THE CLERK: Thank you. Please be seated.
8 State your full name for the record, and please spell
9 your last name.

10 THE WITNESS: My name is Robert Gass,
11 G-A-S-S. I'm the fire chief for the town of Moncks
12 Corner.

13 DIRECT EXAMINATION

14 BY MR. DAVI:

15 Q. Good morning, Chief Gass. Can y'all hear me,
16 okay? All right. Hopefully, we'll get through this
17 quickly, so we don't have any other apartments burn down
18 in the meantime. Can you state your title again?

19 A. I'm the fire chief for the town of Moncks Corner.

20 Q. And how long have you been fighting fires?

21 A. I've been with the town for 21 and a half years.

22 Q. Okay. And you've been with Moncks Corner Fire
23 Department that entire time?

24 A. Yes.

25 Q. Okay. Now can you briefly walk me through some

1 of your training in order to serve on the fire
2 department?

3 A. Well, I started with some of the old training,
4 amounts to nationally-accredited certifications for fire
5 one, fire two. I've had fire instructor, fire officer
6 one, fire safety officer. All of these things are
7 nationally accredited, and all that does is it goes
8 by the NFPA standard for job performance qualifications.

9 In other words, they say that to be a fire
10 one you have to have X number of hours of building
11 construction, you have to have X number of hours of fire
12 behavior, you know, through all of the different
13 categories. It's the same thing for each of those
14 as you progress through the fire service.

15 Q. And can you -- what is the NFPA you mentioned?

16 A. National Fire Protection Association.

17 Q. Okay. And did you arrive at the Santee Run
18 Apartments the morning after the fire?

19 A. Yes, I was -- and I don't have it exactly,
20 but about a half hour -- between 15 minutes and a half
21 hour into the fire is when I arrived.

22 Q. Okay. And when you arrived to the fire, were you
23 the supervisor in charge at the time?

24 A. Yes.

25 Q. Okay. Just to sort of get into it, how important

1 is having a functioning smoke detector in a residence?

2 A. It's pretty important.

3 Q. What is the purpose of a smoke detector?

4 A. A smoke detector will go off and alarm and alert
5 you to the presence of smoke generally rather early so
6 that you can get out of a building ---

7 Q. So ---

8 A. --- if it's on fire, or if something else
9 is causing, you know -- the main thing is if it's
10 a fire causing the smoke, you can get out safely.

11 Q. And smoke detectors, are they required to be
12 serviced or inspected?

13 A. They're not required to be serviced or inspected.

14 Q. Should they be?

15 A. It's recommended that you do it.

16 Q. Okay.

17 A. We teach to -- for residents to test them
18 regularly.

19 Q. I'm going to show you what has been previously
20 marked as an exhibit. Chief Gass, this has been
21 identified by the Plaintiff ---

22 MR. BEVANS: Objection, Your Honor.

23 THE COURT: Hold on.

24 MR. BEVANS: Is the chief -- I mean, is the
25 chief offering testimony as an expert witness or a lay

1 witness at this time?

2 THE COURT: Well, let's see if he's asking
3 for an opinion. He's not going to be able to give it,
4 but he can ask certain factual questions. I don't have
5 a problem with that right now.

6 MR. BEVANS: Thank you.

7 MR. DAVI: Thank you, Your Honor.

8 BY MR. DAVI:

9 Q. Chief Gass, this has been identified by the
10 Plaintiff as the one smoke detector that was in her
11 apartment. Can you tell me when the smoke detector --
12 based on the date here, when it should have been
13 replaced?

14 MR. BEVANS: Objection. Calls for hearsay.

15 THE COURT: He can read it.

16 THE WITNESS: It says replace in ten years,
17 and the date of manufacturing is June 2006.

18 BY MR. DAVI:

19 Q. What was that date again?

20 A. June 2006.

21 Q. Okay. Please talk into your microphone, sir.
22 Now what is the -- why is it important to inspect smoke
23 detectors?

24 A. Well, just to be sure they're working. When we
25 do our fire safety classes, we recommend that you test

1 your smoke alarm monthly, just push the button and test
2 it.

3 Q. Okay. Now how important is having a fire
4 extinguisher in a residence or a building where a lot
5 of people tend to be?

6 A. I would say it's important.

7 Q. Okay. And are fire extinguishers recommended
8 or required to be consistently inspected?

9 A. They are.

10 Q. Okay. How often?

11 A. Well, in a commercial setting, they've got to be
12 inspected annually.

13 Q. Okay. Now, I'm going to show you another exhibit
14 previously identified by the Plaintiffs as the fire
15 extinguisher that was in the Plaintiff's apartment.
16 This is it here. Can you tell me when the last time
17 it was serviced?

18 MR. BEVANS: Object to the form.

19 THE COURT: I understand. I'll overrule it.

20 THE WITNESS: April of 2008.

21 BY MR. DAVI:

22 Q. Can you repeat that date?

23 A. April of 2008.

24 MR. TISDALE: Show it to the jury, Sal.
25 What exhibit number is that?

1 MR. DAVI: This is exhibit -- this
2 is Plaintiff's Exhibit 8. The smoke detector
3 was Plaintiff's Exhibit 1.

4 BY MR. DAVI:

5 Q. Chief Gass, I want to ask you when Moncks Corner
6 Fire Department personnel respond to fires or
7 smoke-related incidents, do they write up reports?

8 A. They do.

9 Q. Okay. Now, Chief Gass, are you aware of any
10 reports that were written up after the May 29th, 2019,
11 fire?

12 A. Yes.

13 Q. Okay. Does this look like the report that was
14 prepared by the Moncks Corner Fire Department after this
15 fire?

16 A. It does. This report was prepared in the old
17 RMS system, which is our report management system.

18 Q. Okay.

19 A. And it has been uploaded into the ---

20 MR. TISDALE: Needs to speak up.

21 THE WITNESS: That report was loaded
22 into the old report management system, and we now have
23 a newer system, and it was merged into it.

24 BY MR. DAVI:

25 Q. Okay. But you've identified this as the report?

1 A. Yes.

2 Q. Okay.

3 MR. DAVI: I would like to admit this as
4 Plaintiff's Exhibit 9.

5 THE COURT: All right. Any objection?

6 MR. BEVANS: Can I see the document he's
7 admitting, just to make sure it looks the same?

8 MR. DAVI: Yeah, here you go, Shawn.

9 MR. BEVANS: Your Honor, if I may approach
10 real quickly?

11 THE COURT: Sure.

12 MR. BEVANS: Can you just take the cover
13 page off? That's all. The rest of the report is the
14 same, just that the cover page has some context.

15 THE COURT: Okay.

16 (PPlaintiff's Exhibit No. 9 was entered into evidence.)

17 BY MR. DAVI:

18 Q. Now again, this is the report that was prepared
19 after the fire by the Moncks Corner Fire Department,
20 correct?

21 A. Yes.

22 Q. Okay. And did you review this report?

23 A. I did.

24 Q. All right. And if you look at that last page,
25 does it say that you were the officer in charge?

1 A. It does.

2 Q. Okay. And who does it say the report was
3 reviewed by?

4 A. The making of the report was Corey Denny.

5 Q. And who reviewed it?

6 A. I reviewed it.

7 Q. Okay. And based on this report and your
8 knowledge having been at the scene, what did your
9 investigation reveal was the origin of this fire?

10 A. SLED was called in to investigate because they
11 have -- they do arson and fire origin investigations
12 on a daily basis, so they are the most qualified.
13 So if it's not a simple fire, we call them in. And they
14 found that it was a cooking fire, a pot left on the
15 stove.

16 Q. All right. And turning your attention to Page 6
17 of that report where it says -- let's see. Page 6.
18 Does your report -- what does your report indicate about
19 the presence of a smoke detector?

20 MR. BEVANS: Objection.

21 THE COURT: He can refresh his recollection
22 based on the report that he's generated.

23 THE WITNESS: It says none present.

24 BY MR. DAVI:

25 Q. Okay. And remind me again what would a

1 functioning smoke detector help prevent?

2 A. It would -- it is to prevent you from being
3 injured by a fire.

4 Q. Okay. Can you elaborate? What does injured
5 by a fire mean?

6 A. Most people are injured by smoke -- smoke
7 inhalation.

8 Q. Okay.

9 A. And then the secondary injury would be from heat,
10 you know, a burn.

11 MR. DAVI: Please talk into the microphone,
12 sir.

13 THE WITNESS: Whether it's radiant or
14 whether it's, you know, flames, the secondary injury
15 would probably be a burn.

16 BY MR. DAVI:

17 Q. Okay.

18 A. Primarily, most people -- most injuries will be
19 smoke inhalation.

20 Q. Okay. So smoke inhalation is dangerous?

21 A. Yes.

22 Q. Okay. Has -- to your knowledge, has the Moncks
23 Corner Fire Department been able to discover any sort
24 of records by the landlord of any smoke detectors being
25 inspected?

1 A. We don't maintain those records.

2 Q. Okay.

3 MR. DAVI: No more questions. If you can
4 answer any questions by Mr. Bevans, that would be great.
5 Thank you.

6 CROSS-EXAMINATION

7 BY MR. BEVANS:

8 Q. Good morning, Chief Gass. How are you today?

9 A. Just fine. How are you doing?

10 Q. I'm doing well. Thank you. I'll be very brief.
11 You were shown photographs of a smoke alarm, correct?

12 A. Yes, sir.

13 Q. And were you told that the smoke alarm that you
14 were shown photographs of came from the Plaintiff's
15 apartment?

16 A. Yes, sir, I was.

17 Q. Would that coincide with the finding on Page 6
18 of the report that shows no smoke detectors were present
19 in the apartment?

20 A. No.

21 Q. So is it possible that there was a smoke
22 detector, at least in Plaintiff's apartment?

23 A. Yes.

24 Q. You mentioned putting on classes about smoke
25 detector safety?

1 A. We do, yes.

2 Q. And that's something that Moncks Corner Fire
3 Department does?

4 A. Yes, we generally try to incorporate it when
5 we do CPR classes.

6 Q. You would try to incorporate it when you do CPR?

7 A. Yes.

8 Q. And when you put on those classes, are they for
9 -- who are those classes for?

10 A. The general public.

11 Q. Citizens of Moncks Corner?

12 A. Yes.

13 Q. Such as the Plaintiff?

14 A. Yes.

15 Q. This fire report, you indicated it was prepared
16 by Captain Denny?

17 A. Yes.

18 Q. And you reviewed it?

19 A. I did.

20 Q. Great. So, I can just ask Captain Denny about
21 anything else on it?

22 A. Yes, sir.

23 MR. BEVANS: That's all I have for you, sir.
24 Thank you for your time and being here today.

25 THE COURT: All right. Anything else in

1 followup?

2 MR. DAVI: No, Your Honor.

3 THE COURT: All right. You may be excused.
4 Have a great rest of your day.

5 THE WITNESS: Thank you.

6 THE COURT: Yes, sir.

7 MR. DAVI: Plaintiffs would like to call
8 Captain Corey Denny to the stand, please.

9 THE COURT: All right. Come on up, sir.

10 CAPTAIN COREY DENNY, was called as a
11 witness, being duly sworn, was examined and testified
12 as follows:

13 THE CLERK: State your full name for
14 the record and please spell your last name.

15 THE WITNESS: Corey Lee Denny, D-E-N-N-Y.

16 DIRECT EXAMINATION

17 BY MR. DAVI:

18 Q. Good morning, Captain Denny.

19 A. Good morning.

20 Q. I just want to remind you to speak into the
21 microphone so everyone can hear you.

22 A. Yes, sir.

23 Q. Once more, can you state your title, please?

24 A. I'm a captain for the Moncks Corner Fire
25 Department.

1 Q. And how long have you been a firefighter?

2 A. This is going to be 18 years in June.

3 Q. And, specifically, how long have you been with
4 the Moncks Corner Fire Department?

5 A. All 18 years.

6 Q. And did you respond to the Santee Run Apartments
7 after the fire on May 29, 2019?

8 A. I did.

9 Q. Okay. Did you respond the night of the fire?

10 A. Yes, correct. I was the first arriving engine.

11 Q. And you -- you said that you were the first
12 arriving engine?

13 A. Correct.

14 Q. Okay. So were you on the engine?

15 A. Yes, I was the officer riding in the passenger
16 seat.

17 Q. And when you arrived was the fire still ablaze?

18 A. Oh, yes, it was through the roof.

19 Q. Okay. And you prepared the incident report after
20 that fire; is that correct?

21 A. Correct, from my information, yes, sir.

22 Q. Okay. I'm going to show you what we have marked
23 as Plaintiff's Exhibit 9. You have that in front of
24 you. Do you see that?

25 A. Yes, sir.

1 Q. Is that the incident report you created?

2 A. It is.

3 Q. And on that last page, who does it say was the
4 member that made the report?

5 A. It was myself, Corey Denny.

6 Q. Okay. Now, I want to turn your attention to
7 Page 6 of your report.

8 A. Yes.

9 Q. Now what does your report indicate about the
10 presence of a smoke defector?

11 A. That none were present.

12 Q. So when you were on the scene, did you hear any
13 audible smoke detectors?

14 A. I did not.

15 Q. Okay. So that is not specific to any individual
16 apartment, you just didn't hear any smoke detectors;
17 is that right?

18 A. That's correct.

19 Q. Okay.

20 A. So, typically, if we would enter a residence,
21 we would know, that's where that's gets notated.
22 This was an apartment complex. We never made entry
23 to a residence. It was all exterior. So the apartment
24 that I went into in the beginning to the bottom right,
25 there was no detectors going off. None were present

1 or heard by me. It's why it's stated as none present.

2 Q. Okay. Now when you -- when you first entered
3 into the parking lot, were your sirens on, on the truck?

4 A. Yes, so when we turned on Bonnoitt Street onto,
5 I believe, it's Debbie Lane, so the apartments are down
6 Debbie Lane about 200 yards, our sirens, lights,
7 everything is on until we turn into the parking lot.
8 There was approximately 30 people in the road, so our
9 lights and sirens were definitely on until we stopped
10 the apparatus in the parking lot.

11 Q. Okay. So when you got to the parking lot,
12 the sirens were off though?

13 A. Correct. We turned the sirens off, entered the
14 parking lot. Correct.

15 Q. All right. Like I showed Chief Gass, I'm going
16 to show you what our Plaintiff has identified as the
17 smoke defector that was the only one in her apartment.
18 Now can you tell me when you are supposed to replace
19 this particular smoke detector?

20 A. It says replace in ten years and manufactured
21 date of 2006, June the 2nd.

22 Q. Okay.

23 A. So ten years from that date it's recommended
24 to be replaced.

25 Q. Now, I'm going to show you another exhibit,

1 and this has also been previously identified by our
2 Plaintiff as -- this is Plaintiff's Exhibit 8, as the
3 fire extinguisher that was present in her apartment.
4 Now based on this photograph, can you tell me when
5 is the last time it was serviced?

6 A. It would have been April of 2008.

7 Q. Can you speak into the microphone, please.

8 A. April of 2008.

9 Q. Okay. And based on your recollection, the fire
10 was on May 29th of 2019, correct?

11 A. That is correct.

12 Q. Okay. How do functioning smoke detectors prevent
13 the inhalation of smoke?

14 A. It wouldn't prevent the inhalation of smoke.
15 It would just warn you that smoke is present.

16 Q. And when it warns you that smoke is present,
17 does that allow you to escape?

18 A. Depends on how fast the smoke is entering the
19 space that the detector is protecting, but typically,
20 yes. Smoke detectors are placed up high so when
21 the smoke comes in, the smoke rises, it has a chance
22 to alert you before the smoke gets down to the level
23 where it would be breathed in by the person.

24 Q. Okay. But the smoke detectors, they provide
25 warning that smoke is in the area, correct?

1 A. Yes.

2 Q. Okay. And is smoke inhalation dangerous?

3 A. Yes, it is dangerous.

4 Q. Okay.

5 MR. DAVI: No further questions. If you can
6 answer any questions by Mr. Bevans.

7 THE WITNESS: Yes, sir.

8 MR. DAVI: Thank you.

9 CROSS-EXAMINATION

10 BY MR. BEVANS:

11 Q. Captain Denny, good to see you again.

12 A. Yes, sir.

13 Q. Good morning.

14 A. Good morning.

15 Q. You testified that you were the first -- you were
16 on the engine that was first to arrive?

17 A. Correct.

18 Q. And you talked about going down Bonnoitt Street
19 or Debbie Lane?

20 A. Correct.

21 THE COURT: One second. I don't know
22 if the jurors can see the witness because of that.
23 Just take it down for right now, please.

24 MR. BEVANS: I guess while we're doing that,
25 can I play with the Elmo?

1 THE COURT: Yeah, it will work sometimes.
2 It's pretty temperamental.

3 (Pause.)

4 THE COURT: We're going to need you in
5 a minute because we're going to do video depositions,
6 and we're just going to need you to make sure that
7 it's up on both of their screens as well.

8 THE CLERK: Okay.

9 THE COURT: All right: Thank you.

10 MR. BEVANS: Okay to resume, Your Honor?

11 THE COURT: Sure, absolutely.

12 MR. BEVANS: Okay. Sorry about that,
13 Captain Denny, ladies and gentlemen of the jury.

14 BY MR. BEVANS:

15 Q. I'll show you -- it's a Google map. Do you
16 recognize this overhead shot?

17 A. Yes, I do.

18 Q. Do you -- what do you see in that overhead shot?

19 A. This is the roadway leading up to the apartment
20 complex on Debbie Lane.

21 Q. And do you see that Santee Run Apartment Complex
22 is in that ---

23 A. I do, yes, sir.

24 Q. If you will, I'm going to give you a red pen,
25 and if you can, trace the route that your engine would

1 have traveled down Bonnoitt Street and Debbie Lane.
2 And what we'll do is we're going to mark this as
3 an exhibit for the jury so the jury can see the route
4 of your engine.

5 (Defendant's Exhibit No. 6 was marked for
6 identification.)

7 (Defendant's Exhibit No. 6 was entered into evidence.)

8 BY MR. BEVANS:

9 Q. And so you put an X where you stopped?

10 A. Correct.

11 Q. Okay. And so if I'm correct, looking at this
12 exhibit, which will be passed back for the jury for
13 y'all to see closer up, your truck would have come from
14 the right side of this page, all the way down Bonnoitt
15 Street, and taken a left onto Debbie Lane?

16 A. That's correct.

17 Q. And then it looks like you pulled into Lorraine
18 Drive?

19 A. Correct.

20 Q. Is that the back parking lot behind Santee Run?

21 A. That is correct.

22 Q. And so your engine, you testified earlier,
23 describing about your lights and sirens, those lights
24 and sirens would have been on the entirety of your
25 travel on Debbie Lane?

1 A. That's correct.

2 Q. And if you will, can you put another star?

3 Do you know where Plaintiff's apartment was at Santee
4 Run?

5 A. (Indicating.) I believe it was that.

6 Q. Okay. And that apartment -- is that apartment
7 you put an X, is that just adjacent to Debbie Lane?

8 A. Correct.

9 Q. Okay. Captain, did you testify that you put
10 the no smoke detector was present in the one apartment
11 you went into, right?

12 A. We never made entry into an apartment -- oh,
13 yeah, yes. Correct. The apartment that I went into
14 on the bottom corner, correct, where there was still
15 people inside.

16 Q. Okay. And that was the bottom corner on the
17 opposite side of Plaintiff's apartment?

18 A. Correct.

19 Q. Did you ever go into Plaintiff's apartment?

20 A. I did not.

21 Q. Did you ever inspect or had an opportunity
22 to inspect the smoke alarm that Plaintiff has shown
23 you and told you was in her apartment at the time?

24 A. We did not.

25 Q. Do you have any indication or knowledge

1 as to whether that alarm was functioning?

2 A. We do not have that information.

3 Q. You don't have that information?

4 A. Do not.

5 Q. And you indicated that alarms are recommended
6 to be replaced?

7 A. That is correct.

8 Q. Is it possible that that alarm could still
9 function?

10 A. It could possibly, yes.

11 Q. And we just don't know because we don't have
12 it to look at, right?

13 A. That is correct.

14 Q. And you were never given a chance to look at it?

15 A. That is correct.

16 Q. Did you ever speak to Ms. Trehus, the Plaintiff,
17 after the fire or during your fighting of the fire?

18 A. Actually, I did. After I was already in rehab
19 getting a drink of water, probably 30 minutes later,
20 and she walked up behind me and asked if this where
21 EMS was, and I said, yes. And I said, are you okay?
22 Being an EMT, I asked if she's okay. She said that she
23 jumped out the window, and she thought maybe something
24 was wrong with her leg. So, I told her to go talk --
25 the EMS was standing right next to me, and she talked

1 to them. That's the only contact I had.

2 Q. That was the last contact ---

3 A. That was the only contact I had, correct.

4 Q. And she walked up to you?

5 A. Correct.

6 Q. And you said that was about 30 minutes after you
7 were already ---

8 A. Thirty to 45 minutes. It really -- I never
9 even thought about it again until y'all contacted me.
10 So that would have never been put in the -- somebody
11 walked up looking for help. I put them in the direction
12 of who was going to help them.

13 Q. Great. During that brief conversation with
14 Ms. Trehus when she walked up to you, did she mention
15 to you at all that her smoke alarm hadn't gone off?

16 A. No, she did not.

17 MR. BEVANS: Those are all my questions,
18 Captain. Thank you for coming this morning.

19 THE WITNESS: Thank you.

20 THE COURT: All right. Anything as
21 followup?

22 MR. DAVI: No, Your Honor.

23 THE COURT: All right. You may be excused.
24 Thank you very much. All right, call your next witness.

25 MR. TISDALE: Your Honor, our next witness

1 is going to be a video deposition of Dr. Corey.

2 THE COURT: All right.

3 MR. TISDALE: And so we have to set it up
4 technically, I guess.

5 THE COURT: All right. Ladies and
6 gentlemen, the next is going to be a video deposition,
7 so they're going to set up. So let's take about
8 a ten-minute break and let you get one more hit
9 of coffee, and we'll bring you right back in, okay?

10 (Jury exits the courtroom at 10:39 a.m.)

11 (Recess taken.)

12 (Back on the record.)

13 THE COURT: Please be seated. Bring them
14 in.

15 (Jury enters the courtroom at 10:55 a.m.)

16 THE COURT: Everybody, feel normal now?
17 All right. All right. The lawyers are excited to
18 be back to normal as well. They like sitting there.
19 All right. So we have the -- oh, is it ready?

20 MR. DAVI: I believe so.

21 THE COURT: Okay. All right. Ladies and
22 gentlemen of the jury, we are now going to play a video
23 deposition. It's as if they -- it's a sworn deposition.
24 All parties were present at that deposition. You will
25 see that. It's simply that the witness is unavailable,

1 and so they obviously have videoed his deposition for
2 purposes of trial. So it's to be considered as though
3 the person was here testifying in person, all right.
4 And I won't have any role in this, so if I move around,
5 don't worry about it.

6 (Video deposition of Dr. William Corey played for the
7 jury.)

8 THE COURT: All right. Is your next witness
9 available?

10 MR. TISDALE: Sir?

11 MR. BEVANS: It's another video, Your Honor.

12 THE COURT: How long is it going to take?

13 MR. TISDALE: It's going -- it doesn't
14 mean we couldn't take a break sometime in the middle.
15 But Shawn, I have -- I think it's two to three hours.

16 THE COURT: Why don't we take a break
17 and condense that down.

18 MR. BEVANS: Yeah. If you give us maybe
19 a 15-minute recess, maybe Mr. Tisdale and I can cut
20 out some segments of it that, you know, might not
21 be necessary.

22 THE COURT: Why don't we talk outside
23 the presence of the jury about what we need to do to see
24 what we can do to trim that down just a bit. All right.
25 Just give us about five minutes, and we'll see what

1 we can do, all right.

2 (Jury exits the courtroom at 11:22 a.m.)

3 MR. TISDALE: Two and a half hours is the
4 whole thing, but there'll be a little reduction.

5 THE COURT: Right. But what I was going to
6 say is, did y'all tell me yesterday -- I think I heard
7 Mr. Bevans say something like, well, after we went
8 through his qualifications for an hour, then we got down
9 to it. I mean, does that, like, take up a ton of time
10 or something?

11 MR. BEVANS: I think we can get -- because
12 remember, I said there's one section ---

13 MR. TISDALE: He does have ---

14 MR. BEVANS: --- and it took a lot of time
15 because he went and looked and counted, so that segment
16 I think, will save us a lot of time. Plus, there is two
17 pages, four pages, 12 pages -- 14 pages of testimony
18 that's taken out by the motion in limine ruling.

19 MR. DAVI: Yeah.

20 MR. BEVANS: That might still put us at an
21 hour and a half, I don't know.

22 THE COURT: And that's fine. I have no
23 problem with going ahead and starting it, and we'll
24 just break at 12. I don't have a problem with that.

25 MR. BEVANS: I would like to shorten

1 it as much as we can. It's my fault. I probably went
2 a little wild on the video deposition.

3 MR. TISDALE: Shawn's questions were about
4 three times as much as mine.

5 MR. BEVANS: I would agree with that.
6 It's my -- I mean -- and I've got segments that we
7 can cut. I just don't know where that's going to leave
8 us time wise.

9 THE COURT: I'm okay with the time. I was
10 just saying that we don't need to have an hour's worth
11 of this guy's qualifications and let's take them out,
12 but if y'all want it, I'm fine with it. Doesn't matter
13 to me.

14 MR. BEVANS: I don't personally ---

15 MR. TISDALE: I don't know how we would take
16 out the important part from the part that's not
17 important.

18 THE COURT: All right. Then, we'll just
19 start it, and we'll just ---

20 MR. BEVANS: Can I fast forward it?

21 THE COURT: Yeah. We'll just have to ride
22 it out.

23 MR. TISDALE: Where the judge says
24 we couldn't present because it wasn't life planning,
25 we've agreed to, of course, take that out, pursuant

1 to the judge's order. That's not very much. That's
2 a page and a half in the deposition, I think.

3 (Recess taken.)

4 (Back on the record.)

5 THE COURT: Well, let's do this. I'm only
6 going to keep them for 20 more minutes. Is the first
7 20 minutes -- doesn't need to be redacted?

8 MR. BEVANS: Yeah, we've got it to 41 now.
9 That's just the Plaintiff's cross-exam -- Plaintiff's
10 direct exam.

11 THE COURT: Okay. But I'm saying is the
12 first 20 minutes ready to go?

13 MR. BEVANS: Yeah.

14 THE COURT: Yeah, well, let's just bring
15 them out, and we can work on it over lunch.

16 MR. BEVANS: Yeah, that's perfect.

17 THE COURT: All right. Bring them out.

18 MR. BEVANS: Thanks for your time, Judge.

19 THE COURT: No problem.

20 (Jury enters the courtroom at 11:33 a.m.)

21 THE COURT: All right. So, ladies
22 and gentlemen, we've got it condensed down pretty good,
23 so we're just going to go ahead and start it now,
24 and then we'll take a break around 12 o'clock to go
25 to lunch, all right.

1 MR. DAVI: Could we cut the lights,
2 Your Honor? Thank you.

3 (Video deposition of Dr. Timothy Brewerton played for
4 the jury.)

5 THE COURT: All right. We're going to go
6 to lunch. It's 12:06. We'll come back at about 1:10,
7 1:15. Fair enough. We'll see you then.

8 (Jury exits the courtroom at 12:06 p.m.)

9 (Recess taken.)

10 (Back on the record.)

11 THE COURT: All right. Thank you very
12 much. Please be seated. All right, everybody is back.
13 You can go ahead and bring them out.

14 MR. BEVANS: Your Honor, I'm not quite done
15 on our time designation on Dr. Brewerton's video.

16 THE COURT: Meaning what?

17 MR. BEVANS: That I still have a few time
18 designations to omit from the time stamps from the
19 testimony. We've got -- I went through it. We agreed
20 with Plaintiff's counsel on what sections need to come
21 out, but it's not time stamped. Now we've got to go
22 through it and find the sections on the video and put
23 the actual timing of it.

24 MR. TISDALE: Make sure you get through
25 it by Friday.

1 MR. BEVANS: I can get it done pretty
2 quickly.

3 (Jury enters the courtroom at 1:18 p.m.)

4 THE COURT: Yeah, but that's not for this
5 video.

6 MR. BEVANS: Yeah, it is. It's the video
7 we're playing now. It's part of the motion in limine
8 before trial started.

9 THE COURT: I thought you were going to
10 redact it last night.

11 MR. BEVANS: Well, I did the deposition,
12 but I didn't on the video until just now. I'm trying
13 to get the time stamp matched up with the redactions
14 on the transcript.

15 THE COURT: I'm confused. What are you
16 trying to accomplish?

17 MR. BEVANS: So there were a few pages that
18 Your Honor agreed to keep stuff out.

19 THE COURT: Right.

20 MR. BEVANS: And I went through, and
21 I identified those segments on the actual transcript,
22 but the transcript I had didn't have the time stamp to
23 match with the video. So, I have got to go in the video
24 and figure out where the time stamp is on the testimony
25 we're omitting. I've gotten about two-thirds of the way

1 through.

2 THE COURT: But it's for this video?

3 MR. BEVANS: Correct, yes, sir. I was
4 working on it over lunch and just didn't get a chance
5 to finish it.

6 THE COURT: All right. Ladies and
7 gentlemen, I'm not sure what he's talking about. So let
8 me just try to figure out what these lawyers are doing,
9 so give me about five minutes, okay?

10 MR. BEVANS: My apologies, Your Honor.

11 (Jury exits the courtroom at 1:19 p.m.)

12 THE COURT: What I'm asking is that you
13 wanted me to make a ruling yesterday so you can do that
14 over last night.

15 MR. BEVANS: Right. Well, I did with the
16 transcript. I identified the segments in the transcript
17 that needed to come out, and Plaintiffs have agreed to
18 those segments to comply with your ruling.

19 THE COURT: Right.

20 MR. BEVANS: What I didn't have at the time
21 was the synced-up video to be able to have Mr. Davi fast
22 forward and omit those portions, or fast forward those
23 portions of the video, and that's what I'm working on
24 now. I'll be finished, really, in no time. I've just
25 got one more section. I've got to identify the time

1 stamps.

2 So, I've already identified the segments.
3 Like, for example, this is, like, an eight-page segment.
4 It talks strictly about the costs that Your Honor agreed
5 to keep out. I just need to match up what pages of this
6 transcript match with the time stamp on the video so
7 that Mr. Davi can, you know, either mute it so the jury
8 doesn't hear it or whatever.

9 THE COURT: All right.

10 MR. BEVANS: You know, the other thing
11 we could do, if Your Honor wants to play what we have
12 so far, if you want to plan on taking a recess during
13 the middle of Dr. Brewerton's testimony, I can kind
14 of point out when the segment is about to come up,
15 you can take a recess then ---

16 MR. TISDALE: How long ---

17 MR. BEVANS: --- we could fast toward it.

18 MR. TISDALE: How long would it take you
19 right now?

20 MR. BEVANS: I wouldn't expect more than
21 five or ten minutes. I'm pretty much -- I'm working
22 on it right now. I could have it playing -- I could
23 do it with a headphone in, but I don't want the jury
24 to see me have headphones in, trying to comp a video
25 while they're in there.

1 THE COURT: Well, they don't care what
2 you're doing because it's a video.

3 MR. BEVANS: I'm fine with doing it with
4 headphones in if that works for the Court.

5 THE COURT: That's fine.

6 MR. BEVANS: I just don't want it to be
7 anything ---

8 THE COURT: Yeah, that's not a problem
9 whatsoever.

10 MR. BEVANS: Okay.

11 THE COURT: All right. Bring them back out.

12 MR. BEVANS: That works for me. I just
13 don't want to be rude and have them in, that's all.

14 THE COURT: Completely fine by me.

15 (Jury enters the courtroom at 1:21 p.m.)

16 THE COURT: All righty. Two things.
17 Number one, what -- basically, I now understand what
18 they were saying, is that I made a ruling because I am
19 the sole judge of the law in this case as to what gets
20 presented at the trial, correct? Y'all are the sole
21 judges of the facts in this case.

22 And so I have determined that certain
23 portions of his testimony will be removed, and so
24 they're trying to figure out how to get past that.
25 That is no concern of y'all whatsoever why I chose

1 to have that taken out. That's my decision, not
2 y'all's, but that's what they're going to have to do.
3 So if you see it fast forwarded or paused or muted,
4 that's why. All right. I just want y'all to know that.

5 Second thing is, is that I found -- I did
6 y'all's Mr. Hibachi, and so if I fall out or Amy falls
7 out, Val is just going to take over, okay? All right.
8 Hit play.

9 (Video of Dr. Timothy Brewerton continued to be played
10 for the jury.)

11 THE COURT: How much longer?

12 MR. BEVANS: Twelve minutes.

13 THE COURT: We're going to take a break.
14 All right. We've been at it for about two hours and
15 seven minutes, which is astonishing. So we're going
16 to go ahead and take about a 15-minute break, and we'll
17 get right back in, okay?

18 (Jury exits the courtroom at 3:01 p.m.)

19 (Recess taken.)

20 (Back on the record.)

21 THE COURT: All right. Thank you very much.
22 Please be seated.

23 MR. TISDALE: Your Honor, can we speak to
24 you just a second?

25 THE COURT: Sure, absolutely.

1 (Off-the-record conversation held at sidebar.)

2 (Back on the record.)

3 (Jury enters the courtroom at 3:13 p.m.)

4 THE COURT: All right. Be seated. Ladies
5 and gentlemen of the jury, they have agreed or conceded
6 that the remaining balance of the video does not need to
7 be played, and so I'm just going to allow the Plaintiff
8 to call their next witness, all right.

9 MR. TISDALE: Your Honor, we don't have
10 anything further in terms of witnesses. We've got
11 one exhibit that we need to submit, but we don't have
12 to do it right now.

13 THE COURT: All right. So the Plaintiff
14 rests. So, ladies and gentlemen of the jury, this
15 is how we're going to proceed forward. At this point
16 in time, I'm going to have to take up some matters
17 of law. And what we'll then do is the defense has their
18 witnesses here today.

19 My understanding is they have two,
20 and so we'll bring you back out, and I'll allow him
21 to call his two witnesses, and hopefully we'll get
22 finished with those witnesses by the end of the day,
23 all right. So if you'll excuse us for about five
24 minutes, I'll bring you right back out.

25 (Jury exits the courtroom at 3:14 p.m.)

1 THE COURT: All right. Yes, sir. Be happy
2 to hear from you.

3 MR. BEVANS: Thank you, Your Honor.
4 May it please the Court. On behalf of the Defendants,
5 I have several directed verdict motions, I think three
6 in total. I'll try and hit them and go from biggest
7 to smallest to rundown and tell you what they are.

8 One is a directed verdict on the totality
9 of the cause of action against both Defendants.
10 The second motion would be a directed verdict
11 as to the damages by the minor Plaintiff as emotional.
12 There's no physical damages. And then the third motion,
13 Your Honor, would be just as to Ms. Colley individually,
14 as nothing has been shown that prevails and hold her
15 individually responsible when she has a corporation.

16 MR. TISDALE: Your Honor, we will agree
17 with that motion.

18 THE COURT: All right, Ms. Colley, you're
19 free to go.

20 MR. BEVANS: Great. Thank you for that,
21 Your Honor. Thank you, Tom. As for the first motion,
22 Your Honor, for the directed verdict, what Plaintiff
23 has is they've asserted a negligence cause of action
24 and a breach of contract cause of action. As for the
25 negligence cause of action, as Your Honor is intimately

1 aware, negligence requires a legally recognized duty,
2 a breach of that duty, causation of the damages.

3 Here, we are absolutely lacking a duty
4 in this case. Under traditional common law of South
5 Carolina, a landlord owes no duty to maintain the
6 premises in a safe condition. That's quoted and that's
7 found in Young v. Morrissey, 285 S.C. 236. It's a 1985
8 Supreme Court case.

9 Beyond that, Plaintiffs in their complaint,
10 as alleged, have not included any statutory allegations
11 against Santee Run for breach of Landlord-Tenant Act,
12 breach of the building code. Those are subjects that
13 the Plaintiffs wanted to amend their complaints just
14 before trial, but Mr. Tisdale wouldn't do that motion.
15 So the complaint, as is, contains simply a common law
16 negligence charge for cause of action and a breach
17 of contract cause of action.

18 As for the common law negligence cause of
19 action, again there's no common law duty for a landlord
20 to provide or to have smoke alarms in the apartments --
21 in rental properties. That's only set up by statutory
22 code. To the extent Plaintiff makes reference to those
23 codes as the source of his duty, I have a Court of
24 Appeals case from the South Carolina Court of Appeals,
25 Robinson v. Code, 384 S.C. 582, and if I may approach,

1 I've got a copy of this very short opinion. Thank you.

2 Essentially, Your Honor, what the Court
3 of Appeals found in this case -- a brief background
4 of the facts. Essentially, this was a rental property
5 fire that happened in Seneca, South Carolina back
6 in 2004. The home didn't have smoke detectors at all,
7 and that was acknowledged. There was no smoke detectors
8 in the home. The Plaintiff -- there's a fire that
9 broke out in the house that started in an armchair.
10 An electrical fire started the armchair on fire.

11 The two Plaintiffs both passed away in the
12 fire from smoke inhalation, and what happened was they
13 tried to file a complaint. This was a motion to strike
14 all the causes of action. Court of Appeals ended up
15 dismissing the complaint. What the Court of Appeals
16 found was, first, traditionally, under South Carolina
17 law, a landlord owes no duty to maintain the premises
18 of the lease condition. Then, it talks about the smoke
19 detectors. Period.

20 The only reference -- legal reference
21 required in a smoke detector is found in the -- well,
22 it was referenced in the Landlord-Tenant Act, which
23 again doesn't specify -- doesn't specifically mandate
24 that landlords must provide smoke detectors in the
25 rental properties. It's another quote from the opinion

1 here, Your Honor.

2 The only code or only reference of law,
3 period, that requires smoke detectors is the building
4 code of South Carolina. Well, one, Your Honor,
5 Plaintiffs haven't had any experts in here to come
6 testify as to the building code, what it requires,
7 whether there's a breach of the building code.

8 Similarly, Your Honor heard me talk
9 ad nauseam during cross-examination questioning today,
10 we don't have the smoke alarm to even know if it didn't
11 work, to know if it didn't meet the building code.

12 But most importantly, Your Honor, most
13 importantly, is that the tenant, South Carolina Code,
14 Section 5-25-1330(a) -- 1330(b), excuse me, states that
15 a tenant must notify the owner in writing of any
16 deficiencies in the smoke detectors. That's codified.
17 It's in this law -- in the case law.

18 And you heard Ms. Trehus testify here today
19 -- or yesterday I believe, that she provided Ms. Colley
20 or anyone at Santee Run with no notice of any defects
21 with the smoke alarms. You also heard that she had
22 tested, or at least changed the batteries. She knew
23 to take them off the wall and change the batteries.
24 At no point did she ever point out any deficiencies
25 with the smoke alarms to Santee Run.

1 So for those reasons, Your Honor,
2 chiefly this case and the lack of the common law duty,
3 we don't see any legal duty that Santee Run would owe
4 to Ms. Trehus that they then breached. And again,
5 the breach element lies a little bit on the fact that
6 we don't have the smoke detector. So there's no way
7 the Plaintiffs can meet their burden of proof to prove,
8 one, that it didn't work, even if they were required --
9 the apartment complex was required to place them.

10 THE COURT: All right.

11 MR. BEVANS: And as for the breach of
12 contract cause of action, Your Honor, I'll again refer
13 to my testimony of Ms. Trehus. We marked the lease
14 as an exhibit -- the rental agreement as an exhibit
15 to trial. Ms. Trehus read through that rental agreement
16 in front of the jury. She testified that it contained
17 no reference to smoke alarms.

18 She also testified the lease -- the rental
19 agreement contains the reference and instructions
20 on how to present any maintenance issues, and she never
21 did that to Ms. Colley in terms of the smoke alarms.
22 So again, Your Honor, there's no contract provisions
23 that would amount to a breach of contract.

24 THE COURT: All right.

25 MR. BEVANS: So for those reasons, we ask

1 for a directed verdict, Your Honor.

2 THE COURT: All right. Yes, sir.

3 MR. TISDALE: Your Honor, just very briefly.
4 We have alleged negligence and breach of contract.
5 Clearly, the South Carolina Law solidly provides that
6 a landlord has a duty to provide a safe place to live
7 for a tenant. That was one of the charges we submitted
8 to Your Honor to consider charging the jury, and that
9 takes care of almost everything he said. The evidence
10 -- the question is, by the evidence, was this a safe
11 place for Ms. Trehus and her child to live? And I think
12 the question is for the jury, was it or wasn't it.

13 Now, furthermore, on the matter of the smoke
14 alarm, it may not have been a duty for her to supply
15 a smoke alarm, but she did. And when she did that,
16 our client had a right to rely upon that safety.
17 And if she didn't, it's a breach that she had a right
18 to rely on and insist being enforced.

19 And, furthermore, Your Honor, she could
20 not report that the smoke alarm was defective because
21 she didn't do that -- know that until the place caught
22 on fire. So, I don't think there's any question about
23 it being a jury trial -- I mean, a jury trial.

24 And what the lease says in Paragraph 16,
25 we exterminate and do an inspection on the last Tuesday

1 of every month starting at 9:00 a.m. If your apartment
2 is not clean, you will be evicted. And so, I mean,
3 according to the testimony on the record, there's never
4 been an inspection, so that's a breach of contract right
5 there, or at least for the jury to consider whether
6 it was or wasn't.

7 Now, certainly, it's presumed in our law
8 that the landlord is familiar with the -- has a duty
9 to be familiar with the property itself, including fire
10 safety equipment. And having provided that equipment,
11 like I've said before, they have a duty to be certain
12 it is workable, and here it wasn't. As I said,
13 she found out that the alarm was defective the day after
14 the fire -- during the fire.

15 THE COURT: Mr. Bevans, are you saying that
16 there's no obligation on behalf of the owner to notify
17 the tenant of smoke detectors and provide those to the
18 tenant?

19 MR. BEVANS: No, sir, not at all.

20 THE COURT: Okay. Because I was about
21 to say 56 -- 5-25-1330 says exactly that. The owner ---

22 MR. BEVANS: I agree with you, and
23 Ms. Colley provided them. The smoke alarm was in the
24 apartment. What I'm looking at is that when Ms. Trehus
25 was -- she was living in the apartment, and she took

1 it off the wall and changed the battery. She would have
2 seen the same defect that she's now pointing out now,
3 the date on the back of the smoke alarm.

4 THE COURT: Right.

5 MR. BEVANS: And she had never alerted
6 my client to that. That's required on her to present
7 any defects to the landlord, and then the landlord has
8 -- is given a 15-day opportunity to cure any of those
9 deficiencies.

10 THE COURT: All right. You can argue that
11 to the jury. That's fine by me, all right. All right,
12 I'm going to deny the motions. All right. Anything
13 further? All right.

14 MR. BEVANS: Well, I do have on the damages
15 the second directed verdict motion.

16 THE COURT: All right. Damages as to the
17 minor child.

18 MR. BEVANS: Yes, sir. Simply put, we've
19 got allegations of emotional damage with no physical
20 injury. And I think our prior case law, in order
21 to verify that the damages are significant and avoid the
22 emotional injuries, negligence only requires a physical
23 element to the damages of the injuries. And I don't
24 believe that -- you know, right now all we've got
25 is the testimony from the expert about emotional

1 damages, zero physical injury.

2 And I think the way our courts have held
3 that, I mean, this isn't an intentional affliction
4 of emotional distress cause of action. This is simple
5 negligence, and I think for a negligence claim you've
6 got to have some kind of form of bodily injury that goes
7 beyond just emotional damages. That's more set forth
8 in my summary judgment motion, which the Court kind
9 of converted to a directed verdict motion. The argument
10 is more set forth in full there.

11 But, essentially, without the bodily injury
12 component, just the allegations of emotional injury are
13 not founded enough.

14 THE COURT: All right. Mr. Tisdale.

15 MR. TISDALE: Your Honor, the question
16 is whether this young man, a Plaintiff in this action,
17 sustained damages as a result of being subjected to this
18 fire. And I can't imagine the law would say he's not
19 entitled to recover through his guardian ad litem for
20 the most horrible injuries that we have heard in a long
21 time being described today by the expert witness on the
22 stand.

23 And he has sustained a lot of pecuniary
24 damage, but we haven't been able to put it in because
25 it's covered by Medicaid, and they have not given us

1 a report yet on the amount of it, but he's clearly been
2 damaged. And how you separate physical damage and
3 emotional damage or psychological damage, I do not know.

4 MR. BEVANS: Your Honor, that's exactly
5 why our courts require the physical element because
6 it's so hard to parse out and ascertain emotional damage
7 and can easily be inflated by parties for pecuniary
8 interest.

9 MR. TISDALE: And there are psychological
10 damages. That's the same thing as bodily damage,
11 except it goes to the mind.

12 THE COURT: All right. Anything else?

13 MR. TISDALE: I think that's about all I can
14 present right this minute.

15 THE COURT: All right. Anything else,
16 Mr. Bevans?

17 MR. BEVANS: No, Your Honor.

18 THE COURT: All right. I'll -- as to the
19 damages portion of what I'm going to charge, I'm going
20 to take it under advisement, and we'll deal with that
21 during the charge conference, okay?

22 MR. BEVANS: Yes, Your Honor.

23 THE COURT: All right. Bring them out.

24 (Jury enters the courtroom at 3:29 p.m.)

25 THE COURT: All right. Thank you very much.

1 All right. Call your first witness.

2 MR. BEVANS: Thank you, Your Honor.

3 The defense for the first witness calls Dr. Patrick
4 Wiita.

5 THE COURT: All right.

6 DR. PATRICK WIITA, was called as a witness,
7 being duly sworn, was examined and testified as follows:

8 THE CLERK: Thank you. Please be seated.
9 State your full name for the record, and please spell
10 your last name.

11 THE WITNESS: My name is Patrick Wiita,
12 spelled P-A-T-R-I-C-K. Last name is Wiita, W-I-I-T-A.

13 DIRECT EXAMINATION

14 BY MR. BEVANS:

15 Q. Good afternoon, Dr. Wiita. How are you today?

16 A. I'm well, thanks.

17 Q. You're here to testify in a lawsuit that was
18 brought by Ms. Shelby Trehus and her minor son, Kayden
19 Montagna; is that right?

20 A. That's correct.

21 Q. And are you familiar with that lawsuit?

22 A. I am.

23 Q. And what did you do in this case?

24 A. I was retained by you to conduct an evaluation of
25 Kayden, a psychiatric evaluation, to determine if there

1 was present a mental condition or symptoms of such,
2 and whether the events of the fire were related to
3 the development of those conditions.

4 Q. Okay. If you will, please enlighten -- well,
5 first off, do you recognize this document?

6 A. I do.

7 Q. What is that?

8 A. This is my CV, or curriculum vitae.

9 Q. Okay.

10 MR. BEVANS: And can we mark that as Defense
11 Exhibit 3, I believe -- oh, we're on 7. Wow.

12 (Defendant's Exhibit Nos. 7 and 8 were marked for
13 identification.)

14 (Defendant's Exhibit Nos. 7 and 8 were entered into
15 evidence.)

16 BY MR. BEVANS:

17 Q. Dr. Wiita, if you could, please share your
18 educational background with the jury.

19 A. Sure. So, I graduated from college in 2006
20 from UCLA. My degree is in microbiology, immunology
21 and molecular genetics. I then attended medical school
22 at the University of Southern California. I was there
23 from 2007 through 2011 when I graduated.

24 Q. And did you do any post-graduate training?

25 A. I did.

1 Q. Where?

2 A. I stayed at USC in California at their
3 Los Angeles County General Hospital. I did residency
4 and general psychiatry, and after that I did two
5 additional fellowships, two-year fellowship, to become
6 specially trained in child and adolescence psychiatry,
7 and a one-year fellowship in forensic psychiatry.

8 Q. And what are your current licenses or
9 certifications that you hold?

10 A. I'm licensed to practice medicine in California
11 and South Carolina, and I have board certifications
12 in general psychiatry, child and adolescence psychiatry
13 and forensic psychiatry.

14 Q. And do you currently have an active medical
15 practice as well?

16 A. I do.

17 Q. What is your medical practice currently consist
18 of?

19 A. A variety. I work about three days a week
20 as a subcontractor for the state of South Carolina,
21 where I provide treatment primarily for children
22 and adolescence at a community mental health center,
23 and I have my own private practice. I see my own
24 practice -- patients who typically live in Hilton Head,
25 Bluffton area. That's where I live, and I do that on

1 evenings -- a couple of evenings a week about -- between
2 five and ten hours a week of private practice.

3 I also do forensic evaluations for San Luis
4 Obispo County, which is in California, for the criminal
5 courts out there. I do evaluations for what's called
6 competency to stand trial, and then I do private
7 forensic psychiatry work, such as this.

8 Q. And in this case, have you formed any opinions?

9 A. I have.

10 Q. And are those opinions set forth in a report you
11 prepared?

12 A. They are.

13 Q. And the document I just handed you, what is that?

14 A. This is the report that I wrote and submitted
15 to you after I concluded my evaluation.

16 Q. Okay. And prior to preparation of this report
17 that we have here that we've marked as Defendant's
18 Exhibit 8, what material did you review?

19 A. I reviewed ---

20 Q. Are they listed in your report?

21 A. They are, yeah.

22 Q. And, if you will, just tell me -- tell the jury
23 what page of your report those materials are listed.

24 A. Yes, it starts on Page 2 and concludes on Page 3.

25 Q. And that's 16 different documents or sources

1 of documents?

2 A. Sixty-two sources of information. The first
3 one -- number one is the evaluation that I conducted
4 of Kayden.

5 Q. And that evaluation of Kayden, did you meet with
6 him in person?

7 A. I did.

8 Q. And how long was your evaluation?

9 A. About two and a half hours. It was two hours
10 and 23 minutes exactly.

11 Q. And was that face to face with Shelby and Kayden?

12 A. Yes.

13 Q. And, if you will, please share with the jury
14 the opinions that you formulated after reviewing the
15 documents you have outlined on Pages 2 and 3 of your
16 report and then also meeting in person with Kayden
17 and Shelby.

18 A. I'm just going to refer to my report.

19 Q. Sure.

20 A. So the first opinion is that of diagnosis.
21 Is there -- does Kayden have a psychiatric diagnosis
22 or mental condition? And my diagnosis was ---

23 MR. TISDALE: I'm having trouble hearing.

24 MR. BEVANS: Can you speak in the
25 microphone? Mr. Tisdale can't hear you very well.

1 BY MR. BEVANS:

2 Q. So you were talking about the opinions you
3 formulated, and the first one was whether or not Kayden
4 had a psychiatric diagnosis; is that right?

5 A. Correct.

6 Q. And what did you find?

7 A. I did find that Kayden met the diagnostic
8 criteria for the diagnosis of attention deficit
9 hyperactivity disorder, predominantly hyperactive
10 impulsive disorder presentation and also the diagnoses
11 of what's called language disorder and also speech sound
12 disorder.

13 Q. Now are those two diagnoses related in any way
14 to the apartment fire on May 29th, 2019?

15 A. Are you referring to the speech sound disorder
16 and language disorder?

17 Q. Correct.

18 A. Those are not related -- well, I mean, the ADHD,
19 none of them are related.

20 Q. And that was my next question. So the language
21 disorder and the ADHD are not related to the fire?

22 A. Correct.

23 Q. And are you aware if Kayden exhibited symptoms
24 of ADHD prior to the fire?

25 A. Yes.

1 Q. How about language disorder?

2 A. Yes.

3 Q. Did you review any records provided by
4 Dr. Brewerton, the report of Dr. Brewerton?

5 A. I reviewed his report and I watched the --
6 at least the partial video that was provided of his
7 evaluation of Kayden that was done over Zoom.

8 Q. Do you agree with his diagnosis of a partial PTSD
9 in remission?

10 A. No.

11 Q. Why not?

12 A. It's not a DSM-5 diagnosis.

13 Q. Enlighten the jury as to why that's not a DSM-5
14 diagnosis, please.

15 A. Sure. So to start, to explain DSM, the
16 Diagnostic and Statistical Manual 5, it's the fifth
17 revision of it. I believe that it started becoming
18 kind of commonly used in practice around 2012. I know
19 it was after I finished medical school and while I was
20 training. I think it was about 2012, 2013.

21 And so what the DSM-5 is, it's literally a book,
22 and it's constructed by massive teams of psychiatrists
23 who get together and look at the available research
24 and kind of discuss how they want to organize what we
25 consider psychiatric diagnoses based on certain groups

1 of symptoms that when they appear together consistently
2 amongst large groups of people are very consistent
3 in terms of their presentation, how that condition
4 progresses, what treatments work for it. And that's how
5 we come up with the known -- what we call psychiatric
6 diagnoses.

7 So kind of what -- because I was in the courtroom
8 earlier, they're going through A, B, C, D, those are
9 different, what we call criteria, or sometimes they're
10 referred to as clusters. But they're groups of
11 different symptoms that typically have to be all present
12 together, or at least some from this group, some from
13 that group. And when they all present simultaneously
14 together for a specified amount of time and they cause
15 some type of functional impairment, that's when we
16 consider it a psychiatric disorder.

17 So post-traumatic stress disorder, or PTSD,
18 is a specific diagnosis in the DSM. It was in the
19 previous version of DSM-4. There were several
20 significant changes to the criteria when they went
21 from four to five. One of the main ones was this kind
22 of fairly new, the way they changed the criteria for
23 kids under six. So the criteria are different for kids
24 who are six years and younger than they are for adults
25 or older children.

1 And so I think the main takeaway is that lifetime
2 PTSD doesn't appear in the DSM. People either meet
3 the criteria for PTSD, or they don't. If people have
4 trauma-related symptoms that are present and they cause
5 distress and impairment that they don't meet the
6 threshold for diagnosing PTSD, we diagnose what's called
7 the unspecified trauma or stressor-related disorder.
8 I hope that answered the question.

9 Q. I think it does. Thank you for that. So long
10 story short, do you believe Kayden has PTSD as a result
11 of this fire?

12 A. No.

13 Q. And do you believe he has any long-term effects
14 related to the symptoms of PTSD related to this fire?

15 A. I think that he will probably always, to some
16 extent, remember it. And he might be more cautious
17 around fire, or he might be more kind of cognisant
18 of how to prevent fire, how to be safe in a house fire,
19 that sort of thing. But whether that's a symptom
20 of a mental condition or a psychiatric diagnosis,
21 no.

22 Q. And those could be natural reactions?

23 A. I will say it normally is.

24 Q. And did Kayden exhibit otherwise normal reactions
25 to this fire?

1 A. He did exhibit normal reactions, yes.

2 Q. And you heard Dr. Brewerton speak some on
3 Kayden's sleep disturbances; is that correct?

4 A. Yes.

5 Q. Did you find through looking at your research
6 and your work in this case any other sources of Kayden's
7 sleep disturbances?

8 A. Yes. After my review of all the available
9 information and my evaluation of Kayden, I actually
10 didn't see any evidence of a sleep disorder or
11 impairment in sleep because of the fire. All of the
12 evidence pointed to really common things for kids his
13 age these days, which is just access to electronics
14 after bedtime, staying up and watching TV past his
15 bedtime. And there were nightmares related to consuming
16 adult kind of media content that was terrifying, scary
17 for a four or five or six-year old.

18 Q. Could ADHD be caused by the fire?

19 A. No.

20 Q. Do you believe Kayden's ADHD was either caused by
21 it or exacerbated by this fire at Santee Run Apartments?

22 A. No.

23 Q. And again, you do not believe Kayden has PTSD
24 as a result of the fire?

25 A. Correct.

1 Q. Did you make any opinions about Shelby?

2 A. No.

3 Q. And why is that?

4 A. I did not evaluate Shelby.

5 Q. And what does a full evaluation entail?

6 A. For a clinical evaluation as a psychiatrist,
7 you would do an interview with a person where you would
8 go through what symptoms they're currently experiencing,
9 the history of those symptoms, when they started, have
10 they gotten worse, have they gotten better, that sort
11 of thing, their medical history, either their medical
12 conditions or psychiatric history, what we call their
13 social history, which is typically a developmental
14 history, where did you grow up, what's your family life,
15 education history, work history, getting an idea of your
16 functional level.

17 Usually, when we're trying to make a diagnosis,
18 right, every diagnosis in the DSM has a criteria that
19 says the symptoms have to cause impairment. There's
20 no impairment; there's no disorder.

21 So having an idea of how someone is functioning
22 before the symptoms started will let you know if after
23 they started having all the symptoms if their functional
24 level is then lower -- impairment that meets that
25 diagnosis criteria.

1 Q. So what I'm understanding from your testimony
2 then is that a complete review of the medical records
3 prior to a "traumatic event" is necessary in order
4 to formulate any opinions from a clinical standpoint,
5 correct?

6 A. Could you repeat that question?

7 Q. Yeah, sure, and I'll rephrase it. Is it
8 important to review prior medical records of a patient
9 prior to forming a clinical diagnosis of them in a PTSD
10 context?

11 A. I think that if you have access to them, then
12 absolutely reviewing them would be very important and
13 not just ignoring them. You know, sometimes in clinical
14 practice, there are no records to review, and you just
15 kind of have to go based on the report of the person.

16 Q. To the extent records are available, it would
17 be beneficial to review them to form an opinion,
18 at least in terms of completeness?

19 A. Absolutely.

20 Q. Okay. Do you treat patients with ADHD?

21 A. Yes.

22 Q. Do you treat patients with PTSD?

23 A. Yes.

24 Q. And again, you find that Shelby, Ms. Trehus --
25 do you find Kayden has no symptoms -- no diagnosis

1 of PTSD?

2 A. That's correct.

3 Q. And a partial remission is not a PTSD diagnosis?

4 A. No, that's not a diagnosis.

5 Q. And in terms of any impairment, do you believe
6 Kayden has any lifelong impairment as a result of PTSD?

7 A. No.

8 MR. BEVANS: Doctor, those are all my
9 questions I have for you. Mr. Tisdale likely has a few.

10 CROSS-EXAMINATION

11 BY MR. TISDALE:

12 Q. Dr. Wiita, where do you live now?

13 A. I live in Hilton Head.

14 Q. And you conduct your practice there?

15 A. I do.

16 Q. Have you ever gone to school in South Carolina?

17 A. No.

18 Q. Have not. And you began your psychiatric
19 practice when?

20 A. In -- after training in 2017 in Los Angeles.

21 Q. In Los Angeles, in 2017?

22 A. Yes.

23 Q. Five years ago?

24 A. Yes.

25 Q. Now have you had occasion to read the works

1 of Dr. Brewerton, who you heard testify today?

2 A. No.

3 Q. You have not. And have you ever been in a class
4 with Dr. Brewerton teaching?

5 A. No.

6 Q. Have not. Have you ever practiced psychiatry
7 with any South Carolina psychiatrists?

8 A. Yes.

9 Q. Who did you practice with?

10 A. I practiced with -- there's Dr. Kellie Bishop,
11 Dr. Reamy [ph.]. Those are the two that I worked most
12 with. This was down in Hilton Head.

13 Q. Down in Hilton Head?

14 A. Yes.

15 Q. And what sort of psychiatry do they practice,
16 general psychiatry?

17 A. Yes.

18 Q. Okay. They have not had any training in the
19 special fields of psychiatry that we've been talking
20 about here today to diagnose, like, PTSD?

21 A. So PTSD is a fairly common diagnosis in
22 psychiatry, and so any psychiatrist who's completed
23 the post-graduate training or what we call residency ---

24 Q. Yeah.

25 A. --- would be competent to diagnose PTSD.

1 Q. Would be competent to do so. Now what is ADHD?

2 A. Attention deficit hyperactivity disorder.

3 Q. Okay. And is it true that Kayden has ADHD?

4 A. Yes.

5 Q. It is. Now would you agree that the presence
6 of ADHD makes him more vulnerable than not to PTSD?

7 A. There is research that describes an association
8 between ADHD and PTSD.

9 Q. What kind of thing?

10 A. It's called an association; it's a technical
11 term.

12 Q. It's sort of like a connection?

13 A. Yes.

14 Q. Okay. Well, my question to you is does having
15 the ADSD -- ADHD make him more vulnerable, based on
16 what you just said, to PTSD?

17 A. Yes.

18 Q. It does. All right. Now, I suppose that
19 you have read about or heard about the fire that
20 is the subject of this lawsuit in connection with
21 your testimony?

22 A. Yes.

23 Q. So you're familiar that they were living in an
24 apartment that the building in which -- the building
25 caught on fire, and they were subjected to intense

1 smoke. Do you understand those facts?

2 A. What the -- what I understand was based on
3 the description that Ms. Trehus gave me, which is that
4 she was asleep and Kayden was asleep in their apartment,
5 and she woke up to the taste of smoke, yes.

6 Q. Woke up to the taste of smoke. And did you hear
7 her testify in this case about how intense and thick
8 the smoke was?

9 A. Her testimony during the trial?

10 Q. Yeah.

11 A. I did not hear that testimony.

12 Q. Did not hear that. And did you hear her
13 testimony that she tried to open the door and couldn't
14 because of the thickness of the smoke? Did you know
15 about that?

16 A. With her prior deposition, that was -- she
17 described she opened the door and that the hallway
18 was full of smoke, so she closed it, yeah.

19 Q. Full of smoke. And did you -- are you familiar
20 with the facts that she testified to that she felt that
21 she needed to escape that room, and the only way out was
22 a window?

23 A. That's my understanding.

24 Q. Ans she dropped her son out of the window for
25 a distance of about 20 feet in the arms of a bystander

1 to save his life?

2 A. Yes.

3 Q. You know about that?

4 A. Yes.

5 Q. And that then she herself jumped out of the
6 window to save her life. Do you understand that?

7 A. Yes.

8 Q. Would you agree that that's a traumatic episode
9 in one's life?

10 A. Yes.

11 Q. It was. Now would you also agree, Doctor,
12 that that traumatic event could certainly lead to PTSD?

13 A. It could.

14 Q. Certainly. And is there any reason why it
15 wouldn't lead to it?

16 A. Yeah. In fact, most people who are exposed
17 to traumatic experiences, do not end up developing PTSD.

18 Q. Do not what?

19 A. Do not end up developing PTSD.

20 Q. Okay. But they can?

21 A. Yes.

22 Q. And certainly it's possible?

23 A. Yes, exposure to a trauma is necessary to get
24 the diagnosis.

25 Q. Yes. And these people were exposed to trauma,

1 weren't they?

2 A. Yes.

3 Q. Okay. By the way, when were you asked by
4 Mr. Bevans, if that's who asked you, to give an opinion
5 in this case?

6 A. I can't remember when I was originally retained.
7 It must have been early 2021.

8 Q. About a year ago?

9 A. Yes.

10 Q. Okay. Have you consulted with any other
11 competent physicians about this case to make your
12 opinion?

13 A. No.

14 Q. Okay. Do you know whether or not Kayden Montagna
15 will have to in the future, retained by himself or his
16 family, retain additional health services to see about
17 his condition as a result of this traumatic event?

18 A. I can't say for certain, but it doesn't seem
19 likely.

20 Q. You don't think it's likely?

21 A. No.

22 Q. Was the trauma event that you've agreed occurred,
23 a life-threatening event?

24 A. Yes.

25 Q. It was. Now what is the danger of smoke

1 inhalation by a human being, smoke inhalation?

2 A. At worst, it could be fatal.

3 Q. Could be fatal. That means die, right?

4 A. Yes.

5 Q. And would you agree, given the circumstances that
6 we all know about, if his mother had not dropped him
7 from the 20-foot window from the ground and had not
8 jumped out herself that there was a strong possibility
9 that their lives would have been lost, they would have
10 died?

11 A. It's definitely possible.

12 Q. Certainly possible. Now, although you have said
13 that you -- I think you said that you didn't think
14 Kayden had PTSD, whatever those letters line up at,
15 PDST -- excuse me, Your Honor, that this traumatic event
16 could certainly lead to that condition?

17 A. I don't -- based on the records I reviewed
18 and my evaluation, I think that after the traumatic
19 event Kayden definitely demonstrated trauma-related
20 symptoms.

21 Q. Okay.

22 A. Whether he, at some point, met full diagnostic
23 criteria for PTSD, I don't know. It's not clear from
24 the available records. During my evaluation, which was
25 September 2nd, 2021, he did not meet the diagnostic

1 criteria for PTSD.

2 Q. Because, as you heard Dr. Brewerton testify,
3 he met all of these criteria, except one, to be
4 diagnosed with the PTSD?

5 A. That was during his evaluation.

6 Q. Yeah. Do you disagree with that?

7 A. Yes, I didn't see any trauma-related symptoms
8 during my evaluation.

9 Q. Okay, didn't see any. So have you seen Kayden
10 since -- and, by the way, when was your meeting with
11 him?

12 A. September 2nd, 2021.

13 Q. 2021, about four or five months ago. Do you have
14 any -- did you suggest any treatment to be given to him
15 for any condition that resulted from this traumatic
16 event?

17 A. No.

18 Q. All right. Do you plan to see him in the future?

19 A. No.

20 Q. Okay.

21 MR. TISDALE: Excuse me just one minute,
22 please, Your Honor.

23 THE COURT: Take your time.

24 (Pause.)

25 BY MR. TISDALE:

1 Q. Do you agree, Doctor, that Kayden, on account
2 of his exposure to this terrible traumatic event
3 where they were not warned about this smoke presence
4 until it was heavy in the room, do you have any opinion
5 over how much Kayden's treatment would last for this
6 event over the period of his life?

7 MR. BEVANS: Objection.

8 THE COURT: What's your objection?

9 MR. BEVANS: To the form of the question.
10 It's speculative.

11 THE COURT: Ask the question again.

12 BY MR. TISDALE:

13 Q. Do you have an opinion on how much Kayden's
14 treatment would last, how long his treatment would last,
15 as a result of this traumatic event over his lifetime?

16 MR. BEVANS: Same objection. Assuming facts
17 in evidence.

18 THE COURT: All right. I'll overrule the
19 objection.

20 THE WITNESS: For clarification, do you
21 mean, like, from today forward?

22 BY MR. TISDALE:

23 Q. From the time of this traumatic event forward.

24 A. Yeah. Based on my review of the records,
25 you know, he received the kind of gold standard

1 evidence-based treatment for trauma-related symptoms,
2 which is called trauma-focused cognitive behavioral
3 therapy. That was the treatment he received at NCVV,
4 and that concluded towards the end of July 2021.

5 And based on that treatment record, any records since
6 then, my evaluation, I don't think that he requires
7 any further treatment related to trauma and related
8 symptoms.

9 Q. All right. And do you think all the remainder
10 of his life he will remember this traumatic event?

11 A. He may.

12 Q. He may? Okay.

13 A. Memories fade, and we have normal forgetting,
14 even for significant events. But, yeah, he'll probably
15 remember the time when he was very little and there was
16 a fire.

17 Q. All right. Do you know how long this traumatic
18 event, as traumatic as you have described and everybody
19 else has described and heard, will be a part of his
20 life?

21 A. As a memory?

22 Q. In any way.

23 A. I think -- like I said, there's a high likelihood
24 he'll probably remember it forever.

25 Q. Forever. That's a long time, isn't it?

1 A. Yes.

2 Q. Okay.

3 MR. TISDALE: No further questions.

4 THE COURT: All right. Anything else
5 as followup?

6 MR. BEVANS: Just real -- two or three
7 questions, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. BEVANS:

10 Q. Dr. Wiita, at the time of your -- at the time
11 of your evaluation in September of 2021, Kayden did
12 not meet the full criteria for PTSD; is that right?

13 A. That's correct.

14 Q. And at the time of Dr. Brewerton's evaluation
15 in December 2020, Dr. Brewerton also concluded that
16 Kayden did not meet full criteria for PTSD, right?

17 A. That is also correct.

18 Q. And is it possible that Kayden's memory
19 can be affected by stories his mom tells him?

20 A. Yeah.

21 MR. BEVANS: So those are all my questions.
22 Thank you.

23 THE COURT: All right. Thank you very much.
24 You may be excused. Have a good rest of your day.

25 THE WITNESS: Thank you, Your Honor.

1 What should I do with these exhibits?

2 THE COURT: You just leave them right there.

3 Thank you.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: Yes, sir. Thank you.

6 MR. BEVANS: Your Honor, I would call
7 Ms. Jean Colley to the stand, please.

8 MS. SHELBY JEAN COLLEY, was called as a
9 witness, being duly sworn, was examined and testified
10 as follows:

11 THE CLERK: Thank you. Please be seated.
12 State your full name for the record, and please spell
13 your last name.

14 THE WITNESS: My name is Shelby Jean Colley,
15 C-O-L-L-E-Y.

16 DIRECT EXAMINATION

17 BY MR. BEVANS:

18 Q. Good afternoon, Jean. How are you?

19 A. Fine.

20 Q. Will you please tell the jury about yourself.
21 Where are you from?

22 A. Well, originally, I'm from Winterville, Georgia.
23 But I live here in Moncks Corner and have lived here
24 probably 50 years or more.

25 Q. In Moncks Corner, you live?

1 A. Yes.

2 Q. Are you married?

3 A. Yes.

4 Q. What's your husband's name?

5 A. Robert G. Colley; we call him Bob.

6 Q. And how long have you and Mr. Bob been married?

7 A. It will be 41 years this year.

8 Q. And do y'all own Santee Run Apartments?

9 A. Yes, we do.

10 Q. Do you own any other apartment buildings in town?

11 A. No.

12 Q. Do you own any other apartment buildings period?

13 A. No.

14 Q. When did y'all purchase Santee Run?

15 A. In 1997.

16 Q. And you and Mr. Colley, you and Mr. Bob, do y'all
17 have any children?

18 A. Four.

19 Q. You have four children. How about grandchildren?

20 A. We have ten grandchildren.

21 Q. Four children, ten grandchildren. Any great
22 grandchildren?

23 A. Thirteen.

24 Q. Thirteen great grandchildren. Have any of your
25 children or great grandchildren lived at Santee Run?

1 A. My granddaughter did.

2 Q. Was that at the time of the fire?

3 A. Yes.

4 Q. And was she in the building where the fire
5 displaced the tenants?

6 A. Yes.

7 Q. Describe Santee Run for the jury, please.

8 A. Okay. We have 40 apartments, and we have two
9 buildings, one facing Bonnoitt Street, which we call
10 building number one. It has 20 apartments in it.
11 And the back apartment is off of Debbie Lane, and you
12 can turn in it from Debbie Lane, and there's also 20
13 apartments there.

14 Q. And when you rent out your apartments to tenants,
15 do they sign a month-to-month rental agreement?

16 A. Yes.

17 Q. And your rental agreements are month to month;
18 is that right?

19 A. That's right.

20 Q. You don't offer any one-year leases, right?

21 A. No.

22 Q. And do you recognize this document we've marked
23 as Exhibit 5 for the defense?

24 A. Yes.

25 Q. What document is that?

1 A. It's a month-to-month rental agreement.

2 Q. Is that the month-to-month rental agreement
3 for Ms. Trehus?

4 A. Yes.

5 Q. And does that month-to-month rental agreement,
6 does it mention anything about smoke alarms?

7 A. No.

8 Q. And what do you tell your tenants, if anything,
9 about smoke alarms when they move in?

10 A. We tell them that they're responsible for keeping
11 the batteries in the smoke alarms and letting us know
12 if they have a problem with it.

13 Q. Okay. What's the procedure that you tell your
14 tenants for letting them know if they have any problems
15 with the smoke alarms?

16 A. Well, they can -- they're supposed to give us
17 written notice, but sometimes they give a verbal notice,
18 you know, also.

19 Q. Did you ever receive any notice, written
20 or verbal, from Ms. Trehus about the smoke alarms
21 in her apartment?

22 A. No.

23 Q. And that was the entire time she had lived there?

24 A. Yes.

25 Q. Did you talk to Ms. Trehus after the fire at

1 Santee Run?

2 A. Yes, I did.

3 Q. And did she tell you anything about the smoke
4 alarms when you talked to her after the fire?

5 A. No.

6 Q. The night of the fire -- what's your
7 understanding of the fire that took place on May 29th,
8 2019?

9 A. Well, we were in Florida visiting my daughter,
10 and my granddaughter, Brittany [sp.], was a manager
11 of the apartments. And she called and told me that
12 the apartments was on fire. I'm sorry. I'm going
13 to get upset. And she was telling me, you know,
14 that the apartments was on fire. I said, Brittany,
15 just make sure all the people get out. That, you know,
16 was all I was concerned about, was just making sure
17 all the people are out.

18 Q. And did Brittany tell you all the people got out?

19 A. Yes.

20 Q. And when did -- so you were in Florida at the
21 time?

22 A. Uh-huh.

23 Q. And what time of night or day did you receive
24 the phone call about the apartment being on fire?

25 A. I'm not 100 percent sure, but we were all dead

1 asleep, and it was between -- I think it was between
2 twelve and one, somewhere in there. I just -- I don't
3 know for sure.

4 Q. That's okay. When did you make it back to Santee
5 Run?

6 A. The next morning.

7 Q. So you left Florida and came back to Santee Run
8 the next morning?

9 A. Uh-huh.

10 Q. And did you do anything to help residents after
11 the fire?

12 A. Oh, yes. All the residents that were displaced,
13 we gave them all their deposits back, they all were
14 trying to find different places to live. We gave them
15 the deposits back. We had fundraisers, people donated
16 money, and they ended up getting their deposit. Plus,
17 I think it was close to \$400 a piece from all the other
18 donations.

19 Q. Going back to the smoke alarms in the units,
20 were these a one-wire system, or was it individual
21 smoke alarms?

22 A. Individual.

23 Q. And did you have tenants who moved the smoke
24 alarms at all, took them down?

25 A. Yes.

1 Q. Tell the jury about that, your experience.

2 A. Well, if a fire or smoke alarm would go off,
3 you know, one was close to the kitchen, and one was
4 in another place, especially in the kitchen, they would
5 take them down or remove the battery to stop the noise.
6 And when we found out about that, we got onto them
7 because we told them not to ever do that, but they do.

8 Q. And, specifically, in Ms. Trehus -- Ms. Shelby
9 Trehus' apartment, how many smoke alarms did you put
10 in there?

11 A. There were two.

12 Q. Where were they?

13 A. One in the kitchen and one as you're going into
14 the hallway toward the bathroom and the bedroom.

15 Q. And do you have any knowledge about Ms. Trehus
16 messing with her smoke alarm or tampering with the smoke
17 alarms, or was that other tenants who did that commonly?

18 A. It was different tenants, you know. I don't
19 know, you know. Specifically, I am not sure.

20 Q. Okay. At any point though, did Ms. Trehus come
21 to you with other complaints or maintenance requests
22 related to her apartment?

23 A. Yes.

24 Q. Like what?

25 A. She had a stopped-up sink where grease was being

1 poured down. And then sometimes the upstairs apartments
2 are warmer than others, and she complained about that.
3 She wanted me to let her put a window unit in, which
4 I told her she could.

5 Q. So when she made complaints to you, you acted
6 upon them, right?

7 A. Sir?

8 Q. When Ms. Trehus made complaints to you, you acted
9 upon them?

10 A. Oh, yes, sir, we always act on them.

11 Q. Do you know what happened to the smoke alarm
12 in Shelby's apartment?

13 A. No, I don't. As far as I know, the alarm was
14 in there. I know they were in there, and now what
15 happened, you know ---

16 Q. After the fire, did you ever get a chance to test
17 the alarm to see if it was working?

18 A. I didn't, but my husband was over there then.
19 I didn't go to the fire. It was dangerous.

20 Q. Okay. And the lease agreement -- the rental
21 agreement you have in front of you, is that something
22 that all tenants sign?

23 A. This is a month to month, yes, all tenants sign
24 it.

25 Q. And in the course of you being the owner

1 and manager of Santee Run, did any tenants ever come
2 to you about the smoke alarm and ask for a replacement?

3 A. Yes.

4 Q. And what would you do?

5 A. We would replace it immediately.

6 Q. But Shelby never asked for that?

7 A. No.

8 Q. You were talking about receiving a phone
9 call from your granddaughter the night of the fire.
10 Was that a telephone call or was it video?

11 A. Telephone call.

12 Q. And Brittany -- do you know what apartment
13 Brittany lived in, your granddaughter?

14 A. Twenty-one.

15 Q. And was that in the building that burned?

16 A. Yeah.

17 Q. And did Brittany have any children with her?

18 A. She has two.

19 Q. And those would be two of your great
20 grandchildren?

21 A. That's right.

22 Q. Do you care about the safety of your tenants,
23 Ms. Colley?

24 A. I sure do.

25 Q. You treat them like family?

1 A. Yes.

2 Q. Because some of them are, right?

3 A. Yes.

4 Q. Would you do anything to intentionally put your
5 tenants in harm ---

6 A. No.

7 Q. --- harm's way?

8 A. No.

9 Q. As a landlord, you put some kind of obligation
10 or burden on your tenants to point out problems with
11 their apartment to you, don't you?

12 A. Yes.

13 Q. And if you don't know about a problem with
14 an apartment that your tenant is aware of, there's
15 no way for you to fix it, right?

16 A. No.

17 Q. They've got to tell you?

18 A. That's right.

19 MR. BEVANS: Thank you, Ms. Colley.

20 Those are my questions, answer any Mr. Tisdale
21 has for you.

22 CROSS-EXAMINATION

23 BY MR. TISDALE:

24 Q. Ms. Colley, I think we -- you and I met once
25 before?

1 A. Yes, sir.

2 Q. And one of your depositions was taken, correct?
3 Did you give a deposition?

4 A. I did give a deposition.

5 Q. Yes.

6 A. Yes.

7 Q. Now what I would like to ask you about is on the
8 smoke alarms in the apartments, I assume that you all
9 inspect those from time to time, don't you?

10 A. Yes, sir.

11 Q. And so whether or not -- excuse me just a minute.
12 Whether or not they need something done to them to be
13 certain they're correct in their operation, those
14 inspections would reveal that, wouldn't they?

15 A. Yes, sir.

16 Q. Yeah. And I assume you all keep records
17 of those inspections that we could look at to ensure
18 that Ms. Shelby's apartment smoke alarms were tested.
19 Do you have a record of it?

20 A. No, sir.

21 Q. No record?

22 A. No.

23 Q. So if we wanted to find out, number one, when
24 they were inspected, her smoke alarms, for what they
25 were inspected, by whom they were inspected from ever

1 since before she moved in there, we couldn't tell that,
2 could we? You don't have a record of it ---

3 A. No, sir.

4 Q. --- to show us?

5 A. No.

6 Q. Okay. So the smoke alarm in this -- do you know
7 -- did you know that the smoke alarm in her apartment
8 that she says did not operate properly was over ten
9 years old?

10 A. No, I did not, sir.

11 Q. Okay. Well, just let me show you this exhibit,
12 which is Defendant's Exhibit 1. And can you look at
13 it and see what it says down here about when it was
14 installed and then it says replace it in ten years?

15 A. Yes, sir, I see that.

16 Q. Was that done?

17 A. I never had pulled the smoke alarm off the wall
18 to see that.

19 Q. Okay. Have you ever or anybody on your behalf
20 replaced this smoke alarm in Ms. Trehus' apartment?

21 A. We would have if we would have known that.

22 Q. Well, you inspected it every week, didn't you?

23 A. We don't take the fire alarms off the walls, sir.

24 Q. Well -- so you don't really ---

25 A. We take the batteries out.

1 Q. --- inspect the alarms to see if they work?

2 MR. BEVANS: Object to the form.

3 THE COURT: Overruled. You can answer the
4 question, ma'am.

5 BY MR. TISDALE:

6 Q. Did you ever test Shelby Trehus' smoke alarms
7 to see if they operated during an inspection?

8 A. Yes.

9 Q. All right. Give us a record of it.

10 A. Well, I don't have a record of it.

11 Q. Okay. Now wouldn't the person who went in
12 to check the alarms, if they did, take it off the wall
13 to see how long it had been there and whether or not
14 it needed to be replaced?

15 A. No, sir. They mash the button to check the
16 battery. If the alarm goes off, we presume that it's
17 correct. If it does not go off -- I mean, if it does
18 go off, we replace the battery and check it again.
19 I never knew that we had to pull the alarms off the wall
20 to see how old they were.

21 Q. Okay.

22 A. I'm sorry. I didn't know that.

23 Q. Even though regulations require to replace
24 them ---

25 A. Well ---

1 Q. --- you all didn't know about that?

2 A. Unfortunately, they don't give us regulations
3 on the fire alarms and what we have to do and what
4 we don't.

5 Q. Well, it's got it written right here on the back
6 of this.

7 A. Yes, sir, but you would have to pull it off the
8 wall.

9 Q. And so nobody ever did that?

10 A. No, sir.

11 Q. Okay. So if Ms. Trehus and her young son were
12 caught with a fire alarm that didn't work in their
13 apartment on the date of this horrible incident, you
14 would not have any way to tell how long that thing had
15 been on the wall and did it work that day, would you?

16 A. No.

17 Q. No. Does your husband help in the operation
18 of this business?

19 A. He does some.

20 Q. He does. And was he -- does he know about this
21 fire and what happened in it and so forth?

22 A. Oh, yes, sir.

23 Q. Is there any way we can get him to come testify?

24 A. You could.

25 Q. All right. What would we have to do?

1 A. Ask him.

2 Q. Okay. Have you asked him?

3 MR. BEVANS: Objection, Your Honor.

4 THE COURT: What relevance does this have?

5 MR. TISDALE: Well, just that he's not here
6 as a witness, so I couldn't -- she said he had something
7 to do with running the place, and it seems like that
8 it would be an inference.

9 THE COURT: No, just ---

10 MR. TISDALE: Okay. Withdrawn.

11 THE COURT: All right.

12 BY MR. TISDALE:

13 Q. Ms. Colley, let me ask you this question.
14 Do y'all have a pretty good relationship with the fire
15 department?

16 A. I know some of them.

17 Q. Well, how long did you say you all have operated
18 this apartment?

19 A. Since 1997.

20 Q. 1997?

21 A. That's when we bought it ---

22 Q. Yeah.

23 A. --- in 1997.

24 Q. And how many fires had you had to deal with
25 before this one that caused this horrible ---

1 MR. BEVANS: Objection, Your Honor,
2 relevance.

3 MR. TISDALE: --- trauma?

4 THE COURT: I'll overrule it.

5 BY MR. TISDALE:

6 Q. How many fires have you had?

7 A. Well, we had a couple of fires on the stove,
8 but they caught them. We had one fire that was in
9 an apartment where the man dropped a cigarette down
10 into a trash can. And I don't know, you know, how many
11 exactly that's been there.

12 Q. You what?

13 A. I don't know how many fires that we have had.

14 Q. Okay. But several?

15 A. A few.

16 Q. Okay. Have you all encountered a problem with
17 the sale of drugs on this property?

18 THE COURT: I agree. It's not relevant.
19 Move on.

20 MR. TISDALE: Not relevant. Nothing
21 further.

22 THE COURT: All right. Anything as
23 followup?

24 MR. BEVANS: No, Your Honor.

25 THE COURT: All right.

1 MR. BEVANS: No more questions.

2 THE COURT: All right. You may step down,
3 ma'am. Call your next witness.

4 MR. BEVANS: The defense rests, Your Honor.

5 THE COURT: All right. Ladies and gentlemen
6 of the jury, the defense has rested. That ends the
7 testimony portion of the case. Let me explain to you
8 kind of how we're going to proceed moving forward.
9 Remaining is still the opportunity for both of the
10 parties to give their closing arguments.

11 I indicated at the beginning that they
12 would give an opening statement, indicating an argument
13 as to what they thought that the evidence would show.
14 I'm now going to give them the opportunity to give
15 a closing argument and indicate what the actual --
16 what they believe the actual evidence has now shown,
17 all right. They can't do that until we have what's
18 called a charge conference to go over the law in which
19 I'm going to charge you on, and I don't think we're
20 going to have enough time to keep y'all here and do
21 all that today, all right.

22 Unfortunately, Mr. Tisdale has -- during
23 this week has had a death in his family, and the funeral
24 is tomorrow, and he has asked if I would allow him
25 to attend that funeral, as he'll be speaking in that

1 funeral, and I have allowed that, obviously.

2 And so what we are going to do is we're
3 going to adjourn for today and tomorrow, and then
4 I will ask that you come Friday at 9:30. We should
5 have the case to you by about eleven o'clock, all right,
6 and then you'll have an opportunity to deliberate then,
7 all right. So, I'm sorry to have to do it like this,
8 but I think we all understand, you know, emergencies
9 happen.

10 We'll be here tomorrow. We're going to
11 try another case, so just call the jury in for the case
12 tomorrow, tell them to be here tomorrow morning at 9:30,
13 ready to roll.

14 THE CLERK: Okay.

15 THE COURT: And so at this point in
16 time, I'm going to adjourn you for the day. And,
17 as I indicated previously in the week, as far as your
18 loved ones and employers know, the trial is still going
19 on tomorrow, so y'all do with it what you want,
20 all right. See you on Friday.

21 (Jury exits the courtroom at 4:22 p.m.)

22 THE COURT: All right. I just told them
23 not to discuss the case and don't do research tomorrow.
24 All right. So here's what we're going to do moving
25 forward is Amy has already sent y'all the jury charges.

1 We've already gotten them altogether. We've added some
2 that I may or may not charge, but we just have them out
3 of abundance of caution, put the ones that we thought
4 maybe were relevant.

5 What I would like both of y'all to do
6 is either stay, call each other on the phone, do it
7 in the morning, whatever, but I want y'all to go over
8 the jury charges together and see what you can agree
9 on, see what you don't agree on. We're going to do
10 the charge conference at around 9:20 on Friday morning,
11 and we will -- I told them, as you heard, to be here
12 at 9:30, and we will go ahead and do closing arguments
13 and charge.

14 MR. TISDALE: We'll be here no later than
15 nine o'clock.

16 THE COURT: Not a problem.

17 MR. BEVANS: For the record, I want to
18 renew my directed verdict motion in closing my case,
19 same ones. Also ---

20 MR. TISDALE: He said he'll take it under
21 advisement.

22 THE COURT: Well ---

23 MR. BEVANS: In your case. I've got to
24 preserve it at the end of my case too.

25 MR. TISDALE: Oh, okay.

1 THE COURT: That's fine. What I was saying
2 is, is that when you were -- the only one that was under
3 advisement was damages. But that's my point, so I want
4 you to take a look at these jury charges when it comes
5 down to damages and other things, and see if you have
6 any issues with it.

7 MR. BEVANS: Gotcha.

8 THE COURT: The only one I didn't charge --
9 I put in there is nominal.

10 MR. BEVANS: Okay. I guess we'll look at
11 it. But in terms of the directed verdict on that whole
12 statute, Article 11 of the building code, that was one
13 of the last ones I included in there, it's -- it really
14 gets to my directed verdict motion on the lack of duty.

15 THE COURT: Right.

16 MR. BEVANS: I mean, that's a question
17 of law that I think is more appropriate for the Court
18 to decide, not for the jury to decide. And to the
19 extent, there's a statute that's in there that literally
20 says that a violation of this section is not evidence
21 of negligence per se or negligence, and so that's a big
22 part of -- one, the directed verdict motion, is what
23 I'm bringing to your attention now or more so than
24 the jury charge aspect.

25 THE COURT: All right. I'll -- again,

1 I'll take it under advisement. I'll make a ruling
2 probably first thing on Friday morning. I'll take
3 a look at the statute.

4 MR. BEVANS: Will do. Just again
5 to preserve the record is all, Your Honor.

6 THE COURT: All right.

7 MR. TISDALE: Your Honor, I don't
8 think you all need to get in touch with me tomorrow,
9 but I'll leave my best number in case you do.

10 THE COURT: Yes, sir, just leave it with
11 Ms. Val in case we need to get ahold of you.

12 MR. TISDALE: Just in case.

13 THE COURT: All right.

14 (End of Transcript of Record)

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CERTIFICATE OF REPORTER

State of South Carolina)
County of Berkeley)

I, the undersigned, Yvestre Torres, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Berkeley County, South Carolina, on the 23rd of February, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 3, 2022



Yvestre Torres

Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

COURT OF COMMON PLEAS
2019-CP-08-02808

Shelby Trehus)

) TRANSCRIPT OF RECORD

-vs-)

) February 25, 2022 - Day 3

Santee Run Apartments)

) Moncks Corner, South Carolina

B E F O R E:

The Honorable Bentley Price, Judge

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

Thomas S. Tisdale, Jr., Esquire
Salvatore Giancarlo Davi, Esquire
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Attorney for the Defendant

Reported By:

Yvestre Torres, OCR
Circuit Court Reporter for the
Ninth Judicial Circuit

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>

P-10	Brewerton's Redacted Report	252	252

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5
6
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9
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11
12
13
14
15
16
17
18
19
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21
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24
25

INDEX

<u>CLOSING STATEMENTS</u>	<u>PAGE</u>
Mr. Tisdale	258
Mr. Bevans	270

1 THE COURT: All right. Thank you very much.
2 All right. We're back. So where are we? Mr. Bevans,
3 do you have witnesses? Where are we with everything?

4 MR. BEVANS: No, we closed, just going to
5 wrap up my directed verdict motions and go into the
6 charges.

7 THE COURT: Right. All right. Don't worry
8 about those charges. We're going to have to redo them
9 right now because I just saw them, and it's missing
10 about 13,000 things, so.

11 MR. BEVANS: Oh, boy.

12 THE COURT: She's going to be working on it
13 diligently.

14 MR. TISDALE: Should we go -- there's a few
15 things we want to add to your charge.

16 THE COURT: All right. Well, let's go
17 through it now then. All right. What was the last,
18 as to the damages?

19 MR. BEVANS: Well, one, I wanted to renew my
20 one about South Carolina Code 5-25-1320. I think that
21 specifically that last section, South Carolina Code
22 5-25-1380, and I'll just quote it again for Your Honor.
23 "Failure to comply with the provisions of this article
24 does not create a cause of action for a per se statutory
25 violation, or for negligence-based liability, for death,

1 injury or damages."

2 I think that plain language is fairly clear
3 that violation of the -- the only law that involves
4 smoke alarms in the South Carolina Code says that
5 it doesn't create a violation for negligence-based
6 liability or for statutory negligence per se.

7 THE COURT: All right.

8 MR. BEVANS: And that's 5-25-1380.

9 THE COURT: All right.

10 MR. BEVANS: So that's the one. And then
11 the second one, Your Honor, was about the emotional
12 damages, lack of bodily injury for the minor.

13 THE COURT: Okay.

14 MR. BEVANS: And, I mean, I've got a few
15 cases I can run through, if you want to hear them now.

16 THE COURT: It's your record. I'm happy
17 to hear from you.

18 MR. BEVANS: Yes, sir. So, essentially,
19 Your Honor, as you've heard through the testimony today,
20 Kayden, the minor child, was physically uninjured
21 throughout the entire event. We believe that there's
22 no case for negligence -- neglect infliction of
23 emotional distress. We believe that causes -- there
24 has to be willful or malicious conduct on behalf
25 of the Defendant.

1 And, additionally, the mental anguish aspect
2 of it, if you're going to have mental anguish without
3 physical injury, there has to be extreme and outrageous
4 conduct, and distress must be an extreme and severe
5 nature.

6 Your Honor, there's two cases in South
7 Carolina that have discussed the extreme and severe
8 nature, Hannson v. Scalise Builders, 374 S.C. 352.
9 That was an intentional affliction of emotional distress
10 case where the Court found that there was not sufficient
11 emotional distress due to lost sleep and grinding
12 of teeth. They held that was not sufficient to prove
13 the emotional distress claim.

14 And in another case where the Court did find
15 the burden that extreme or severe nature of emotional
16 distress was met is Padgett v. Colonial Wholesale
17 Distribution Company, 232 S.C. 593. That was a case
18 where there was a rash, severe weight loss, and extreme
19 fever for weeks after an incident. The Court did find
20 that was sufficient to title physical injury in.

21 In this case, we don't have any evidence of
22 physical injury, and certainly not something that would
23 rise to the extreme or severe nature. What we have in
24 this case is claims of lost sleep, which is exactly what
25 the Court in Hannson, which is a 2007 case, Supreme

1 Court, said wasn't sufficient without any accompanying
2 bodily injury.

3 THE COURT: Give me the code section again.

4 MR. BEVANS: The first ---

5 THE COURT: I got it, 5-25-1330.

6 MR. BEVANS: 1320.

7 THE COURT: Which one are you quoting?

8 MR. BEVANS: I'm quoting South Carolina
9 Code 5-25-1380. It's the last provision of that code,
10 Your Honor. I just think that plain language is clear
11 as day there as to the negligence-based liability
12 and negligence per se, for death, injury or damages.
13 Period.

14 (Pause.)

15 MR. BEVANS: And, lastly, while Your Honor
16 is looking, and I'll be quite quickly, is if you look to
17 the common law, there's no duty under the South Carolina
18 Common Law regarding smoke alarms at all. That creates
19 reference to the South Carolina Landlord-Tenant Act.

20 If you look at the case that I passed up to
21 Your Honor yesterday, the code case, it was a two-page
22 opinion I handed up to you, that goes to the analysis
23 and talks about the common law having no duty for smoke
24 alarms. Then, you look to the Landlord-Tenant Act,
25 which talks about, as Plaintiff argued, a safe place

1 to live.

2 Again, the Landlord-Tenant Act is silent
3 on smoke alarms, so you have to look to the statute in
4 front of Your Honor, which is the only area of law that
5 references smoke alarms being required in buildings.
6 And then you go to the bottom of that statute where
7 it doesn't create a cause of action for negligence-based
8 liability or per se.

9 THE COURT: All right.

10 MR. BEVANS: And that code case made that
11 finding in the Court of Appeals.

12 (Pause.)

13 THE COURT: The statute really doesn't make
14 -- the code doesn't make a whole lot of sense.

15 MR. BEVANS: I'm just reading that last
16 sentence, Your Honor, reading the plain language.

17 THE COURT: Right. But, I mean, the whole
18 point -- I get it. But then the next sentence says,
19 "Nor shall failure to comply with the provisions of this
20 article be used by any insurance company to deny
21 coverage, void a policy or deny a claim."

22 MR. BEVANS: Well, it isn't a coverage case.
23 I mean, I'm just looking at ---

24 THE COURT: Deny a claim. There's been
25 a claim brought.

1 MR. BEVANS: I'm looking at it from an
2 insurance claim perspective. This isn't an insurance
3 company denying the claim.

4 THE COURT: You're working directly for her.

5 MR. BEVANS: No, sir. I mean, we're ---

6 THE COURT: You're working for the insurance
7 company.

8 MR. BEVANS: That's right, but the insurance
9 company hasn't denied the claim.

10 THE COURT: I didn't say that it did.
11 It's just -- "Failure to comply with the provisions
12 of this article does not prevent a claim to be brought."
13 So it's contradictory to the first sentence.

14 MR. TISDALE: Right.

15 MR. BEVANS: Well, it says, "Failure to
16 comply with the provisions of the article does not
17 create cause of action for per se violations, statutory
18 violations or for negligence" ---

19 THE COURT: Nor should failure to comply
20 with the provision prevent someone from bringing
21 a claim.

22 MR. BEVANS: Again, Your Honor, I'm going
23 to rely on the straight ---

24 THE COURT: The first sentence ---

25 MR. BEVANS: 5-25 -- that's the whole

1 sentence, Your Honor.

2 THE COURT: I understand that, but you're
3 not agreeing with me that the second sentence
4 contradicts the first sentence, "Nor shall failure
5 to comply with the provisions of this article be used
6 by any insurance company to deny coverage, void a policy
7 or deny a claim." There has been a claim brought.

8 MR. BEVANS: There has been a claim brought,
9 but it's not a cause of action, Your Honor. That's --
10 I guess, we'll have to agree to disagree there.
11 I'm looking -- I'm trying to pull up the whole language
12 right now to look at it, but I trust that Your Honor
13 is reading it correctly.

14 I just -- and, I mean, I guess moreover,
15 Your Honor, I would still go back to the Court of
16 Appeals' decision. They made the same analysis on the
17 same code section, under an issue where two people where
18 in a house that didn't have smoke alarms. Period.

19 So it wasn't even an issue about inspection
20 or regulation. It was that they didn't have them,
21 period, and two people perished in a house fire.
22 And the Court of Appeals still found it appropriate
23 to dismiss the case because there's no cause of action,
24 pursuant to the section I just read you.

25 THE COURT: Well, the Court of Appeals,

1 I trust them because, obviously, I don't mind them
2 grading my papers. But they're going to have to get
3 somebody to figure this code out because, of course,
4 I just went back to 5-25-1330, and it says, "The owner
5 of a dwelling is responsible for supplying and
6 installing smoke detectors in rental dwellings and
7 housing, and shall provide the tenant at the time the
8 tenant takes possession of the dwelling written or
9 verbal instructions, or both, for testing the detectors
10 and replacing batteries in battery-powered detectors."

11 MR. BEVANS: That's right. And Ms. Colley
12 testified that she did that.

13 THE COURT: I understand that's what she
14 testified to, but they can take her credibility into
15 consideration because, obviously, we don't have the
16 smoke detector, we don't have any pictures of the smoke
17 detector. I mean, that's just evidence that the jury
18 is going to have to take into consideration.

19 MR. BEVANS: That's right. Well,
20 Your Honor, if I may keep going here. If you'll look
21 at Section 15-25-1330(c) [sic.].

22 THE COURT: Yeah.

23 MR. BEVANS: That requires written
24 notification.

25 THE COURT: I understand that.

1 MR. BEVANS: Ms. Trehus testified she didn't
2 provide ---

3 THE COURT: I understand that. They can
4 take her credibility into consideration. That is a
5 question for the jury, so I'm going to deny the motion.
6 We need to move on.

7 MR. BEVANS: Yes, sir.

8 THE COURT: What's next?

9 MR. BEVANS: The final motion was about
10 the bodily injury I raised.

11 THE COURT: Okay. I'm going to deny
12 that. We'll let the jury make that determination.
13 You certainly can argue that in your closing argument
14 as much as you'd like.

15 MR. BEVANS: Thank you, Your Honor.

16 THE COURT: All right. All right, let's go
17 over these jury charges.

18 MR. TISDALE: Your Honor, one thing.
19 We've conferred on the matter of Dr. Brewerton's report
20 that we've submitted as an exhibit, and it's been
21 redacted sufficiently, we believe, for that purpose.
22 We would like to hand it up as an exhibit, as corrected.

23 THE COURT: All right. Any objections?

24 MR. BEVANS: Yes, Your Honor.

25 THE COURT: All right. What's the issue?

1 MR. BEVANS: If I may approach, I can show
2 you the report and what the redactions are. That would
3 be the easiest.

4 THE COURT: Sure.

5 MR. BEVANS: So, essentially, what I had
6 requested to be redacted was the entire section entitled
7 estimated costs, including medical, psychiatric costs,
8 and educational labor market earnings, income
9 consequences associated with child trauma and
10 PTSD-associated disorders. I wanted that entire section
11 stricken, and what Plaintiff's counsel has done is only
12 stricken -- so, I want it stricken to here and then ---

13 THE COURT: What do you want taken out?

14 MR. BEVANS: Just that -- the section about
15 estimated costs, per the motion in limine.

16 THE COURT: All right.

17 MR. BEVANS: And they took ---

18 MR. TISDALE: We took out costs which Your
19 Honor did not permit into evidence.

20 MR. BEVANS: My understanding of Your
21 Honor's ruling on the motion in limine was that
22 Dr. Brewerton can testify that Kayden would potentially
23 need additional treatment for PTSD in his lifetime.
24 But what he couldn't do is testify to any of the
25 associated costs, and that entire section deals with

1 the associated costs.

2 THE COURT: I'm not worried about the
3 associated costs. I was worried about him utilizing
4 a number that he had found in some book and that you
5 had consistently referenced.

6 MR. BEVANS: Well, that's the same -- if
7 you'll look at the section ---

8 THE COURT: Give me a second.

9 MR. BEVANS: --- it's still quoting quotes
10 from the same book. It's not applicable to Kayden's
11 case in any form, fashion or way.

12 MR. TISDALE: Judge, we've -- what we've
13 proposed is entirely within your ruling.

14 MR. DAVI: Your Honor, if I may, the
15 citations that are included in there, it was two pieces
16 of literature. Any reference to those pieces of
17 literature that are affiliated with those costs have
18 been stricken as well. So everything else is general
19 future costs. Thank you.

20 MR. BEVANS: Exactly right, Your Honor,
21 general future costs.

22 MR. TISDALE: But it doesn't say what the
23 costs will be.

24 MR. DAVI: Without a number value.

25 THE COURT: They can take it into

1 consideration. I just didn't want to give them a number
2 of value to have something to start from. So, I'll
3 allow it.

4 MR. TISDALE: Thank you very much,
5 Your Honor.

6 THE COURT: All right. You need to put this
7 into evidence then.

8 MR. BEVANS: Is it possible I can submit
9 a redacted copy with what I would like for objection
10 purposes? Is that on the record that I wanted the whole
11 section redacted?

12 THE COURT: All right. We'll put it on the
13 record.

14 MR. BEVANS: If you will, Your Honor,
15 for me, please. Thank you.

16 THE COURT: All right. For the record,
17 the section that defense counsel would like stricken
18 is estimated costs, including medical, psychiatric costs
19 and educational labor market and earnings consequences
20 associated with child trauma, PTSD-associated disorders,
21 which is at the bottom of Page 11 and goes to the top
22 of Page 13.

23 MR. BEVANS: Thank you, Your Honor.

24 THE COURT: Y'all need to put this into
25 evidence.

1 MR. TISDALE: This is the redacted version,
2 Your Honor.

3 THE COURT: That's fine. You have it
4 marked?

5 MR. TISDALE: It needs to be marked.

6 THE COURT: All right.

7 (Plaintiff's Exhibit No. 10 was marked for
8 identification.)

9 THE COURT: All right.

10 MR. TISDALE: Your Honor, this is
11 Dr. Brewerton's redacted report. It's been marked
12 as Exhibit 10.

13 THE COURT: All right. Thank you, sir.
14 (Plaintiff's Exhibit No. 10 was entered into evidence.)

15 THE COURT: All right. So the standard
16 jury charges are in there; duties of jury and judge,
17 preponderance of the evidence, direct and circumstantial
18 evidence, credibility of witnesses, expert witnesses,
19 negligence, comparative negligence. I don't know,
20 is that something that you -- yeah, sole negligence
21 of third party, I'm assuming y'all don't want that one.

22 MR. BEVANS: You can take it out,
23 Your Honor.

24 THE COURT: All right. And then we go to
25 damages, obviously, actual damages. Now why is that

1 actual damages different than the actual damages that
2 was in yesterday?

3 (Pause.)

4 THE COURT: All right. We have actual
5 damages, but we're going to have -- we've got the wrong
6 actual damages one in here. We're going to have to
7 put the correct one in there. Perspective damages,
8 duty to mitigate damages, we take out punitive damages,
9 mental suffering, pain and suffering, speculative
10 damages, and that's where we are.

11 MR. TISDALE: Did you say, Your Honor,
12 you took out punitive damages?

13 THE COURT: Are you asking for it?

14 MR. TISDALE: We are.

15 MR. BEVANS: I think there's been no
16 clear and convincing evidence of willful, malicious
17 or reckless conduct.

18 MR. TISDALE: I mean, I ---

19 MR. BEVANS: There hasn't been a statutory
20 violation.

21 THE COURT: I agree. I'm not letting
22 punitive damages come in.

23 MR. BEVANS: Thank you, Your Honor.

24 MR. TISDALE: You're not?

25 MR. BEVANS: If you will, would you run

1 through the other damages charges, mental anguish.
2 I'm sorry, I got a little distracted by the punitive
3 charge, I think.

4 THE COURT: All right. Actual damages,
5 and then two that will be on the back end is duty
6 to mitigate and perspective damages, but I'll charge
7 those last.

8 MR. BEVANS: Sure.

9 THE COURT: Mental suffering, pain
10 and suffering and speculative damages. Which ones
11 are we missing?

12 MR. BEVANS: Are you asking us what's
13 missing, or are you asking yourself?

14 THE COURT: Myself. All right. I think
15 we got them all.

16 MR. TISDALE: Your Honor, we have some
17 additions for request.

18 THE COURT: All right.

19 MR. TISDALE: And, first of all, just for
20 the record, take exception to your ruling on excluding
21 punitive damages because we believe that the conduct of
22 the Defendant clearly creates for the jury as to whether
23 the conduct was reckless.

24 THE COURT: All right.

25 MR. TISDALE: This is a chart that we've

1 added to your charge, without the gross negligence
2 charge being involved, because of your ruling. We have
3 asked that -- we have a cause of action for breach of
4 contract -- breach of the lease contract, and we think
5 we're entitled to a charge on the contract in the
6 elements of the breach. We think we're entitled to the
7 statutory life expectancy charge.

8 THE COURT: Okay. Put that in there.
9 What's the life expectancy? Have y'all calculated it?

10 MR. TISDALE: Yes, sir, we have.

11 THE COURT: All right.

12 MR. TISDALE: The Plaintiff, Kayden, is 71
13 years, might be 0.03 or something. And Shelby ---

14 MR. DAVI: Your Honor, specifically, Kayden
15 was three years old at the time. That life expectancy
16 is 73.76.

17 THE COURT: What is it?

18 MR. DAVI: 73.76.

19 THE COURT: Okay.

20 MR. DAVI: And then Ms. Trehus was 24
21 at the time. That life expectancy is 57.37.

22 THE COURT: All right.

23 MR. TISDALE: Do you want me to go get his
24 name out of the two that we have?

25 THE COURT: I've got contract, breach of

1 contract, and then those are the two that you've added.

2 MR. TISDALE: The Residential Landlord
3 and Tenant Act, we plan to charge on. I think that's
4 it.

5 THE COURT: All right.

6 MR. BEVANS: If you add the Tenant Act,
7 Your Honor, I'll request the entire Article 11 go in,
8 which is 5-25-1320, down to 5-25-1380, my directed
9 verdict statute I've handed up. I've got the charge
10 here, and I can hand it up, if you would like.

11 THE COURT: All right.

12 MR. BEVANS: But I did -- just for full
13 disclosure to the Court that you will need to add in.
14 I took out that last sentence about insurance because
15 I didn't think insurance was appropriate to be mentioned
16 to the jury. So if you want to add that in, I'll leave
17 that up to Your Honor's discretion. I would ask that
18 you don't since insurance can't go to the jury.

19 THE COURT: All right. Do you have any
20 objections to those three that they've added; contract,
21 breach of contract and Residential Landlord and Tenant
22 Act? You're saying that you don't have an objection
23 if we add this as a charge as well?

24 MR. BEVANS: And as far as -- so, I mean,
25 I would have an objection to the breach of contract

1 to the point they haven't proven it because the contract
2 is silent on smoke alarms.

3 But as for the Landlord-Tenant Act, I do
4 not have an objection to that, provided the statute
5 that is in your hand goes in along with it. I think
6 they should both be charged, if any one does, because
7 again I think the case law is clear that the
8 Landlord-Tenant Act points to the statute I just gave
9 Your Honor, and particularly, the noted sections that
10 are in there.

11 THE COURT: So you just took out the last
12 sentence of 5-25-1380?

13 MR. BEVANS: Yes, Your Honor, the one that
14 you talked about, we had our back and forth on the
15 directed verdict.

16 THE COURT: All right.

17 MR. BEVANS: Because really the
18 Landlord-Tenant Act -- the duty to provide a safe place
19 to live in that Code v. Robinson case doesn't reference
20 smoke alarms. You go to the building codes as to
21 whether there's a safety -- that's where I went back,
22 the statute.

23 THE COURT: All right. Let me get organized
24 then.

25 (Pause.)

1 THE COURT: All right. I'll get all this
2 stuff organized while y'all do y'all's closing
3 arguments. So anything else before we get started?

4 MR. TISDALE: Ready to go, Your Honor.

5 THE COURT: All right. You can bring them
6 out.

7 (Jury enters the courtroom at 10:03 a.m.)

8 THE COURT: Y'all can be seated. All right.
9 Good morning, ladies and gentlemen. We got everything
10 sorted out this morning, so we can kind of flow on
11 through like I indicated on Wednesday. So at this point
12 in time, I'm going to allow the parties to give their
13 closing arguments.

14 As I indicated before, this is just
15 arguments of counsel, is not to be considered by
16 you in any way as evidence in this case. At the close
17 of that, I'm going to charge you on the law that's
18 applicable in this case that you are to apply the facts
19 and the evidence in this case to, and then I'm going
20 to allow you to deliberate. So we'll get kind of going
21 this morning pretty quickly, all right. Mr. Tisdale.

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

24 THE COURT: Yes, sir.

25 MR. TISDALE: Madam Foreperson and ladies

1 and gentlemen of the jury, first, I just want to thank
2 you very much to y'all coming here to serve on this jury
3 and for the attention that you have given to this matter
4 on behalf -- I am speaking on behalf of our clients,
5 Kayden, the little boy, and his mother, Shelby Trehus.

6 So what I would like to do with this time
7 the Court has given us is to review where we are on
8 the evidence in the case that you will need to consider
9 after the judge explains the law to you. As he just
10 said a few minutes ago, he will be telling you what
11 the law of South Carolina is as it applies to the facts
12 in this case.

13 And you, members of the jury, are the sole
14 judges of the facts of what happened. You decide who
15 said what when and what it means. The judge explains
16 the law to apply to that, vice versa.

17 Now, we believe that our clients, Shelby
18 and Kayden, are entitled to recover from you a verdict
19 in their favor for the damages that have been
20 established that they have sustained as a result
21 of this fire that occurred at the Santee Run Apartments.
22 The fire that occurred was not the first fire that had
23 occurred at this apartment. Fortunately, it was the
24 first one for Ms. Trehus, I think.

25 So what happened on this night in 2019

1 is that Shelby Trehus awoke in her room -- excuse me --
2 and found the apartment was filled with smoke. She --
3 there was no smoke alarm that signaled anything.

4 And we know from the testimony we've heard from the
5 expert witnesses and from the fire officers -- fire
6 department officers, that smoke inhalation is deadly.

7 So what then occurred on this night is
8 Shelby Trehus, in what's my opinion quite courageously,
9 did what she needed to do to save the life of her child
10 and her life. She went to a window, which was the only
11 way to get out of the apartment because smoke was
12 filling the only other one exit, which was the stairway.

13 So she courageously dropped her son, who was
14 three, perhaps, four at the time out of the window into
15 the hands of some -- arms of some bystanders 20 feet
16 below. Then, she herself jumped out of the window
17 to save her life from the smoke inhalation. Now, there
18 was absolutely no warning to her, except discovering
19 the thickness of the smoke in the entire apartment.

20 So let's talk about smoke alarms for
21 a minute. There was no functional smoke alarm in this
22 apartment. In fact, one of the witnesses said, I think
23 perhaps one of the firemen, that when he arrived there
24 was no evidence of any smoke alarms in the whole place.

25 Ms. Colley, when she testified yesterday,

1 said that the fire alarm -- the smoke alarms were
2 inspected monthly, but she had no records of that.
3 And, in fact, this particular fire alarm was -- I mean,
4 smoke alarm was over ten years old. And the directions
5 on it say it has to be replaced every ten years,
6 at least. And it says right here, this is manufactured
7 -- and so forth, replace in ten years. This was over
8 ten years and never replaced.

9 Ms. Colley said, well, I could not have --
10 I could not have -- I could not have known this because
11 you have to take this off the wall to see that it needed
12 to be replaced in ten years. Well, the truth of the
13 matter is if you look at this particular smoke alarm,
14 you have to take it off the wall to replace the
15 batteries.

16 So that raises another question. If the
17 batteries were -- had to be -- if you had to take
18 it off the wall to put the batteries in, it's clearly
19 evident by looking at this exhibit that you will have
20 to look at in the jury room, if you wish, perhaps the
21 batteries were never replaced.

22 There is some evidence that Ms. Trehus
23 did replace the batteries on one occasion, but she
24 did it herself. It was the landlord's responsibility
25 to do it, not hers. But in any case, it is undisputed

1 evidence in this case before you and the judge that
2 the fire -- the smoke alarm did not sound on -- excuse
3 me -- on the night of this fire.

4 So we believe that, in it of itself,
5 proves negligence or carelessness by the landlord where
6 -- which owned the property where Ms. Trehus lived,
7 and she was paying \$600 a month to live in a safe place.
8 It was not safe.

9 I asked Ms. Colley, I think, about her --
10 who was supposed to do these inspections? I think
11 she said it was her husband, but it was somebody from
12 the company if it wasn't her husband. But why was
13 that person not here to explain to us what they did
14 to inspect the place? It sounds like to me that it was
15 nothing, and these people, these two people, were lucky
16 to get out of this with their lives on that night due
17 to the negligence of the landlord.

18 Now what is negligence? The judge is going
19 to explain to you exactly what negligence is, so it's
20 what he explains it is, not what I might say it is now,
21 but I think I'm going to tell you the same. My
22 intention is to say the same as he's going to tell you.

23 Negligence is simply carelessness.
24 Carelessness. And if I'm correct in my definition
25 of negligence, which I believe is careless in the law,

1 it means that if you can find that these people were
2 careless by not putting a smoke alarm in this house
3 that worked to keep these people from jumping out of
4 the window to save their lives, from being dropped out
5 of the window, that, I submit, is carelessness.
6 Sometimes in law, it's called the lack of due care.
7 That's the same thing as carelessness.

8 So there's no dispute that the fire took
9 place, the house was full of smoke -- the apartment was
10 full of smoke, that they had to jump out of the window
11 to save their lives. None of that is disputed. There's
12 no dispute that the smoke alarm is over ten years old,
13 it should have been replaced by the directions on it.
14 By not replacing it, it's carelessness.

15 By having this inspection -- it was supposed
16 to be inspected. They have no records. I asked
17 Ms. Colley if her husband was responsible for the
18 inspections. Why wasn't he here to explain to us
19 what he did to inspect? I think it was evasion.
20 And if somebody else for the company inspected these
21 smoke alarms, why aren't they here to explain it to
22 you and the Court?

23 So, I believe that the law is, and the judge
24 will, of course, explain this as well, that a landlord
25 is responsible under the law of our state for providing

1 a safe place to a tenant in accordance with the law
2 of landlord/tenant relationships. So, I think that
3 establishes pretty clearly that this company was
4 careless, and their carelessness has resulted in any
5 of the damages that have been sustained by Ms. Trehus,
6 Shelby Trehus, and her son, Kayden.

7 I submit to you that there is really
8 no reasonable outcome in this case, except a finding
9 by you that the company was careless, therefore,
10 negligent, and that negligence has caused damage
11 and injury to Ms. Trehus and Kayden.

12 So, I would like to talk to you a little
13 bit now -- so, I think there's liability, what we call
14 liability in the case. And I think that it establishes
15 completely by the evidence, which is essentially
16 undisputed, that the carelessness of the company,
17 the landlord, has caused damage to the tenants.

18 And so then your job would be, if you agree
19 with that assessment that they are responsible for
20 whatever damage exists there, that they are responsible
21 -- you have an obligation to award a verdict in their
22 favor for the value -- for compensatory damages to
23 compensate them for the damages they've sustained
24 as a result of this unfortunate incident that everybody
25 agrees to happened in the way that I just said that

1 it happened.

2 So what are the damages? Well, first
3 of all, everybody who's testified, Dr. Brewerton,
4 and I believe the other witness, more or less, agreed
5 with Dr. Brewerton in a way, without trying to say
6 it strongly, but in effect, these damages and these
7 injuries are lifelong, lifelong injuries for these
8 two people.

9 Dr. Brewerton said absolutely that Shelby --
10 excuse me -- Shelby had sustained damage, a cuboid
11 fracture to her left ankle. She worked full time,
12 and it is painful when she works. This she said --
13 Dr. Corey said this trouble she has had with pain
14 and suffering as a result of saving her child's life
15 and saving her life will be with her until the day she
16 dies.

17 The judge is going to tell you that in South
18 Carolina, I guess, in other states too, there's what's
19 called a life expectancy table that tells us and
20 everybody what a person's life expectancy is from
21 a certain time in their life until they are expected
22 to leave the earth.

23 And in Shelby's case, the judge is going
24 to tell you what it is, but I want to be certain that
25 I give you the correct number. In Shelby's case,

1 she was how old? Twenty-four. She was 24 years old
2 at the time this horrible thing occurred. Her life
3 expectancy then is 57.37 years, 57 years, going on 58.
4 So she is going -- according to the doctors, she is
5 going to have to deal with her broken ankle for 57 years
6 as a result of these people putting her in a situation
7 that required her to jump out of the window to save her
8 life.

9 Now young Kayden, her son, was four years --
10 three years old at the time, and the judge will agree
11 with what I'm saying I hope, but his life expectancy
12 after the date of his injury, will be with him for
13 the remainder of his life, which from that date will
14 be 73.76 years.

15 Now what Dr. Brewerton said in his testimony
16 was that he didn't -- it was quite likely and probable
17 that he will sustain all of the psychological and
18 psychiatric problems, everything that he explained,
19 and they will be with him for the rest of his life
20 and a growing risk as he gets older.

21 So what your responsibility will be,
22 I submit, is to try to figure out what is fair.
23 These people's lives have been changed on account
24 of what happened that night. So your responsibility
25 is to figure, knowing that the sole evidence in the case

1 is it's going to last forever, until they die.

2 So how much, for example -- it's up to you
3 all solely to come up with a figure, what is Shelby's --
4 she's going to be living with the time that the judge
5 tell you, 47 [sic.] years. How much would you believe
6 is fair to give her to compensate her for the pain
7 and suffering and walking difficulty she has for
8 the rest of her life?

9 And perhaps a good way to try and figure
10 it out is how much per year should she be awarded times
11 47 to give her a reasonable amount to compensate her
12 for what she's going to be suffering from now on.

13 In the case of Kayden, he's still a young
14 boy, going on six years old. So Dr. Brewerton said
15 he's going -- he's got a permanent injury, and he's
16 going to be dealing with it all of his life, and until
17 he's a certain age, somebody is going to have to pay for
18 that. So whatever you award to him, whatever you award
19 to him, is going to have to be supervised by the Court
20 going forward, at least until he reaches his maturity
21 in age.

22 And I can't -- I can't predict and say what
23 will be fair and equitable for him to have available
24 to him to take care of whatever costs he incurs,
25 whatever pain and suffering he incurs, whatever else

1 he incurs on account of these injuries that came from
2 being dropped out of a window on the night of the fire.

3 So, in conclusion this afternoon -- this
4 morning, what I would like to ask you to consider is
5 look at both their lives, where they've been, where they
6 will be going, and how much is fair and equitable to put
7 aside for them to live on as a result of the injuries
8 that they sustained at the hands of conduct, which is
9 clearly, clearly careless conduct and is really
10 negligence.

11 Another thing is we've asked for damage for
12 breach of the contract, the lease contract. They have
13 a lease in place that's in evidence, and you can look
14 at it when you deliberate. But it says, and I think
15 the judge will tell you, again not me, but I think
16 he will tell you that every landlord has an obligation
17 to provide a tenant, but especially a tenant with
18 a lease, a safe place to live.

19 And because this place where Shelby and her
20 son were living, obviously, was not safe, so that is
21 a breach of the lease agreement, that the landlord did
22 not give them a safe place to live. That also supports
23 the damages because they didn't have a safe place to
24 live, they incurred the damages that we have been
25 talking about and that we know they sustained.

1 And I ask you to please carefully do what
2 you believe is right in awarding them a full return with
3 your verdict that they can cover the expenses they are
4 going to incur from now on permanently. And you know
5 what expenses are for care, you know, for damages and
6 injuries and illnesses and all that, figure out what
7 they are going to incur as a result of this incident,
8 and give them enough to annually, for the rest of their
9 lives, be able to meet the cost of what they have
10 encountered.

11 And they also, especially Shelby with her
12 broken ankle, although she can still work, she said
13 I believe that it is painful and it is, and the doctors
14 have assured that it is. So do what you can to see that
15 their lives can be returned to what it would have been
16 had this not occurred due to the wrongdoing and
17 negligence of where they were renting their apartment
18 and where they expected to be safe.

19 So how much is it a month for 47 years
20 and 73 years for each one of them? How much per year?
21 How much per month? Whatever you can do to come up
22 with a reasonable figure and bring them an award --
23 bring them to what they would have been had this not
24 happened. That is all they're entitled to and all they
25 are asking for.

1 So, I really do appreciate your attention
2 to what I have said, and I now ask you to listen to
3 our opposition and see what they have to say concerning
4 the liability and the damages. Thank you very much.

5 MR. BEVANS: Thank you, Mr. Tisdale, Shelby,
6 Madam Foreperson, ladies and gentlemen of the jury.
7 As Mr. Tisdale said, I want to take the first minute
8 or so of my closing to devote to you all. The service
9 you all are providing this week has been tremendous.
10 From our point of view, we can tell that y'all are an
11 attentive and engaging jury, and that is not something
12 you always get from a lawyer's point of view.

13 I especially love the fact that you all are
14 in the jury box. That was tremendous for us. We were
15 trilled to see y'all move up here. We like being closer
16 to y'all when we talk, and we definitely appreciate you
17 taking time out of your days to come here and devote,
18 spend time with us.

19 And what I hope is I hope that I've been
20 respectful of that time that you've devoted to the court
21 system. I hope that I've not filled your time with
22 fluff, and I hope that I've only laid out the facts
23 because that's all I've sought to do for y'all when
24 I gave my opening, and y'all were all spread out.
25 I had to scream really loud and couldn't actually make

1 eye contact.

2 Throughout this trial, ladies and gentlemen,
3 you've seen Mr. Tisdale speak ahead of me. Every time
4 we've gotten to talk, he goes ahead of me. That's by
5 design. It's because Mr. Tisdale and his clients have
6 the burden of proof. They have to prove their case.

7 Now burden of proof is exactly what it
8 sounds like. He must do that by calling witnesses.
9 You just heard him talk about not calling Mr. Colley.
10 That's his burden to call him, if he wants to.
11 He didn't tell you about depositions where Mr. Colley
12 was there, and Mr. Tisdale never asked him any
13 questions. Again, ladies and gentlemen, it's his burden
14 of proof to bring his witnesses.

15 Now what his clients must do to prove
16 their case, ladies and gentlemen, is threefold. First,
17 they must prove that the smoke alarms in the apartment
18 were defective. Ladies and gentlemen, they have not
19 proved that. They have not proved that with any
20 reasonable certainty by looking at a photograph.
21 Sure, the photographs might purport to you -- again,
22 we don't have the alarm to see that the alarm may have
23 been over ten years old.

24 However, what you heard was the fire
25 chief from Moncks Corner, the head of the department

1 who's been here for over 20 years, he called that
2 a recommendation, ladies and gentlemen.
3 Just a recommendation.

4 You also heard Captain Corey Denny,
5 another member of the Moncks Corner Fire Department,
6 who testified that he's been on the force for 17 years.
7 Captain Denny said that it's totally possible that an
8 alarm over ten years old could still function just fine.
9 Captain Denny also talked about different programs that
10 the Moncks Corner Fire Department puts on, not for
11 landlords, not for Ms. Colley, but for the general
12 public and tenants, such as Ms. Trehus, to advise them
13 on the importance of smoke alarms and how to test them.

14 Next, ladies and gentlemen, Captain Denny
15 testified that he was in one of the fire engines
16 that drove directly outside of Ms. Trehus' apartment,
17 right outside the window that her and her son exited.
18 And when he did that, he testified that he had his
19 sirens on. Those fire truck sirens are loud, ladies
20 and gentlemen. Y'all have all heard them before.
21 You can hear them a neighborhood away. He also had
22 lights on. They were there to respond to a scene.

23 Ms. Trehus testified that she woke up,
24 walked around her apartment, tried to find the source
25 of the smoke, eventually opens the front door, and sees

1 the fire trucks. Plural, ladies and gentlemen, as she
2 testified. Remember, I had to correct her and show her
3 the deposition where she testified plural fire trucks
4 were on scene. She never heard it, ladies and
5 gentlemen, right outside of her window, those loud fire
6 engines.

7 So next, what does Plaintiff have to prove?
8 She has to prove the smoke alarm, not the fire, not the
9 fact that she didn't hear the fire trucks, she has to
10 prove the smoke alarm itself was the cause of her
11 injuries.

12 Finally, ladies and gentlemen, the
13 Plaintiffs must prove their damages. They must prove
14 their damages. And my job throughout this whole trial
15 today is simply to prove to you all with just the facts,
16 not my side of the story, not how I want to phrase words
17 to make it very descriptive. I'm just presenting you,
18 ladies and gentlemen, with the cold, hard facts of this
19 case and what happened to those people.

20 Now, ladies and gentlemen, now more than
21 ever it is important to look to those facts and not
22 just to the headlines. We see that all the time.
23 Headlines can be misleading; headlines can be deceiving.
24 You've got to look to the facts.

25 Now in this case, sure, the headline

1 is absolutely what it is. Ms. Trehus and her son got
2 out of their apartment through a second-floor window,
3 down to neighbors who were assisting below, standing
4 from the ground. You heard the neighbor -- neighbors,
5 plural, grab Kayden with no issue at all. Kayden didn't
6 have a scratch on his body. He was entirely, physically
7 uninjured when he went out the window.

8 In fact, ladies and gentlemen, Ms. Trehus
9 testified that he may have even been asleep. She never
10 woke him up. She just lowered him out the window,
11 again uninjured. Now, Mr. Tisdale has certainly added
12 his spin to that story. He's put his facts on it.

13 Now granted, I'm an advocate for my client
14 as well. Mr. Tisdale and I aren't going to agree;
15 we are presenting different sides. However, the problem
16 with the story that Mr. Tisdale presented, stories in
17 general, is that they are often and easily embellished,
18 and that's exactly what we have here, ladies and
19 gentlemen.

20 Again, looking at the facts first, we have
21 the photograph of the smoke alarm. It offers no proof
22 that it was defective at all. It could have sounded.
23 That has nothing to do with whether the alarm went off.
24 You also noticed, ladies and gentlemen, that she took
25 a photograph with her Smart Phone. She didn't take

1 a video; she didn't press the button and see if it
2 worked. That would be all she had to do to prove her
3 case, ladies and gentlemen, that the smoke alarm was
4 defective. Instead, she didn't do that, and that's
5 because she can't, ladies and gentlemen, because the
6 smoke alarm very well could have worked.

7 Also, ladies and gentlemen, in that
8 photograph Ms. Trehus testified that she took it after
9 the fire was put out, and she was able to get back into
10 her apartment. I don't see any black smoke on that
11 smoke alarm. You can see the carpet of her apartment
12 and the walls in there as well. There's no damage
13 in her apartment, ladies and gentlemen.

14 Remember, at the beginning of the trial
15 Plaintiff's counsel showed you that large, blown-up
16 picture of Santee Run Apartment Complex, right, ladies
17 and gentlemen? And he was showing you how the fire
18 had torn through that complex. It did. That is a fact.

19 The other fact, ladies and gentlemen,
20 is what I pointed out to you in that same photograph
21 that Plaintiff highlighted to you. There was one
22 building on the end where the roof was entirely intact.
23 The roof had no char marks on it. The roof hadn't
24 caved in. Ms. Trehus, ladies and gentlemen, pointed
25 that out to you all. It's her apartment, the one

1 apartment with no damage at all.

2 For those reasons, ladies and gentlemen,
3 I will tell you that Plaintiff simply can't prove her
4 case. She also added that, you heard Mr. Tisdale say,
5 the smoke was so thick in her apartment. It was charred
6 with thick black smoke. She couldn't see across
7 the room. That is a mighty descriptive headline,
8 ladies and gentlemen. But again it is not the facts
9 of the case that were presented to you, not by me,
10 ladies and gentlemen, that's not words I'm using.
11 I'm relying on the words of Ms. Trehus, the only person
12 who was in that apartment at the time of the fire.
13 Her lawyer wasn't there; her expert witness she's paid
14 to testify to y'all today wasn't there at the time
15 of the fire.

16 Now Mr. Tisdale, of course, and Dr.
17 Brewerton want you to believe that this apartment
18 was charred with smoke. They want you to believe
19 that because that would mean maybe the smoke alarm
20 didn't go off. However, you heard from Ms. Trehus.
21 Again, she testified that when she woke up that she
22 had no problem walking around her apartment. She did
23 it standing up.

24 If the apartment was charred with smoke,
25 as her lawyer and her expert that she's hired want's

1 y'all to believe, I would submit to you, ladies and
2 gentlemen, that she may be crouching down or crawling.
3 It's something we all learned in fire safety.

4 Ms. Trehus also testified that she opened
5 the door to her apartment, the door that leads to an
6 exterior staircase that's about ten feet away, that goes
7 directly outside to the courtyard. It's when she did
8 that, ladies and gentlemen, that the smoke came in her
9 apartment. It's also when she saw the fire trucks that
10 had already been on scene with their engines and sirens
11 blaring right outside her window.

12 However, at that point, it was only at that
13 point, after Ms. Trehus said she spent several minutes
14 walking around her apartment, that she goes into her
15 son's room for the first time. Now, ladies and
16 gentlemen, if have a family member and you wake up,
17 there's a fire, and your house is charred with smoke,
18 again, I would submit to you that the first move you
19 might make would be to go into your three-year-old
20 son's room.

21 You're not going to look around the
22 apartment; you're not going to open the door; you're
23 not going to walk out front. You're going to go right
24 across your hallway into that three-year old's room,
25 if the apartment was charred with smoke, as Ms. Trehus'

1 lawyer wants you to believe. But, ladies and gentlemen,
2 we know for a fact she didn't do that. It's not
3 something I'm telling you; it's something that
4 Ms. Trehus told you that she didn't do.

5 We also, ladies and gentlemen, have heard
6 that when Ms. Trehus did make it into her son's room,
7 there was no smoke in the room at all. To the extent
8 there's smoke inhalation and death, there was no smoke
9 in Kayden's room whatsoever. Again, Ms. Trehus told
10 y'all that, not me. Possibly, if there's no smoke
11 in his room, there's not enough smoke for an alarm
12 to go off inside the building, ladies and gentlemen.
13 Perhaps that alarm went off after she exited the
14 building as more smoke came in while fire crews were
15 fighting the fire.

16 Now, ladies and gentlemen, don't let
17 yourself be fooled by some of the arguments you heard
18 by Plaintiff's counsel about a fire extinguisher.
19 That's what's called a red herring. It's something
20 to detract you away from the facts in the case.
21 Again, Ms. Trehus testified when she opened that door,
22 there's no flames. She never testified to even going
23 to get the fire extinguisher. But what it does show
24 is there was a fire extinguisher and smoke alarms in
25 her apartment.

1 Now once Ms. Trehus did make the decision
2 to go out the second-floor window and jump to the
3 neighbors below, you heard that she did sustain a foot
4 fracture. That's also a fact, ladies and gentlemen.
5 That's not a fact I'm hiding from you. But what you
6 heard from Dr. Corey is that that fracture had fully
7 healed.

8 You also heard from Ms. Trehus that the
9 fracture wasn't diagnosed after the fire. She was
10 able to walk around the complex, ladies and gentlemen.
11 She took photographs; she spoke with other people;
12 she had her son with her. She did not have a broken
13 foot where she wasn't walking. She went to an express
14 care the next day, as Ms. Trehus told you, and the
15 X-rays were negative.

16 Weeks later, an MRI certainly revealed a
17 foot fracture. That is not something we are disputing.
18 But what it also revealed -- what her treatment revealed
19 was that Ms. Trehus simply wore a boot, not even a cast,
20 a boot for a number of weeks. She was able to work
21 full time the entire time that she was in a boot.
22 She was paid her full salary. She's returned to work
23 now. And Dr. Corey said that fracture is 100 percent
24 healed. He doesn't expect it to get any worse,
25 ladies and gentlemen. To me, that doesn't sound

1 like permanency. I'll let you decide that though.

2 Now shifting to Kayden, of course, you've
3 heard that Kayden has no physical injuries at all when
4 he was grabbed by the neighbors below. But, of course,
5 Dr. Brewerton has his opinions, and you've heard those
6 on the video. His opinions though are what may occur.
7 And the fact is that currently neither Shelby or Kayden
8 is seeking any treatment for the alleged injuries that
9 they sustained in this fire.

10 In fact, ladies and gentlemen, Dr. Brewerton
11 testified that he hasn't seen the Plaintiffs since
12 December of 2020. Over a year ago since he's seen
13 them, and Plaintiffs have sought no additional treatment
14 whatsoever. It's because they don't need any, ladies
15 and gentlemen. That's what Dr. Wiita told you.
16 Dr. Wiita acknowledged a fire could be a traumatic
17 event. That's what was established. Again, I'll
18 present to you that's a fact. It could be a traumatic
19 event.

20 But what Dr. Wiita also testified with
21 absolute certainty, ladies and gentlemen, is that just
22 because we go through traumatic events in our lives
23 doesn't mean that we're permanently affected. And in
24 this case, Kayden is not permanently affected, and he's
25 certainly not affected to the sense of a PTSD diagnosis,

1 ladies and gentlemen.

2 Dr. Brewerton agreed with that. Y'all
3 heard him say that Kayden did not have PTSD at the
4 time of his meeting with him, nor did Ms. Trehus.
5 They were in remission, meaning they had recovered
6 from it. They were in recovery from PTSD. You
7 also heard Dr. Wiita say that the symptoms -- and
8 Dr. Brewerton, both experts said that symptoms did
9 not meet the full criteria for a diagnosis.

10 Another point Dr. Brewerton did make,
11 and he made it quite emphatically in his presentation,
12 was that just because you have symptoms, it doesn't mean
13 it's a diagnosis, ladies and gentlemen. Now, I present
14 to you to use Dr. Brewerton's own words that diagnosed
15 symptoms does not mean PTSD.

16 Now, again Dr. Brewerton made his opinions
17 after speaking with Mr. Tisdale first. He got the story
18 from Mr. Tisdale first. He didn't get the story
19 directly from Shelby at first. He knew going into his
20 meeting with Shelby what Mr. Tisdale's version of the
21 events were. Then, he conducted a simple three-hour
22 Zoom call, a video call, with Shelby and Kayden.
23 That's all he did. He reviewed some limited records.
24 Those are listed in his report as well that y'all will
25 see.

1 Now to the contrary -- oh, those records,
2 might I add, ladies and gentlemen, as he testified,
3 were limited severely by Mr. Tisdale's office. As in
4 the deposition of Dr. Brewerton, I questioned whether
5 he had looked at Kayden's individualized education plan.
6 That's something that Berkeley County School District,
7 along with Berkeley County officials, put together
8 for Kayden. They've done it every year since he's been
9 in special needs classes, well before this fire.

10 Yet, curiously, in Dr. Brewerton's report,
11 ladies and gentlemen, you'll see that they're picked
12 and choose. What I've done is I presented the IEP,
13 the individualized education plan, from two weeks
14 before the fire and then one the next year right after
15 the fire. And, surprisingly, not surprisingly to
16 me, Kayden has improved. Kayden's marks improved after
17 the fire from what they were before, but Dr. Brewerton
18 didn't see those records.

19 Now to the contrary, Dr. Wiita, who
20 testified in front of you all here, he looked at
21 volumes of records. They're also listed in his report,
22 which y'all will have back in the jury deliberation
23 room. Dr. Wiita also met face to face, in person,
24 with Kayden and Shelby. He wasn't limited by a screen.
25 He had a full interaction with them, and he concluded

1 that there was no additional treatment that was
2 necessary.

3 Now one thing that you will hear from Judge
4 Price is that future damages in this case, which is what
5 Plaintiffs are asking for, and that's why they're going
6 through the life expectancy that you heard Mr. Tisdale
7 getting through, future damages, ladies and gentlemen,
8 you'll be told by Judge Price cannot be left up
9 to speculation. They cannot. That is the law.
10 They cannot be guessed.

11 Plaintiff's counsel just asked you to guess.
12 He's asking you to guess, to speculate. Judge Price
13 will tell you specifically you're not allowed to
14 do that. That's not within the parameters of what
15 a jury can do.

16 Now, lastly, ladies and gentlemen,
17 do not forget Plaintiff's own testimony about changing
18 the batteries in her smoke alarm. That's extremely
19 important because when she did, she reported no
20 problems with the alarm to my client, Ms. Colley.
21 In fact, she lived there for 15 months, 15 months
22 under a month-to-month agreement, ladies and gentlemen,
23 and never had any complaints about the apartment not
24 being safe, never had any complaints about the smoke
25 alarms not being functioning or defective in any way,

1 shape or form.

2 However, as a tenant, Ms. Trehus admitted
3 to you all that she knew the importance of checking
4 those smoke alarms and she did. Why would she have
5 done it if she didn't know it was important, ladies
6 and gentlemen? She knew. She knew as a tenant it
7 was her obligation to do. It's also something that
8 Ms. Colley told y'all that she tells tenants to do.

9 Oftentimes in her apartment, tenants will
10 take the smoke alarms off the wall. These are just
11 battery-powered smoke alarms. Ms. Colley would say
12 that she had told her tenants it's their responsibility
13 to change the batteries in their smoke alarms, and
14 it's their responsibility to test it. Shelby admitted
15 to you that she knew it was her responsibility,
16 yet she did not.

17 Now, ladies and gentlemen, there's one other
18 charge that I would like to go through with you briefly
19 because it's extremely important to this case, and
20 it's something that Judge Price will tell you as soon
21 as I'm done speaking. Now that charge is the law
22 regarding smoke alarms in condominium or apartments,
23 like the one that Ms. Trehus lived in.

24 Now what it says, ladies and gentlemen,
25 is that the owner does need to provide a smoke alarm;

1 we did. There's one that is in the apartment.
2 And the owner must also provide verbal or written
3 instructions on how to test the alarm and replace
4 the batteries. You heard Ms. Colley testify that
5 she did give verbal instructions. You never heard
6 any indication to the contrary from Ms. Trehus.
7 In fact, again, ladies and gentlemen, we know that
8 Ms. Trehus did test the alarms, evidencing her knowledge
9 that she knew to do so.

10 Additionally, ladies and gentlemen,
11 Judge Price will read a charge to you that says no
12 obligation is created under the law to provide batteries
13 for battery-powered -- no obligation is created for
14 the owner. The owner is Ms. Colley. No obligation
15 is created for the owner to provide batteries for
16 battery-powered smoke detectors. That's a burden
17 on the tenant, ladies and gentlemen. The law puts
18 that burden on the tenant.

19 Now, lastly, ladies and gentlemen,
20 the law requires that the tenant of a rental dwelling,
21 and I'm quoting, you'll hear those exact words from
22 Judge Price, "Shall notify the owner in writing of
23 any deficiencies in the performance of smoke detectors."
24 Shall notify the owner in writing, ladies and gentlemen.

25 Here, we have Ms. Trehus testify that she,

1 in fact knew her lease agreement created a maintenance
2 obligation and a reporting obligation on her,
3 the tenant, to notify the landlord of any problem
4 she had. She testified that she did so with the
5 air-conditioning unit, and Ms. Colley responded right
6 away. Ms. Trehus testified to that. That's a fact.

7 Ms. Trehus also testified that she had
8 a problem with her sink clogging. She reported those
9 to Ms. Colley; Ms. Colley responded right away.

10 Finally, ladies and gentlemen, Ms. Trehus
11 testified that she never once, in writing or verbally,
12 make any complaints with the performance of her smoke
13 detectors to Ms. Colley or anyone at Santee Run,
14 ladies and gentlemen. That right there is the reason
15 you should return a defense verdict. The law puts
16 the burden on the Plaintiff in this case to alert
17 the landlord of any problems with their smoke detectors.
18 Judge Price will tell you that. Ms. Trehus has told
19 you she didn't.

20 Because of that, ladies and gentlemen,
21 because the Plaintiff simply cannot meet their burden
22 of proof in this case, the law dictates that you should
23 return a verdict for the Defendant, and that's exactly
24 what I urge you to do. And thank you very much for your
25 time.

1 THE COURT: All right. Ladies and
2 gentlemen, at this time I'm going to charge you on
3 the law in this case as to -- well, do you have any
4 followup? I'm sorry, Mr. Tisdale.

5 MR. TISDALE: No, sir.

6 THE COURT: Okay. The law in this case
7 of which you are to apply the facts. As both attorneys
8 have indicated, I am the sole and exclusive judge
9 of the law. And, as I indicated previously, that's
10 why some of those things were redacted because I make
11 those decisions. You all are the sole and exclusive
12 judges of the facts, and so y'all are obviously going
13 to apply the facts to the law that I'm now going to give
14 you.

15 As you all are fully aware I'm sure, any
16 time you deal with the legal profession or legal world,
17 it's confusing for no reason, and this is going to be
18 a mildly confusing charge that I give you, but I'll
19 explain it to you at the end, and also I'm going
20 to allow you to have it in the back, so you can refer
21 to it, all right. So it's rather lengthy, but again
22 don't worry about that. I'll allow you to have it in
23 the back for your reference.

24 I remind you that, during this trial,
25 you and I have certain duties to perform. As the trial

1 judge, it is my responsibility to preside over the trial
2 of this case. And I also have the duty to rule on the
3 admissibility of the evidence offered during this trial.
4 You are to consider only the evidence before you.

5 If there was any testimony ordered stricken
6 from the record during this trial, you must disregard
7 that testimony. You are to consider only the testimony,
8 which has been presented from this witness stand,
9 any exhibits which have been made a part of the
10 record in this case, and any stipulations of counsel.

11 A stipulation is an agreement, an admission
12 or concession made in judicial proceedings by the
13 parties thereto or their attorneys.

14 I had the additional duty to charge you
15 the law applicable to this case. It is your duty
16 as jurors to accept and apply the law as I now state
17 it to you. If you think you have any idea as to what
18 the law is, or what the law ought to be, and it does
19 not agree with what I tell you the law is, you must
20 forget that idea because you are sworn to accept the
21 law and apply the law exactly as I state it to you.

22 In every case tried in this court before
23 a jury, the jury becomes the sole and exclusive judge
24 of the facts. A trial judge cannot comment on or make
25 any statement about the facts in a case. Since you are

1 the sole judges of the facts, do not think by anything
2 I have said during this trial that I have any opinion
3 about the facts in this case. The law does not allow
4 me to have any opinion about the facts whatsoever.

5 There are two types of evidence generally
6 presented during a trial; there's direct evidence
7 and circumstantial evidence. Direct evidence
8 is the testimony of a person who claims to have
9 actual knowledge of a fact, such as an eyewitness.
10 It is evidence which immediately establishes the main
11 fact to be proven.

12 Circumstantial evidence is proof of a chain
13 of facts and circumstances indicating the existence
14 of a fact. It is evidence which immediately
15 establishes collateral facts from which the main fact
16 may be inferred. Circumstantial evidence is based on
17 inference and not on personal knowledge or observation.
18 It is proof that does not actually establish the facts
19 in question, but that asserts or describes something
20 else from which you may either reasonably infer
21 the truth of the fact, or at least reasonably infer
22 an increase in the probability that the fact is actually
23 true.

24 For circumstantial evidence to be sufficient
25 to warrant the finding of a fact, the circumstances

1 must lead to that fact with reasonable certainty.
2 The facts and circumstances should be considered
3 in light of ordinary experience and common sense.
4 The existence of a fact cannot be based on speculation,
5 surmise, or conjecture.

6 The law makes absolutely no distinction
7 between the weight or value to be given to either direct
8 or circumstantial evidence. Nor is a greater degree
9 of certainty required of circumstantial evidence than
10 of direct evidence.

11 Also, necessarily, you must determine the
12 credibility of witnesses who have testified in this
13 case. Credibility means -- simply means believability.
14 It becomes your duty as the jurors to evaluate the
15 evidence and determine which evidence convinces you
16 that it's true.

17 In determining the believability
18 or credibility of witnesses who have testified in
19 this case, you may believe one witness over several,
20 you may believe several witnesses over one, you may
21 believe a part of the testimony of a witness and reject
22 the remaining part of the testimony, you may believe
23 the testimony of a witness in its entirety, or reject
24 the testimony of a witness in its entirety.

25 You may consider whether the witness has an

1 interest in the result of the trial, whether the witness
2 is prejudiced toward either the Plaintiff or the
3 Defendant, the opportunity for the witness to have
4 seen the matters and things about which the witness may
5 testify, and the way the witness acted on the witness
6 stand.

7 The rules of evidence ordinarily
8 do not permit witnesses to testify to their opinions
9 or conclusions. An exception to this rule exists
10 for witnesses we call expert witnesses. A witness
11 who, by education and experience, has become an expert
12 in some art, science, or profession may give an opinion
13 as to the subject the witness claims to be an expert
14 in, and may also give the reasons for the opinion.

15 You should consider any expert opinion
16 given by a witness, and like any other evidence,
17 you just give it the weight you think that it deserves.
18 If you decide that an expert witness's opinion is not
19 based on sufficient education, experience, or if you
20 decide that the reasons given in support of the opinion
21 are not sound, or that the opinion is outweighed by the
22 evidence, you may disregard the opinion in its entirety.

23 An expert witness's testimony is to be given
24 no greater weight than that of other witnesses simply
25 because the witness has been deemed an expert, and you

1 do not have to accept an expert's opinion, even though
2 it may be uncontradicted.

3 The burden of proof in this case is by
4 a preponderance of the evidence. A preponderance
5 of the evidence simply means the greater weight
6 of the evidence. It is evidence which, as a whole,
7 shows that the facts sought to be proven is more likely
8 true than not.

9 This can be illustrated by imaging a set
10 of scales. When the case begins, the scales are even.
11 After all the evidence has been presented, if the scales
12 remain even or if they tip even slightly in favor of the
13 Defendant, the Plaintiff has failed to meet the burden
14 of proof and would not be entitled to recover in this
15 case.

16 If, on the other hand, the scales tip even
17 slightly in favor of the Plaintiff, the Plaintiff will
18 have met the burden of proof, and you should return
19 a verdict for the Plaintiff. The preponderance of the
20 evidence is not determined by the number of witnesses.
21 Instead, it must be determined by the greater weight
22 of all the evidence presented.

23 The Plaintiff claims that the Defendant
24 was negligent and should compensate the Plaintiff
25 for the injury the Plaintiff suffered as a result

1 of the Defendant's negligence. In order to prove
2 that the Defendant was negligent, the Plaintiff must
3 prove by a preponderance, or greater weight of the
4 evidence, the following things:

5 First, the Plaintiff must prove by
6 a preponderance, or greater weight of the evidence,
7 that the Defendant owed the Plaintiff a duty of care.
8 You must then decide the remaining question. The first
9 of these is whether the Plaintiff has proven by
10 a preponderance, or greater weight of the evidence,
11 that the Defendant breached the duty of care by
12 a negligent act or omission.

13 Negligence means that a person has done
14 something that a reasonable person would not have done,
15 or has failed to do something that a reasonable person
16 would have done in the same situation. The Plaintiff
17 must also prove by a preponderance, or greater weight
18 of the evidence, that they suffered damages as a result
19 of the Defendant's breach.

20 Finally, the Plaintiff must prove by
21 a preponderance, or greater weight of the evidence,
22 that the damages were proximally caused by the
23 Defendant's breach of that duty.

24 Proximate cause is something that produces
25 a natural chain of events which, in the end, brings

1 about the injury. It is the direct cause of the injury.

2 To prove that the Defendant's negligence
3 proximally caused the Plaintiff's injury, the Plaintiff
4 must first prove causation in fact. This is proven
5 by showing that the injury would not have occurred
6 but for the Defendant's negligence.

7 The Plaintiff must also prove legal cause.
8 Legal cause is proven by showing that the injury
9 was foreseeable. This means that the injury occurred
10 as a natural and probable consequence of the Defendant's
11 negligence. The Plaintiff must prove that some
12 injury from the Defendant's negligence was foreseeable,
13 but does not have to prove that the particular injury
14 that occurred was foreseeable. However, the Defendant
15 cannot be held responsible for things which could not
16 be expected to happen.

17 Proximate cause does not mean the only
18 cause. The Defendant's act can be a proximate cause
19 of the Plaintiff's injury if it was at least one of the
20 direct, concurring causes of that injury. Just giving
21 Eve a second to let her fingers rest. All right.

22 The Defendant claims that the Plaintiff's
23 own negligence proximally caused the Plaintiff's
24 injuries. If you find that the Defendant was negligent,
25 you must then decide whether the Plaintiff was

1 negligent. The Defendant must prove by a preponderance,
2 or greater weight of the evidence, that the Plaintiff
3 breached a duty of care which proximally caused
4 the Plaintiff's injuries. The same law which I have
5 told you to use in deciding whether the Defendant
6 was negligent should be used in deciding whether
7 the Plaintiff was negligent as well.

8 If you find that the negligence of both
9 the Plaintiff and the Defendant proximally caused
10 the Plaintiff's injuries, you must then decide how
11 much the negligence of the Plaintiff contributed
12 to the injuries and how much the Defendant's negligence
13 contributed to the injuries. In deciding the
14 percentages of negligence of the Plaintiff and
15 the Defendant, you may consider, among other things,
16 the following factors:

17 One, whether each party's conduct was
18 only inadvertent or whether it was engaged in with
19 an awareness of the danger that it was involved in;
20 the magnitude of the risk created by each party's
21 conduct, including the number of persons endangered and
22 the possible severity of the injury; the significance
23 of the goal that each party was trying to reach and the
24 need to achieve the goal in that manner; each party's
25 capabilities and abilities to realize and eliminate

1 risk; the particular circumstances confronting each
2 party at the time the conduct occurred, such as the
3 existence of an emergency requiring a quick decision;
4 the relative closeness of the causal relationship of
5 the negligent conduct of the Defendant and the harm to
6 the Plaintiff; and whether the conduct of either party
7 involved a violation of a safety statute or regulation.

8 I will give you written questions on
9 a special verdict form for you to reach your verdict.
10 The form will have spaces for you to write your
11 decisions about the percentage of the negligence,
12 if any, of both parties which proximately caused
13 the Plaintiff's injuries.

14 The first question on the verdict form
15 asks you to decide whether the Defendant was negligent,
16 and if so, whether the Defendant's negligence was
17 the proximate cause of the Plaintiff's injuries.
18 Question two asks the same question about any negligence
19 by the Plaintiff.

20 Questions three and four -- I told you
21 it would get confusing. Hang with me, okay? All right.
22 Questions three and four asks you to decide the
23 percentage of each party's negligence which proximately
24 caused the Plaintiff's injuries. The percentages
25 must add up to 100 percent, all right.

1 Question five asks you if the Plaintiff's
2 negligence was greater than the Defendant's negligence.
3 If so, the Plaintiff would not be entitled to any
4 damages, and your verdict would be for the Defendant.

5 If, however, you find that the Plaintiff's
6 negligence was equal to or less than the Defendant's
7 negligence, you would answer question six which asks
8 you to determine the total amount of damages suffered
9 by the Plaintiff. Do not reduce the Plaintiff's total
10 damages based on percentage of negligence of any party.

11 After you have answered the questions,
12 I will compute the amount of damages for which
13 the Defendant is responsible based on the percentage
14 of the Defendant's negligence which you have decided
15 proximally caused the Plaintiff's injuries.

16 You are to determine only the total
17 amount of the Plaintiff's damages and enter that figure
18 on the verdict form. Do you understand? Y'all will
19 have it numbered, if anything, and then I'll determine
20 if it's 60/40, 70/30, whatever y'all say, if any, okay?
21 So, I'll do that math is basically what that last
22 sentence makes so difficult, so don't worry about that.

23 A contract is an agreement entered into
24 by two or more parties in which each party agreed
25 to perform, or not to perform, certain acts. It may

1 be shown by words, written or oral, or by conduct.

2 However, a contract is more than the mere
3 exchange of promises for the agreement to be considered
4 a contract. The parties must have intended to enter
5 into a contract and must have reached a mutual
6 understanding of the terms of that contract.
7 This is sometimes called the meeting of the minds.
8 The parties must intend to be mutually bound by
9 the agreement. The Plaintiff must then show by
10 a preponderance, or greater weight of the evidence,
11 that the Defendant unjustifiably breached that contract.

12 The word breach means the failure,
13 without legal excuse, to perform any promise that forms
14 the whole or a part of the contract. This includes
15 the refusal of a party to recognize the existence
16 of the contract or the doing of something inconsistent
17 with the existence of the contract. A party breaches
18 a contract when that party does not perform as agreed
19 under the contract by failing to carry out a term,
20 promise, or condition of the contract. All right.

21 The South Carolina Residential Landlord
22 and Tenant Act is found in Sections 27-40-10, and
23 the following provisions under that title of the South
24 Carolina Code are as such:

25 I charge you that the purpose of -- they've

1 reduced it down to RLTA, Residential Landlord-Tenant
2 Act, is to codify the rights, obligations, and duties of
3 landlords and tenants of rental dwellings and to enforce
4 landlord's duty to ensure the quality and habitability
5 of their rental properties and to provide a safe place
6 to live in an effort to protect the tenants.

7 I charge you that a landlord has a duty to
8 maintain the premises, to comply with the requirements
9 of applicable building codes that may materially affect
10 the health and safety of tenants, to make all repairs
11 and do whatever is necessary to put and keep the
12 premises in a fit and habitable condition.

13 I charge you that, according to the RLTA,
14 the statute can be supplemented, in which the principles
15 of law and equity, contractual obligations, real
16 property, public health, safety and fire prevention,
17 estoppel, fraud, misrepresentation, duress, coercion,
18 mistake, bankruptcy, or other validating or invalidating
19 causes shall supplement the provisions of the act.

20 I charge that the landlord is required
21 to have notice of any omission or acts that breach the
22 rental agreement for RLTA. I charge you that a person
23 has notice if from all the facts and circumstances
24 known to him or her at the time in question he or she
25 has reason to know that it exists, or if the person

1 has actual knowledge of the fact. All right.

2 A battery-operated detector meeting
3 the requirements is permitted in an existing dwelling
4 that has not undergone remodeling exceeding 50 percent
5 of its assessed value. Detectors must be installed
6 according to manufacturer's instructions.

7 The owner of a dwelling is responsible for
8 supplying and installing the smoke detectors in rental
9 dwellings and housing and shall provide the tenant
10 at the time the tenant takes possession of the dwelling
11 written or verbal instructions, or both, for testing
12 the detectors and replacing batteries in battery-powered
13 detectors.

14 The tenant of a rental dwelling shall
15 notify the owner in writing of any deficiencies in
16 the performance of the smoke detectors. The owner
17 must be considered notified upon delivery of the written
18 notice at the place of business of the owner through
19 which the rental agreement was made, or at any place
20 held out by him as the place for receipt for the payment
21 of rent or other communications.

22 Upon written notification by the tenant
23 that a smoke detector is deficient, the owner shall
24 repair or replace the detector within 15 days.

25 No obligation is created hereby for the owner to replace

1 or repair a detector when he determines upon visual
2 inspection or testing has been deliberately tampered
3 with, damaged, destroyed by the tenant or any person
4 authorized to reside in the residence by the tenant
5 and notifies the tenant in written of these findings.

6 The owner may repair or replace a detector
7 that he or she determines has been deliberately tampered
8 with, damaged, or destroyed by the tenant or any person
9 authorized by the tenant to reside in the residence
10 and may assess against the tenant the actual cost
11 of the repair or replacement of the detector.

12 No obligation is created hereby for the
13 owner to provide batteries for battery-powered detectors
14 allowed under this section.

15 A person who violates this article on
16 first offense has 15 days to install a smoke detector
17 or to repair or replace the detector. On second
18 offense, a person who violates that article is guilty
19 of a misdemeanor and upon conviction, must be fined
20 not less than \$50, nor more than \$200 or imprisonment
21 for 30 days.

22 Failure to comply with provisions
23 of this article does not create a cause of action
24 for a per se statutory violation for liability,
25 or for negligence-based liability, for death, injury,

1 or damages.

2 What are damages? Actual damages are
3 to compensate the Plaintiff for the Plaintiff's injuries
4 or loss and to put the Plaintiff, as near as possible,
5 in the same position that the Plaintiff was in before
6 the incident occurred. In other words, actual damages
7 would be the actual losses and expenses which the
8 Plaintiff has suffered because of the Defendant's
9 negligence.

10 In determining the amount of compensation
11 for injuries suffered by the Plaintiff as a result
12 of the Defendant's negligence, it is proper for you
13 to consider and award past, present and future damages.

14 All of these potentials are for loss
15 of income, loss or impairment of earning capacity,
16 out of pocket expenses, medical expenses, including
17 physicians, hospital, medicines, physical therapy,
18 rehabilitation expenses, transportation expenses,
19 any future damage resulting from permanent injuries,
20 disfigurement, loss of family services, deprivation
21 of normal life expectancy, alteration of one's
22 lifestyle, psychological trauma, mental anguish, mental
23 distress, apprehension, anxiety, emotional injury,
24 psychological injury, depression, pain and suffering,
25 or loss of enjoyment of normal life. The Plaintiff

1 bears the burden of proving these elements by the
2 preponderance of the evidence.

3 Pain and suffering compensates the Plaintiff
4 for physical discomfort and emotional response to
5 the sensation of pain caused by the injury itself.
6 There is no definite standard by which to compensate
7 the Plaintiff for pain and suffering. You have the
8 authority to determine the amount, if any, to be allowed
9 for pain and suffering, using calm and reasonable
10 judgment to ensure that the damages are just and
11 reasonable in light of the testimony and evidence
12 presented in this case.

13 Mental suffering, apprehension, shock,
14 fright, emotional upset, humiliation, anxiety, either
15 present or expected in the future, can be properly
16 considered as an element of damages and may be
17 considered by you. The amount of damages for mental
18 suffering cannot be exactly measured.

19 A Plaintiff is never entitled to recover
20 conjectural or speculative damages. But if you find
21 the Plaintiff is entitled to a verdict for actual
22 damages, your verdict should include an amount to cover
23 any past, present, and future damages for which were
24 proximately caused by the Defendant. Any future damages
25 must be reasonably certain to occur in the future

1 as a result of the Defendant's acts.

2 Actual damages need not be proven by
3 a mathematical certainty or be based on evidence of the
4 precise amount of damages the Plaintiff has suffered.
5 Instead, the evidence must allow you to determine what
6 amount of damages is fair, just and reasonable.

7 The Plaintiff is required to use reasonable
8 care and diligence to reduce the seriousness of the
9 injuries caused by the Defendant. This duty includes
10 making a reasonable attempt to see a doctor. If you
11 find that the Plaintiff failed to do this, the Plaintiff
12 may recover damages for the injuries themselves but
13 not damages for the aggravation of those injuries.

14 The existence or amount of damages cannot
15 be left to conjecture, guess, speculation. However,
16 proof of amount of loss with absolute or mathematical
17 certainty is also not required. Damages must be
18 susceptible of ascertainment with a reasonable degree
19 of certainty.

20 A person's life expectancy is determined
21 by a life expectancy table which is a part of the laws
22 of the state of South Carolina. That's true, which
23 is unique because they say how long we're going to
24 live. But the life expectancy table is only an estimate
25 of the probable average remaining length of the life

1 of all persons in the state of South Carolina.

2 The Plaintiff, Shelby Trehus, is -- was
3 a 24-year-old female, and has a life expectancy of 57.37
4 years. The Plaintiff, Kayden Montagna, at the time
5 of the incident was three years of age, and therefore,
6 has a life expectancy of 73.76 years.

7 These facts are to be considered by you,
8 along with any other facts and circumstances in evidence
9 bearing on the Plaintiff's life expectancy, including
10 occupation, habits, and health at the time of the injury
11 and decide the amount of damages to be awarded to the
12 Plaintiff, if any. All right.

13 Madam Forelady, I will now describe
14 your -- charge you with your final duties, all right.
15 First and foremost, this has to be a unanimous decision,
16 all right. It has to be all 12 that are going to make
17 the decision, all right. And in doing so, what I mean
18 by that is that everyone needs to participate in the
19 deliberations, all right. You'll find that some are
20 going to participate a lot, and you'll find that some
21 just don't participate really that much, and that's
22 okay, but you have to allow everyone the opportunity
23 and ability who wants to participate in the
24 deliberations to participate, all right.

25 So if someone needs to use the restroom

1 or needs, you know, to use the phone or something comes
2 up, I would ask you to stop the deliberations,
3 all right, because at that point in time it needs
4 to be unanimous, so everybody needs to be participating
5 equally, all right.

6 Your other duties are that if, in fact,
7 there is a question, I'm going to give you -- I don't
8 know what questions you may have, but if there is
9 a question, you need to reduce it to writing, sign
10 it, date it and send it out to the bailiffs, and they'll
11 come and get me, all right. Every question you ask,
12 I promise, you will get an answer. There is a 99
13 percent chance you will not like the answer, but you
14 will get one, okay? All right.

15 And the last thing that I charge you to
16 do is you have to sign and fill out the verdict form,
17 all right. I explained it in the charge how you go
18 one to two, two to three, three to four, and so on and
19 so forth. So if you'll just take a look at the verdict
20 form, there are two. Obviously, there are two
21 Plaintiffs in this case, and so you will decide
22 as to Shelby Trehus and as to Kayden, all right.
23 And both of them are on here.

24 And if have any questions or concerns about
25 the verdict form, just submit a question, and I'll bring

1 you out and see if I can help you out with it,
2 all right. All right.

3 So if there's nothing, I would ask you to go
4 ahead and retire to the jury room. Please don't begin
5 deliberating because we don't have the evidence back
6 there to you. We're going to go over all the evidence
7 and make sure that we have it all. I'm going to get
8 this verdict form and the charges to you, and I will
9 then ask the bailiff to tell you -- ask y'all to go
10 ahead and begin your deliberations, so give us about two
11 minutes, all right. Excuse us. We'll get everything
12 together.

13 (Jury exits the courtroom at 11:15 a.m.)

14 THE COURT: Y'all go ahead and come on up,
15 make sure the evidence is straight, make sure everything
16 is marked.

17 (Off the record.)

18 (Back on the record.)

19 THE COURT: All right. Will you bring them
20 out for me, please?

21 (Jury enters the courtroom at 12:26 p.m.)

22 THE COURT: All right. Please be seated.
23 All right. This is just for scheduling purposes. I did
24 not order y'all lunch, so that's out the window because
25 it takes an hour and a half, and we haven't placed your

1 orders.

2 I've got 35 to 40 staff members that are
3 here just because of us, and so I either have to make
4 a determination now whether we're going to take a break
5 and go to lunch and come back or if -- obviously,
6 I have no idea what y'all's deliberation status is.
7 I don't want to know, obviously, I'm not asking anything
8 about that. My question is just very simple.
9 Is it beneficial for y'all to continue deliberations,
10 or do you think it's best if we go to lunch and then
11 come back later?

12 THE FORELADY: I would say beneficial
13 to complete what we already started and not go to lunch.

14 THE COURT: Fair enough. Y'all can
15 continue. I just wanted to get y'all's wishes before
16 I sent all these people out.

17 (Jury exits the courtroom at 12:27 p.m.)

18 (Off the record.)

19 (Back on the record.)

20 (Jury enters the courtroom at 1:18 p.m.)

21 THE COURT: All right. You'll just hand the
22 verdict to the deputy, please. All right. You may be
23 seated. All right. Ms. Simmons, is this the verdict?

24 THE FORELADY: Yes, sir.

25 THE COURT: All right. And was it

1 unanimous?

2 THE FORELADY: Yes, sir.

3 THE COURT: Okay.

4 (Pause.)

5 THE COURT: All right. Because we have
6 overly complicated this verdict form, because we
7 realized we should have put if you find that the person
8 is not negligent, we should have put another line that
9 says just stop here, but we didn't. I guess the
10 question is -- okay, then you're correct. I'm sorry.
11 All right.

12 As to -- all right. This is Case No.
13 2019-CP-08-2808. As to Shelby Trehus, we, the jury,
14 unanimously find the Defendant was negligent. Yes.
15 If, yes, we, the jury, unanimously find the Defendant's
16 negligence was the proximate cause of the injury.
17 No. That's correct.

18 And, therefore, you indicated that as to
19 Shelby Trehus, we, the jury, unanimously award damages
20 in favor of Ms. Trehus in the amount of zero dollars.
21 Okay. You found that it was not the proximate cause
22 of her injuries. Got it. All right.

23 As to Kayden Montagna, we, the jury,
24 unanimously find the Defendant was negligent. No.
25 So, we, the jury, unanimously find the percentage

1 of Kayden Montagna's negligence which proximally
2 caused the injury is zero. And so as to Kayden
3 Montagna, we, the jury, unanimously award damages
4 in favor of Kayden Montagna in the amount of zero.
5 All right.

6 Did I get that correct? Was that the intent
7 of the jury?

8 THE FORELADY: Yes.

9 THE COURT: Okay. That it was not the
10 proximate cause of the injuries, and therefore, you
11 wanted to award zero to both. But you did find that
12 they were negligent, but just it wasn't the proximate
13 cause of the injuries. Okay, I got it right.
14 All right. And that he was not negligent, so that
15 doesn't matter, correct?

16 THE FORELADY: Correct.

17 THE COURT: All right. Just wanted to make
18 sure I had it correct and wanted to make sure that
19 y'all's wishes were correct. All right. Well, ladies
20 and gentlemen of the jury, that is -- that concludes
21 your jury service. You worked hard and so I appreciate
22 it, appreciate y'all being here, and appreciate y'all
23 allowing us to have that extra day. We actually tried
24 another case yesterday as well, so we were able to get
25 two done. And again, thank you for your service.

1 You will be receiving a very, very, very
2 small check, but you'll also be receiving a three-year
3 exemption, if that's what you chose. I would love
4 to have you back on a jury. All right. You have
5 a wonderful rest of your day.

6 (Jury exits the courtroom at 1:23 p.m.)

7 THE COURT: Anything for the record before
8 we adjourn?

9 MR. BEVANS: Post-trial motions, Your Honor.
10 We had filed -- the Defendants filed offers of judgment
11 on January 11, 2022.

12 THE COURT: Okay.

13 MR. BEVANS: We had made an offer to
14 Ms. Shelby Trehus for \$75,000.

15 THE COURT: Okay.

16 MR. BEVANS: And to the minor Plaintiff
17 for \$50,000.

18 THE COURT: All right.

19 MR. BEVANS: So pursuant to Rule 68(b),
20 we will be seeking any admin filing or other court
21 costs from the date of that offer. We would also be --
22 well, I guess, there's no reduction from the judgment
23 to seek.

24 THE COURT: No, you have to just send it to
25 me in a petition.

1 MR. BEVANS: Sure.

2 MR. TISDALE: Your Honor, given the little
3 bit of complicated nature of this whole thing, can you
4 give us just a few days to file post-trial motions?

5 THE COURT: You have 15 days from today's
6 date as always.

7 MR. TISDALE: Thank you.

8 THE COURT: Yes, sir. All right. Anything
9 else?

10 MR. BEVANS: No, Your Honor. Thank you very
11 much.

12 THE COURT: Thank y'all very much.
13 Y'all worked well together, made it very easy on us.
14 I appreciate everybody's hard work.

15 MR. TISDALE: Appreciate your accommodation
16 during the week.

17 THE COURT: Anything -- everybody has lives
18 outside of this courthouse. All right. Y'all have
19 a wonderful weekend.

20 MR. BEVANS: Thank you, Judge.

21 THE COURT: Yes, sir. Thank you.

22 (End of Transcript of Record)

23

24

25

CERTIFICATE OF REPORTER

State of South Carolina)
County of Berkeley)

I, the undersigned, Yvestre Torres, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Berkeley County, South Carolina, on the 25th of February, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 3, 2022



Yvestre Torres

Circuit Court Reporter

Santee Run Apartments
219 Bonnoitt St
Moncks Corner, SC 29461
843-761-0797

Month to Month Rental Agreement

Date: 2/12/2018 Apartment Number: 40

1 Bedroom= 2 adults

2 Bedroom= 2 adults/ 2 children (2 boys or 2 girls)

Tenant Name: Shelby Trehus SS#: 250-93-8308

Driver's license number: 102892160 Tag number: _____

Contact information:

Cell phone: 843-727-9299 Home phone: _____ Work number: _____

Place of employment: Stealth Concealments

Name of supervisor: Billy Work address: 3534 Ashely Phone: 843-207-800
phosphate Charleston,

Former landlord: Village apartment Address: _____ Phone: _____

Tenants monthly income: 2,500

Tenant Name: Jillian Smith SS#: 251-87-1407

Driver's license number: 102362115 Tag number: _____

Contact information:

Cell phone: 843-423-0212 Home phone: - Work number:
843-875-9952

Place of employment: Circle K

Name of supervisor: Oxana Work address: 207 Trolley Rd Phone number:
Kibitkina

Former landlord: _____ Address: _____ Phone number: _____

Tenants monthly income: 1300

Number of Children: 1 Ages: 7

Name of nearest relative: Artincha Coffel

Address: 207 Forest Cir Phone number: 843-851-9612

Tenant agrees to PAY IN FULL the amount of \$ ~~2200.00~~ 1,000.00

- First month's rent \$ 343.00 Non-Refundable Initial SS
- Security Deposit: \$ 600.00 Non-Refundable Initial SS
- Background check: \$ 25.00 Non-Refundable Initial SS
- Application fee: \$ 35.00 Non-Refundable Initial SS

All tenants are to read this agreement and sign that they agree to the terms with Santee Run Apartments.

Rent is due on the 1st of every month. You have until the 5th of the month to pay your rent in full. If your rent is not paid in full by the 5th you will be evicted the following day, NO EXCEPTIONS. If you are allowed to stay you will pay \$10.00 per day in late fees. If the eviction occurs, you will also have to pay the cost for the eviction to be filed and also all rent that is due at the time plus any late fees. NO OTHER NOTICES WILL BE GIVEN!

Office Hours:

The office is open from the 1st-5th from 1:00- 6:00 p.m.

Security Deposit: Your security deposit will only be returned to you if:

- Thirty-day notice of moving is given on the 1st of the month when that month's rent is due to be paid.
- If you DO NOT pay your rent or give the proper notice of moving out, you will forfeit your security deposit.
- If the apartment is cleaned including carpets and no damages have been made to our property.
- If for any reason you are asked to move out or if you are evicted, you will automatically forfeit your security deposit.

Signature: Shelly Lewis Jillian Smith

When you vacate your apartment the following costs will be withdrawn from your security deposit:

- Professional carpet cleaning fee
- Apartment cleaning fees
- Any needed repairs and painting
- Any electric bills that are due or other charges that have accrued
- If you do not turn in your keys to your apartment or to your mailbox you will be charged for the replacement.

DO NOT turn off your lights until your belongings are out of your apartment and you turn your keys in.

If damage has been made to our property you will be billed for the repairs.

The landlord has 30 days to return your deposit.

Renters Insurance: We suggest that all tenants gain renters insurance. We are only responsible for our property

The law states you can give a 30- day notice when you want to move it also states I can give you a 30- day notice to move for any reason or no reason at all and your rent has to be paid.

Signature: Shelley Cohen Jillian Smith Date: 2/14/18

The managers are acting on my behalf you will respect them as they're doing a job and have to answer to me. Do as you agree and there will be no problems. The maintenance staff is also employed by the owners and will only complete work that has been submitted by the office. If you have maintenance requests complete a form and submit it to the office.

All tenants are to read this agreement and sign that they agree to the terms with Santee Run Apartments.

Signature: Shelley Cohen Jillian Smith Date: 2-14-18

Managers signature: B Swan Date: 2-14-18

Tenant Guidelines- Complex Rules

1. No alcohol containers or drinking alcohol is allowed anywhere outside of your apartment this includes your visitors and guests.
2. NO Smoking Inside your apartment. Please use ashtrays outside and keep them emptied and clean. DO NOT THROW CIGGARETTE BUTTS ON THE GROUND!

3. NO loitering in either the parking lot or in the breezeways.
- ~~4. NO partying or loud music, if the cops are called you will be evicted.~~
Initial: JS JS
5. NO buying, selling or using of drugs. If the police are called you will be evicted. Initial: JS JS
6. NO Fighting. If the police are called you will be evicted. Initial: JS JS
7. NO working on or washing of vehicles will be permitted. NO EXCEPTIONS!
8. NO wallpaper, borders, or nail holes will be allowed. Please use picture hangers.
9. NO pets of any kind are allowed. If you are found with a pet, you will be evicted and will forfeit your security deposits. Visitors are not allowed to bring pets. Initial: JS JS
10. NO waterbeds are permitted in the aptments.
11. Children must be supervised while playing outside.
12. Keep your apartment and outside your apartment door clean and free of trash, a dumpster is provided on site. You are only allowed 2 chairs outside of your door and all furniture must be outdoor furniture.
13. When using the washers and dryers remove lint and wipe down units after every use take any trash with you are done.
14. You are responsible for your children and visitors and any damage that they may cause. If the police are called for any trouble or disturbance you will be evicted. Initial: JS JS
15. AC filters must be replaced every 30 days at your expense. Please use the correct size. If repairs need to be made and the filter is dirty or the filter is the incorrect size, you will be billed for the repairs. Keep the closet door free of dust. Do not use the closet for any storage.

16. We exterminate and do an inspection on the last Tuesday of every month starting at 9:00 a.m. If your apartment is not cleaned, you will be evicted. Initial: JA

17. We complete all repairs and fix all leaks. AC and toilet leaks are considered emergency issues. If you have a problem, please notify the managers as soon as possible to have the problem resolved. The issue will not be fixed if it doesn't go through the office. You will be notified if there was a problem while you were not at home and maintenance had to enter.

18. -- You must get approval from the office manager prior to having an overnight guest as well as moving anyone into your apartment. We must have information and a background checks on all persons who live in your apartment, if you move anyone into your apartment you will be charged 1/3 of your rent for the additional person. The cost will be as followed:

- One bedroom: \$150.00 for 1 additional person
- Two bedroom: \$183.00 for 1 additional person

Tenants also must adhere to the following

- One bedroom: 2 adults, no children
- Two bedroom: 2 adults/ 2 children (must be two boys or 2 girls) children over 18 are considered extra persons.

19. Parking. ALL visitors are to park in the back lot on the second row. The front lot is first come first serve if all the spaces are occupied you must park in the back. The parking lots are not used for vehicles that are not tagged and legal. If the vehicle is not in running condition it must be moved or will be towed at your expense.

20. No grills are to be places on sidewalks or on balconies for storage violators will be fined by the Fire Marshall. Grilling is only to be done in the courtyard area and must be supervised as well as moved once

the grill is cool. You are responsible for any damaged that is caused when using a grill to both people and property.

21. Place all trash in the dumpster. DO NOT put furniture in the dumpster, you must take these items to the county landfill.
 22. Do not install a satellite dish of any kind. Cable is provided by Home Telecom.
 23. You are in charge of replacing your light bulb outside your apartment if it goes out and we have to change it there will be a \$5.00 fee.
 24. IF THE POLICE ARE CALLED FOR ANY REASON, YOU WILL BE EVICTED. Initial: ST JS
-

Please abide by the rules that have been set forth and you should have a great stay at Santee Run Apartments. By signing below, you are agreeing to all guidelines and rules. No further notice will be given on the above guidelines.

Signature: Shelly Phelps Date: 2-14-18

Signature: William Smith Date: 3/18/2018

Managers signature: B. Swan Date: 2/14/18

KIDDE
Ionization Smoke Alarm Model 0915

9V Battery Powered; For repair or service return to Kidde Safety, Mebane, NC 27302. (800-880-6788) Three pulse alarm pattern indicates that particles of combustion have been detected. Periodic flashing (45 sec.) of the red LED, indicates that the alarm is operating. An intermittent "CHIRP" indicates a low smoke alarm battery. See the inside of the battery door for complete battery information. Not recommended for operation at temperatures below 40°F or above 100°F, or in humidity higher than 85%, as these conditions may reduce battery life. Clean your alarm (annually) using compressed air or a vacuum cleaner hose and vacuuming or blowing air through the openings around the perimeter of the alarm. If cleaning does not restore your alarm to normal operation, the alarm should be replaced.

Sensitivity = $1.26 \pm .38$ percent/h

This device contains 0.9 Micro curies of Americium 241, a radioactive material and is distributed under U.S. NRC NO. 32-2381

SEE OWNER'S MANUAL FOR COMPLETE INSTRUCTIONS .. WEEKLY TESTING IS REQUIRED

Manufactured under one or more of the following patents, 4246572, 4972181, D346981 Others pending

REPLACE IN 10 YEARS

2006 Jun. 02

MADE IN CHINA C

TO REPLACE THE
BATTERY OPEN

 SINGLE STATION SMOKE ALARM
NOT FOR USE IN RECREATIONAL VEHICLES
ISSUE NO. 71622

843 871 9403

Robert Gass



Incident Report: 1900678

Basic Information

Incident Number	Date/Time	Exp #	Incident Type
1900678	05/29/2019	0	111 - Building fire

Times:

Dispatch/Alarm	Enroute	Arrival	Controlled	Last Unit Cleared
05/29/19 00:29:19	05/29/19 00:32:21	05/29/19 00:32:21	05/29/19 02:04:26	05/29/19 04:44:52

Location:

219 BONNOITT ST #33, MONCKS CORNER, SC 29461

Details

Alarms: 1	District: CTY
Shift: A Shift	Township: MONCKS CORNER
Station: Station 1	Census Tract:

Property Use:

429 - Multifamily dwelling

Haz Mat Release:

Mixed Use Property:

Detector Status:

Estimated Dollar Value and Losses

	PRE-INCIDENT VALUES	LOSSES
Property	\$458400	\$458400
Contents	\$100000	\$100000

Incident Actions

11 - Extinguishment by fire service personnel

May 31, 2019 16:05

Page 1 of 7

DEF 001

Mutual Aid

Type of Aid: 2 - Automatic aid received

Agency: Whitesville Rural VFD (Co 6)

FDID: 08222

Custom Department Identifier:

Agency's Incident Number:

Mutual Aid Purpose: Automatic Aid Given

TIMES			
Notify	Arrival	Cleared	Cancel
05/29/19 00:29:19			

	Apparatus	Personnel
Fire	2	6
EMS		
Rescue		
Other	2	4

Agency: Moncks Corner Rural FD (Co 7)

FDID: 08226

Custom Department Identifier:

Agency's Incident Number:

Mutual Aid Purpose: Automatic Aid Given

TIMES			
Notify	Arrival	Cleared	Cancel
05/29/19 00:29:19			

	Apparatus	Personnel
Fire	1	4
EMS		
Rescue		
Other		

Responding Apparatus and Personnel

E-1

Primary Use at this Incident: 1 - Suppression

Dispatch	Enroute	Arrival	Cleared	In Quarters
05/29/19 00:29:19	05/29/19 00:32:21	05/29/19 00:32:21	05/29/19 04:44:52	

Personnel Responding on: E-1

KINSEY, WALTER K
DENNY, COREY L

E-3

Primary Use at this Incident: 1 - Suppression

Dispatch	Enroute	Arrival	Cleared	In Quarters
05/29/19 00:29:19	05/29/19 00:32:21	05/29/19 00:32:21	05/29/19 04:44:52	

Personnel Responding on: E-3

POWELL, JOSEPH S

F-1 Tahoe

Primary Use at this Incident: 1 - Suppression

Dispatch	Enroute	Arrival	Cleared	In Quarters
05/29/19 00:29:19	05/29/19 00:32:21	05/29/19 00:32:21	05/29/19 04:44:52	

Personnel Responding on: F-1 Tahoe

GASS, ROBERT L

SQUAD 1

Primary Use at this Incident: 1 - Suppression

Dispatch	Enroute	Arrival	Cleared	In Quarters
05/29/19 00:29:19	05/29/19 00:32:21	05/29/19 00:32:21	05/29/19 04:44:52	

Personnel Responding on: SQUAD 1

AVINGER, TREY
CANNON, RANDY

Truck 1

Primary Use at this Incident: 1 - Suppression

Dispatch	Enroute	Arrival	Cleared	In Quarters
05/29/19 00:29:19	05/29/19 00:32:21	05/29/19 00:32:21	05/29/19 04:44:52	

Personnel Responding on: Truck 1

YOUNG

Actions Taken by Apparatus

Apparatus: E-3

11 - Extinguishment by fire service personnel

Apparatus: Truck 1

11 - Extinguishment by fire service personnel

Apparatus: SQUAD 1

11 - Extinguishment by fire service personnel

Apparatus: F-1 Tahoe

81 - Incident command

Apparatus: E-1

11 - Extinguishment by fire service personnel

Apparatus and Personnel Counts

	Suppression	EMS	Other
Apparatus	5	0	0
Personnel	7	0	0

Fire Details

Property Details

Total Number of Buildings Involved in Fire: 1 **Acres Burned:**

Is it a Residential Property?: True

If True, Number of Residential Units: 20

Ignition

Area of Origin: 24 - Cooking area, kitchen

May 31, 2019 16:05

Page 4 of 7

DEF 004

Type of Material: 27 - Cooking oil, transformer or lubricating oil
Heat Source: 12 - Radiated or conducted heat from operating equipment
Cause of Ignition: 2 - Unintentional
Item First Ignited: 76 - Cooking materials, including edible materials

Factors Contributing to Ignition

UU - Undetermined

Human Factors Contributing to Ignition

1 - Asleep

Water Usage:

Foam A Usage:

Foam B Usage:

Suppression Factors

112 - Roof collapse

113 - Roof assembly combustible

Equipment Details

Equipment Involved: 646 - Range, stove with/without oven or cooking surface

Brand:

Serial Number:

Model:

Year:

Equipment Power Source: 11 - Electrical line voltage ($\geq$ 50 volts)

Equipment Portability: 2 - Stationary

Structure Fire Details

Structure Details

Structure Type: 1 - Enclosed building

Main Floor Size:

Building Status: 2 - In normal use

142 X 51

Building Height - Above Grade: 2

OR

Building Height - Below Grade: 0

7242 Sq. Ft.

Fire Origin

Floor of Origin: 2

Number of Stories Damaged by Flames

Minor:

Heavy:

Fire Spread: 3 - Confined to floor of origin

Significant:

Extreme: 1

Flame Spread

May 31, 2019 16:05

Page 5 of 7

DEF 005

Item Contributing to Spread: 76 - Cooking materials, including edible materials
Material Contributing to Spread: 27 - Cooking oil, transformer or lubricating oil

Detectors

Detector Presence: N - None present

Detector Details

Type:

Power:

Operation:

Effectiveness:

Detector Failure Reason:

AES - Automatic Extinguishing System

AES Presence: N - None Present

AES Details

Type:

Number of Sprinklers

Operation:

AES Failure Reason:

Narratives

Title: Narrative

Narrative:

MCFD was dispatched to 219 Bonnoitt St for a structure fire. We were advised while en route there were flames showing. MCFD arrived to find a 2 story residential apartment complex with flames showing through the roof on the C - D sides. MCPD was on scene evacuating people from the bottom floor, they told me there was someone still in the apartment in the A - B Corner. I went on air and entered into the apartment and got the resident out. We were advised everyone was out from the top floor. Both 1 3/4 cross lays were deployed and sent to the C side of the structure to knock down the fire. The 1 3/4 front bumper line was deployed on the B side. Water supply was established and E-1 deployed the deck gun on the B side. Company 6 & 7 assisted with apparatus and manpower to extinguish the fire. The fire was turned over to MCPD for investigation. EOR/CLD

Title: Narrative Addendum

Narrative:

Findings from the preliminary report from the SLED investigation stated this was an accidental fire caused by the resident having fallen asleep while cooking. The fire was found to have originated in a pot left on the stove in the kitchen.

May 31, 2019 16:05

Page 6 of 7

DEF 006

Authorization

Report Completed: 5/29/2019

Member Making Report: DENNY, COREY L.

Member Making Report Assignment:

Officer In Charge: GASS, ROBERT L.

Officer In Charge Assignment:

Reviewed By: GASS, ROBERT L.

Reviewed Date: 5/31/2019

May 31, 2019 16:05

Page 7 of 7

DEF 007