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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable Kristi F. Curtis, Circuit Court Judge

Appellate Case No. 2023-000289

Jack Kelly, ... *Appellant,*

vs.

Roger D. Cox, Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC,
and Cox Properties, LLC *Respondents.*

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Jack Kelly,

Plaintiff,

v.

Roger D. Cox, Cox Millwork & Supply, Inc.,
Waterside Drive Boat Ramp, LLC, and Cox
Properties, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2020-CP-26-06286

**AMENDED CONSENT SCHEDULING
ORDER**

THE UNDERSIGNED, counsel for the parties herein, have consented to the dates set forth herein, and the Court has determined that good cause exists to approve the dates set forth herein;

It is therefore, ORDERED, ADJUDGED AND DECREED that the above-captioned matter is hereby subject to the following scheduling:

1. Discovery, including depositions of the parties, shall be completed on or before **April 30, 2023**. Said deadline shall not affect the obligation of the parties to supplement their discovery responses through the time of trial, nor the right to compel additional discovery pursuant to an appropriate motion.
2. Motions shall be completed on or before **May 31, 2023**.
3. The case shall not be called to trial prior to **June 1, 2023**.

IT IS SO ORDERED.

The Honorable Letitia H. Verdin
Judge Thirteenth Judicial Circuit

CONSENT SIGNATURES ON FOLLOWING PAGE

Case No. 2020-CP-26-06286
2022.08.26 Amended Consent Scheduling Order

WE CONSENT:

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Horry Common Pleas

Case Caption: Jack Kelly VS Roger D Cox , defendant, et al

Case Number: 2020CP2606286

Type: Order/Scheduling Order

So Ordered

s/Letitia H. Verdin, SC Judge 2162

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Jack Kelly,

Plaintiff,

v.

Roger D. Cox, Cox Millwork & Supply Inc.,
Waterside Drive Boat Ramp, LLC and Cox
Properties, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2020-CP-26-06286

**ORDER GRANTING SUMMARY
JUDGEMENT TO ALL DEFENDANTS
(ENDS CASE)**

This matter came for hearing on November 29, 2022, for a motion for summary judgement as to all Defendants, filed on August 17, 2022. The court having considered the Motion, reply, pleadings, discovery, and depositions on file, together with the arguments of counsel, grants Defendants Roger D. Cox, Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC (hereinafter also “Defendants”)’s Motion for Summary Judgement. Thus, final judgement is entered on their behalf, ending this case with prejudice.

In or around October 2016, the Plaintiff was the stepson of Defendant Roger D. Cox. During that time and continuing through the present, Mr. Cox was an owner of the various business entities Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC. Plaintiff filed this action on October 30, 2020, alleging that Mr. Cox committed various acts that were designed to harass, defame, and torture Plaintiff including scratching his car, harming his toothbrush, and throwing his shoes into the waterway. The Defendants filed answers on January 15, 2021, denying the causes of action. At this time substantial discovery has been completed and the facts do not support the causes of action asserted against these Defendants.

STANDARD OF REVIEW

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Hancock v. Mid-South Mgmt., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). “However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Moore v. Barony House Restaurant, LLC*, 382 S.C. 35, 40, 674 S.E.2d 500, 503 (Ct. App. 2009). The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case and on which that party will bear the burden of proof at trial. *Bray v. Marathon Corp.*, 347 S.C. 189, 553 S.E.2d 477 (Ct. App. 2001).

I. Plaintiff has failed to show that the allegations in this suit relate to Defendants Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC.

Plaintiff has brought claims against Defendants Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC (hereinafter also collectively referred to as the “Businesses”) for negligence by respondeat superior and negligent retention and supervision. These claims both fail as a matter of law.

A. Allegations against the Businesses for Respondeat Superior fail.

Under the doctrine of respondeat superior, the employer is “...called to answer for the tortious acts of his servant, the employee, when those acts occur in the course and scope of the employee's employment.” *James v. Kelly Trucking Co.*, 661 S.E.2d 329, 377 S.C. 628 (S.C. 2008), citing *Sams v. Arthur*, 135 S.C. 123, 128-131, 133 S.E. 205, 207-08 (1926). “Such liability is not

predicated on the negligence of the employer, but upon the acts of the employee, whether those acts occurred while the employee was going about the employer's business, and the agency principles that characterize the employer-employee relationship.” *James v. Kelly Trucking Co.*, 661 S.E.2d 329, 377 S.C. 628 (S.C. 2008).

Defendant Cox is an owner of the Defendant Businesses and is therefore himself the master. Plaintiff has not presented sufficient evidence that Defendant Cox was acting in the scope of his employment when he is alleged to be committing tortious conduct against the Plaintiff.

“If the servant is doing some act in furtherance of the master's business, he will be regarded as acting within the scope of his employment, although he may exceed his authority.” *Kase v. Ebert*, 392 S.C. 57, 707 S.E.2d 456, 458 (S.C. App. 2011), quoting *Jones v. Elbert*, 211 S.C. 553, 558, 34 S.E.2d 796, 798–99 (1945). “On the other hand, if the servant acts for some independent purpose of his own, wholly disconnected with the furtherance of his master's business, his conduct falls outside the scope of his employment.” *Kase* at 458, quoting *Crittenden v. Thompson–Walker Co.*, 288 S.C. 112, 116, 341 S.E.2d 385, 387 (Ct. App.1986). “If a servant steps aside from the master's business for some purpose wholly disconnected with his employment, the relation of master and servant is temporarily suspended; and this is so no matter how short the time, and the master is not liable for his acts during such time.” *Kase* at 458, quoting *Lane v. Modern Music, Inc.*, 244 S.C. 299, 305, 136 S.E.2d 713, 716 (1964) (emphasis added).

Plaintiff has offered no evidence that Defendant Cox’s alleged actions occurred within the scope of his employment with the Businesses and none of the allegations in Plaintiff’s complaint could be reasonably construed to be “in furtherance of the master’s business.” Plaintiff has described Defendant’s alleged acts as “a campaign to harass, defame and torture Plaintiff.” *See*

Complaint at ¶ 7. These allegations couldn't be reasonably related to any business much less these Businesses which engage in woodwork, boating, and real estate.

In his deposition, Mr. Kelly testified that Cox Millwork & Supply, Inc. is a "woodworking company". (See Dep. J. Kelly at Pg. 64:3-5). Mr. Kelly alleges in his complaint that Defendant Cox began a campaign to harass, defame, and torture Plaintiff. (See Complaint ¶ 4). Specifically, the Complaint alleges that Defendant Cox scratched Plaintiff's BMW, that Defendant Cox threw Plaintiff's tennis shoes in the waterway behind their residence, that Defendant Cox put soap on Plaintiff's toothbrush, and that Defendant Cox used the Plaintiff's toothbrush to wipe his butt. (See Complaint ¶¶ 8-16). While Defendant Cox denies these events occurred as Plaintiff describes them, even if they are true, none of them have anything to do with running, operating, or working at a woodworking company.

As to Waterside Drive Boat Ramp, LLC, Plaintiff testified that the business relations to ownership of a boat ramp, he does not know if the LLC does any business, and he has no specific evidence that Mr. Cox did anything to him as the owner of this business:

Q. What's your understanding of what Waterside Drive Boat Ramp, LLC does?

A. I know it's an Owner –it's an LLC for the boat ramp.

Q. Does it do business?

A. I'm unaware if it does or does not do business.

Q. What evidence do you have that Mr. Cox did anything as an owner, officer, agent of the boat ramp?

A. I have no specific evidence.

(See Dep. J. Kelly at Pg. 67:3-13)

Not one of the allegations in the Complaint relate in any way to the ownership of a boat ramp and the Plaintiff has no testimony to show that the allegations of the Complaint occurred during the operation of this LLC.

Likewise, Plaintiff was asked about Cox Properties, LLC's involvement in the allegations. He testified as follows:

Q. What evidence do you have that Mr. Cox did anything you're alleging in his capacity as an owner, officer, agent of Cox Properties?

A. I'm not sure.

(See Dep. J. Kelly at Pg. 67:14-17)

Owning your own business does not automatically trigger respondeat superior liability for everything you do. Just as working from home does not mean everything one does from home is within the scope of employment. The law as it stands requires that lines be drawn. As previously cited, "If a servant steps aside from the master's business for some purpose wholly disconnected with his employment, the relation of master and servant is temporarily suspended; and this is so no matter how short the time, and the master is not liable for his acts during such time." *Kase* at 458, quoting *Lane v. Modern Music, Inc.*, 244 S.C. 299, 305, 136 S.E.2d 713, 716 (1964). Sleeping, doing the dishes, eating dinner, or brushing your teeth in the morning are all things people do at home. Working at home does not automatically bring actions wholly unrelated to a master's business within the scope of employment.

Plaintiff has no evidence that any of the allegations in the complaint are or could have been reasonably related to Defendant Cox's role as owner or servant of the Businesses. Therefore, Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC's Motion for Summary Judgement against the Plaintiff's claims of respondeat superior is granted.

B. Allegations against the Businesses for negligent retention and supervision fail.

This cause of action is also premised on the master-servant relationship. A business owner (the master) cannot be sued for negligently retaining and supervising themselves. Plaintiff's claim for negligent retention and supervision fails because Defendant Roger D. Cox is an owner of Defendant entities Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC.

South Carolina courts have used the Restatement to describe negligent retention and supervision as:

A master is under a duty to exercise reasonable care so to control his servant while acting outside the scope of his employment as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if

(a) the servant

(i) is upon the premises in possession of the master or upon which the servant is privileged to enter only as his servant, or

(ii) is using a chattel of the master, and

(b) the master

(i) knows or has reason to know that he has the ability to control his servant, and

(ii) knows or should know of the necessity and opportunity for exercising such control.

(emphasis added) *Kase v. Ebert*, 392 S.C. 57, 707 S.E.2d 456, 459-460 (S.C. App. 2011), citing *Degenhart v. Knights of Columbus*, 309 S.C. 114, 116–17, 420 S.E.2d 495, 496 (1992).

Therefore, Plaintiff's claim fails as a matter of law because Defendant Cox is the master of the Businesses, and he cannot negligently retain and supervise himself and therefore the Businesses' Motion for Summary Judgement on this claim of negligent retention and supervision is granted.

II. Plaintiff has no evidence that any of the alleged "outrage" caused by Defendant Cox led to damages incurred by Plaintiff.

Plaintiff's complaint contains a series of acts allegedly committed by Defendant Cox. Defendant Cox strongly disputes these allegations. However, solely for the purposes of this Motion and the arguments contained herein, Defendant Cox will take the following acts at face value to outline how they fail to meet the requirements of intentional infliction of emotional distress. Plaintiff has alleged that:

- a. Defendant Cox "intentionally snuck out in the night and scratched Plaintiff's new BMW and further used some liquid paint remover to damage the vehicle's paint.

- Defendant Cox further damaged the headlights to obstruct the headlights intended purpose.”
- b. Defendant Cox “continued to sneak around and scratch Plaintiff’s vehicle in order to get him in trouble with his mother and biological father.”
 - c. Defendant Cox “took Plaintiff’s new shoes and tossed them into the waterway behind their residence to make it look like Plaintiff does not take care of his belongings.
 - d. Defendant Cox “also took additional of Plaintiff’s clothing to further traumatize the Plaintiff.
 - e. “Defendant Cox admitted that he took Plaintiff’s toothbrush and put soap on it.”
 - f. “Defendant Cox admitted that he used the Plaintiff’s toothbrush to wipe his butt.”

See Complaint at ¶¶ 8-16.

The Supreme Court of South Carolina has explained “that in order to recover for intentional infliction of emotional distress, the complaining party must establish that:

- (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct;
- (2) the conduct was so "extreme and outrageous" so as to exceed "all possible bounds of decency" and must be regarded as "atrocious, and utterly intolerable in a civilized community;"
- (3) the actions of the defendant caused plaintiff's emotional distress; and
- (4) the emotional distress suffered by the plaintiff was "severe" such that "no reasonable man could be expected to endure it."

Hansson v. Scalise Builders of S.C., 650 S.E.2d 68 (S.C. 2007), citing *Ford v. Hutson*, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981).

In addition to the elements the Court in *Ford* stated, the Plaintiff must show both extreme and outrageous conduct and show that the conduct caused distress of an “extreme or severe nature”. *Hansson v. Scalise Builders of S.C.*, 650 S.E.2d 71 (S.C. 2007), citing *Ford v. Hutson*, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981).

In *Hansson* the court found that the Plaintiff did not meet the burden of proof as his damages were limited to loss of sleep, a dentist, and a couple hundred dollars. *Id.* In addition, Plaintiff’s relationships with others, nor his employment suffered. *Id.*

Here, even if the Plaintiff's allegations are true and even if those allegations are in fact "outrageous," there are no real damages.

The Plaintiff has testified that he performs well in school:

Q: I believe the last time you were being deposed you testified you were premed at Wofford; is that right?

A: Yes Ma'am.

Q: Are you still premed at Wofford?

A: According to administration, yes.

Q: Why do you qualify it that way?

A: I'm registered under the premed track of Wofford.

Q: Are you taking premed courses?

A: Yes.

Q: Are you currently a junior?

A: Yes, ma'am.

Q: When your first semester grades came out, what did they look like? What was your GPA?

A: I don't recall my first semester GPA.

Q: Did you have any grades on that transcript below a C?

A: No, ma'am. I've never had a grade below a C.

(See Dep. J. Kelly, Part 2 at Pg. 83:7-25 and Pg. 84:1).

The Plaintiff has testified that he has been able to seek and hold employment that he wanted to hold:

Q: Have any of the experiences that you allege in this lawsuit kept you from pursuing or taking a job opportunity?

A: As of now, no.

(See Dep. J. Kelly, Part 2 at Pg. 106:23-25 and Pg. 107:1).

The Plaintiff has not been treated by a medical professional; he has only sought periodic counseling when he is in school at Wofford:

Q: I'm going to go backwards for just a second, and I apologize. I can't remember if I've asked you this or somebody else has asked you. Other than your guidance counselor in high school and the counselors at Wofford, are there any other counselors that you've seen?

A: What do you consider a counselor?

Q: A licensed therapist or a psychologist or a psychiatrist.

A: I don't believe I've seen anyone else.

(See Dep. J. Kelly, Part 2 at Pg. 102:12-21).

In addition, his car was repaired, and his toothbrush and shoes were replaced, so there is no monetary damage:

Q: I want to be clear about the property damage. The property damage, my understanding is that that includes the 2005 BMW, which was repaired, correct?

A: Incompletely repaired, yes.

Q: And has since been sold; is that correct?

A: I'm not sure how the movement of the BMW was, but it is no longer my primary vehicle that I use.

Q: You were never the owner of the 2005 BMW, correct?

A: No, ma'am.

Q: And then the only other property damage that I'm aware of are some tennis shoes.

A: Yes. Expensive tennis shoes.

Q: Those tennis shoes were replaced or additional tennis shoes were purchased, correct?

A: Yes.

Q: Is there any other property damage that you allege as a result of the allegations in this suit?

A: Not that I'm aware of at this time, but there could be. I'm drawing a blank.

(See Dep. J. Kelly, Part 2 at Pg. 113:12-25 and Pg. 114:1-10).

Based on the lack of damages demonstrated by the Plaintiff, there is no damage evidence to submit to the jury and therefore Defendant Cox's Motion for Summary Judgement as to intentional infliction of emotional distress and violation of S.C. Code § 20-7-490 is granted.

III. There is no evidence to support that Defendant Cox violated S.C. Code § 44-29-145.

To prove negligence per se, the plaintiff must show that the defendant owed them a duty of care arising from a statute. *Norton v. Opening Break of Aiken, Inc.*, 443 S.E.2d 406, 408 313 S.C. 508 (S.C. App. 1994), citing *Whitlaw v. Kroger Co.*, 306 S.C. 51, 53, 410 S.E.2d 251, 252 (1991). To do this, a plaintiff must show:

(1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered; and (2) that he is a member of the class of persons the statute is intended to protect. If the plaintiff makes this showing, he has proven the first element of a claim for negligence: viz., that the defendant owes him a duty of care. If he then shows that the defendant violated the statute, he has proven the second element of a negligence cause of action: viz., that the defendant, by act or omission, failed to exercise due care. This constitutes proof of negligence per se.

Id.

Plaintiff claims that Defendant Cox committed a felony by violating S.C. Code § 44-29-145 for knowingly exposing him to HIV. This reckless and defamatory accusation must be dismissed. Section 44-29-145 is a criminal statute that says in pertinent part:

It is unlawful for a person who knows that he is infected with Human Immunodeficiency Virus (HIV) to:

- (1) knowingly engage in sexual intercourse, vaginal, anal, or oral, with another person without first informing that person of his HIV infection;
- (2) knowingly commit an act of prostitution with another person;
- (3) knowingly sell or donate blood, blood products, semen, tissue, organs, or other body fluids;
- (4) forcibly engage in sexual intercourse, vaginal, anal, or oral, without the consent of the other person, including one's legal spouse; or
- (5) knowingly share with another person a hypodermic needle, syringe, or both, for the introduction of drugs or any other substance into, or for the withdrawal of blood or body fluids from the other person's body without first informing that person that the needle, syringe, or both, has been used by someone infected with HIV.

A person who violates this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than ten years.

Plaintiff has no evidence that Defendant Cox violated this statute.

First, and arguably most important, Defendant Cox does not have HIV. Therefore, he can't have violated Section 44-29-145. One must both have HIV and know about their infection. Defendant Cox has no knowledge of an HIV infection because he does not have HIV. Plaintiff has not produced any evidence to the contrary.

Plaintiff's mom was married to Defendant Cox for years and they were sexually active:

Q: Since you are married to him, I assume you were sexually active with him. Is that fair to assume?

A: Yes.

(See Dep. D. Sarte at Pg. 52:1-4).

She was asked if she was aware of Defendant Cox having HIV. She responded, "I'm not."

Q: I'm asking if you're aware of my client having HIV.

A: I'm not.

(See Dep. D. Sarte at Pg. 51:20-22).

Plaintiff's mom was also asked if she was aware of Defendant Cox having any other STDs:

Q: And you don't have any knowledge as to Mr. Cox having any sort of STD; is that correct?

A: I have no knowledge.

(See Dep. D. Sarte at Pg. 52:22-24).

Again she responded, "I am not." *Id.* She had "no knowledge" of Defendant Cox having any sort of STD. *Id.* at 52.

In his deposition, Plaintiff testified he had no evidence that Mr. Cox has HIV:

Q: You've also alleged that Mr. Cox violated South Carolina Code 44-29-145. What evidence do you have that my client has HIV or any other sexually transmitted disease?

A: I do not have evidence.

(See Dep. J. Kelly at Pg. 67:18-22).

Plaintiff also testified that he has not received an STD test and has no knowledge that Mr. Cox transmitted HIV to him:

Q: But you haven't had an STD test?

A: Correct.

Q: So it's my understanding that you have no evidence that Mr. Cox has transmitted HIV or any other sexually transmitted disease to you; is that correct?

A: Correct.

(See Dep. J. Kelly at Pg. 68:4-10).

There is no evidence that Defendant committed negligence per se and therefore Defendant Cox's Motion for Summary Judgement on this claim is granted.

CONCLUSION

Defendants Roger D. Cox, Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC's Motion for Summary Judgement ending this case on all claims filed in this lawsuit is GRANTED.

Order Granting MSJ
Case No.: 2020-CP-26-06286

AND IT IS SO ORDERED.

The Honorable Kristi F. Curtis
Presiding Judge

Myrtle Beach, South Carolina
December 15, 2022

ELECTRONICALLY FILED - 2022 Dec 29 2:04 PM - Horry - COMMON PLEAS - CASE#2020CP2606286



Horry Common Pleas

Case Caption: Jack Kelly VS Roger D Cox , defendant, et al

Case Number: 2020CP2606286

Type: Order/Summary Judgment

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2606286

Jack Kelly
PLAINTIFF(S)Roger D Cox et al
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), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCPP; ☐ 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:

Plaintiff's motion for reconsideration of this court's order granting summary judgment as to all defendant 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 02/03/2023 .

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.



Horry Common Pleas

Case Caption: Jack Kelly VS Roger D Cox , defendant, et al

Case Number: 2020CP2606286

Type: Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTHTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION No. 2020-CP-26-_____
	)	
Jack Kelly,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<u>SUMMONS</u>
	)	
Roger D. Cox, Cox Millwork &	)	
Supply, Inc., Waterside Drive Boat	)	
Ramp, LLC and Cox Properties, LLC.	)	
	)	
Defendants.	)	
	)	
_____	)	

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Plaintiff's Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Plaintiff's Complaint on the subscribers at 628A Sea Mountain Highway North Myrtle Beach, SC 29582 within thirty (30) days after service hereof, exclusive of the day of service hereof. AND IF YOU FAIL to answer the Plaintiff's Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Plaintiff's Complaint.

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October 30, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTHTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION No. 2020-CP-26-_____
	)	
Jack Kelly,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<u>COMPLAINT</u>
	)	(Jury Trial Requested)
Roger D. Cox, Cox Millwork &	)	
Supply Inc., Waterside Drive Boat	)	
Ramp, LLC and Cox Properties, LLC.	)	
	)	
Defendants.	)	
	)	
_____	)	

NOW COMES the Plaintiff, complaining of the Defendants, and says and alleges as follows:

1. The Plaintiff is a resident and citizen of Horry County, South Carolina.
2. Upon information and belief, the Defendant Roger D. Cox (hereinafter "Cox") is a resident and citizen of Horry County, South Carolina.
3. Upon information and belief, the Defendant Cox Millwork & Supply, Inc. (hereinafter "Millwork"), is a corporation organized and existing under the laws of the State of South Carolina and that regularly transacts business in Horry County.
4. Upon information and belief, the Defendant Waterside Drive Boat Ramp, LLC, is a corporation organized and existing under the laws of the State of South Carolina and that regularly transacts business in Horry County.
5. Upon information and belief, the Defendant Cox Properties, LLC, is a corporation organized and existing under the laws of the State of South Carolina and that regularly transacts business in Horry County.

6. Sometime prior to October of 2016 Plaintiff's mother married Defendant Cox and became the Plaintiff's step-father.
7. At or immediately after Defendant Cox' marriage to Plaintiff's mother, Defendant Cox began a campaign to harass, defame and torture Plaintiff.
8. In October of 2016 Defendant Cox intentionally snuck out in the night and scratched Plaintiff's new BMW and further used some liquid paint remover to damage the vehicle's paint. Defendant Cox further damaged the headlights to obstruct the headlights intended purpose.
9. Defendant Cox continued to sneak around and scratch Plaintiff's vehicle in order to get him in trouble with his mother and biological father.
10. Defendant Cox erased the security footage from the home security system that showed him vandalizing Plaintiff's vehicle.
11. After questioning from Plaintiff's mother Defendant Cox admitted to being the one who was vandalizing Plaintiff's vehicle.
12. Upon information and belief, vandalizing the vehicle of a 16 year old boy did not cause enough mental anguish to the Plaintiff so Defendant Cox began to escalate his conduct in order to increase the amount of emotional torture.
13. Defendant Cox, took Plaintiff's new shoes and tossed them into the waterway behind their residence to make it look like Plaintiff does not take care of his belongings. The Defendant also took additional of Plaintiff's clothing to further traumatize the Plaintiff.
14. Plaintiff and his mother engaged in many arguments due to Defendant Cox's actions which caused Plaintiff severe mental anguish and distress.
15. Defendant Cox admitted that he took Plaintiff's toothbrush and put soap on it.

16. Defendant Cox admitted that he used the Plaintiff's toothbrush to wipe his butt.
17. Defendant Cox is the owner of Defendant Millwork.
18. Defendant Cox as an agent and/or employee regularly transacts business for Defendant Millworks from the residence where Plaintiff resided.
19. Defendant Cox is owner of Defendant Waterside Drive Boat Ramp, LLC.
20. Defendant Cox as agent and/or employee regularly transacts business for the Defendant Waterside Drive Boat Ramp, LLC from the residence where Plaintiff resided.
21. Defendant Cox is owner of Cox Properties LLC.
22. Defendant Cox as agent and/or employee regularly transacts business for the Defendant Cox Properties from the residence where Plaintiff resided.
23. Upon information and belief, Defendant Cox while engaged in conducting business for Defendant Millwork, Cox Properties LLC and Waterside Drive Boat Ramp, LLC preformed some of the heinous acts stated above.

FIRST CLAIM FOR RELIEF
Intentional Infliction of Emotional Distress / Outrage
(As to Defendant Cox)

24. All allegations set forth above are incorporated herein as if set forth verbatim.
25. Defendant Cox's conduct was extreme and outrageous and was intentional or done recklessly with disregard for the emotional wellbeing of Plaintiff.
26. The defendant intentionally or recklessly inflicted severe emotional distress, or was certain or substantially certain that such distress would result from his conduct.
27. The defendant's conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community.

28. The actions of the defendant caused the plaintiff's emotional distress.
29. The emotional distress suffered by the plaintiff was severe so that no reasonable person could be expected to endure it.
30. As a result of Defendant Cox's conduct, Plaintiff experienced and continues to experience severe emotional distress resulting in harm.
31. As a direct and proximate result of Defendant Cox's above described conduct, Plaintiff has suffered and continues to suffer great pain of the mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, and was prevented and will continue to be prevented from performing his daily activities and obtaining the full enjoyment of life.
32. Plaintiff suffer and continues to suffer severe emotional and mental damages and is informed and believes he is entitled to judgment and relief in an award of nominal, actual, general and punitive damages as will be proven at trial of this action.
33. Plaintiff is informed and believes that Defendant Cox is liable to Plaintiff in damages for the emotional distress suffered by Plaintiff, in an amount and upon such terms as will be more fully proven during the trial of this matter.

SECOND CLAIM FOR RELIEF
NEGLIGENT RETENTION AND SUPERVISION

(As to Defendants Millwork, Cox Properties LLC and Waterside Drive Boat Ramp, LLC)

34. All allegations set forth above are incorporated herein as if set forth verbatim.
35. Upon information and belief, Defendant Millwork, Cox Properties LLC and Waterside Drive Boat Ramp, LLC by and through its agents, servants, and/or employees, knew or reasonably should have known about Defendant Cox's dangerous and exploitative and outrageous conduct and that he was an unfit agent and/or servant. Despite such

knowledge Defendant Millwork, Cox Properties LLC and Waterside Drive Boat Ramp, LLC negligently retained and/or failed to supervise Defendant Cox in a position of authority within the Defendant Millwork' company, Cox Properties LLC and Waterside Drive Boat Ramp, LLC where he was able to commit wrongful acts against the Plaintiff. Defendant Millwork, Cox Properties and Waterside Drive Boat Ramp, LLC failed to provide reasonable supervision of Defendant Cox, failed to use reasonable care in investigating him and failed to provide adequate warning to Plaintiff of Defendant Cox's unfitness as an agent/and or servant of Defendant Millwork, Cox Properties LLC and Waterside Drive Ramp, LLC.

36. As a direct and proximate result of Defendant Cox's above described conduct, Plaintiff has suffered and continues to suffer great pain of the mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, and was prevented and will continue to be prevented from performing his daily activities and obtaining the full enjoyment of life.
37. Plaintiff suffer and continues to suffer severe emotional and mental damages and is informed and believes he is entitled to judgment and relief against Defendants Millwork, Cox Properties LLC and Waterside Drive Boat Ramp, LLC in an award of nominal, actual, general and punitive damages as will be proven at trial of this action.

THIRD CLAIM FOR RELIEF
NEGLIGENCE BY RESPONDEAT SUPERIOR

(As to Defendant Millwork, Cox Properties LLC and Waterside Drive Boat Ramp, LLC)

38. All allegations set forth above are incorporated herein as if set forth verbatim.
39. At all relevant times, and upon information and belief, the Defendant Millwork, Cox Properties LLC and Waterside Drive Boat Ramp, LLC employed Defendant Cox as an

agent and/or servant of the company. Defendant Millwork, Cox Properties LLC and Waterside Drive Boat Ramp, LLC was negligent, careless, reckless, wilful, and wanton in one or more of the following particulars to wit:

- (a) In allowing Defendant Cox to act on its behalf when engaging with Plaintiff when it knew or should have known that he was capable of such conduct stated above;
- (b) In failing to properly supervise said Defendant Cox; and
- (c) For the negligent acts of said Defendant pursuant to the doctrine of respondeat superior.

- 40. As a direct and proximate result of Defendant Cox's above described conduct, Plaintiff has suffered and continues to suffer great pain of the mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, and was prevented and will continue to be prevented from performing his daily activities and obtaining the full enjoyment of life.
- 41. Plaintiff suffer and continues to suffer severe emotional and mental damages and is informed and believes he is entitled to judgment and relief in an award of nominal, actual, general and punitive damages as will be proven at trial of this action.
- 42. Plaintiff suffer and continues to suffer severe emotional and mental damages and is informed and believes he is entitled to judgment and relief against Defendants Millwork, Cox Properties LLC and Waterside Drive Boat Ramp, LLC in an award of nominal, actual, general and punitive damages as will be proven at trial of this action.

FORTH CLAIM FOR RELIEF
IN THE ALTERNATIVE NEGLIGENCE PER SE
(As to Defendant Cox)

- 43. All allegations set forth above are incorporated herein as if repeated verbatim

44. That in the instance that Defendant Cox has HIV or any other sexually transmitted disease (as discovery may make known), Defendant Cox violated S.C. Code Ann. 44-29-145 when he intentionally wiped his butt with Plaintiff's toothbrush.
45. That Defendant Cox was negligent per se when he intentionally violated S.C. Code Ann. 44-29-145.
46. As a direct and proximate result of Defendant Cox's above described conduct, Plaintiff has suffered and continues to suffer great pain of the mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, and was prevented and will continue to be prevented from performing his daily activities and obtaining the full enjoyment of life.
47. Plaintiff suffered and continues to suffer severe emotional and mental damages and is informed and believes he is entitled to judgment and relief in an award of nominal, actual, general and punitive damages as will be proven at trial of this action.

FOR A FIFTH CLAIM OF RELIEF
VIOLATION OF SOUTH CAROLINA CODE OF LAWS sec. 20-7-49
(As to Defendant Cox)

48. All allegations set forth above are incorporated herein as if repeated verbatim.
49. Emotional abuse as defined by South Carolina Code of Laws Ann. Code section 20-7-490 which states the following: Mental injury means an injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment of the child's ability to function when the existence of that impairment is supported by the opinion of a mental health professional or medical professional".

- 50. Defendant's behavior has caused and is still causing Plaintiff to experience an array of negative emotions and stress, including sleepless nights and crying uncontrollably.
- 51. Defendant's behavior has also created anxiety and trust issues for Plaintiff.
- 52. Plaintiff has sought counseling for the past year and is still in counseling to come to terms with why someone who he considered a father figure (Defendant) would abuse him.
- 53. Plaintiff suffer and continues to suffer severe emotional and mental damages and is informed and believes he is entitled to judgment and relief in an award of nominal, actual, general and punitive damages as will be proven at trial of this action.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for the following relief:

- A. That a jury be empaneled to decide all contested issues of act;
- B. That Plaintiff have and recover judgment against the Defendants, an award of Plaintiff's nominal, actual and consequential damages as will be proven during the trial of this case and also an award of punitive or exemplary damages, the costs of this action including an award of reasonable attorney fees, and also an award of pre-judgment interests at the legal rate; and
- C. That Plaintiff have and recover such other and further relief deemed just and proper by the Court.

Wright, Worley, Pope, Ekster & Moss, PLLC
Attorneys for the Plaintiff

s/George N. Spirakis

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October 30, 2020

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Jack Kelly,

Plaintiff,

vs.

Roger D. Cox, Cox Millwork & Supply Inc.,
Waterside Drive Boat Ramp, LLC and Cox
Properties, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2020-CP-26-06286

**ROGER D. COX & COX MILLWORK &
SUPPLY INC.'s, ANSWER TO
PLAINTIFF'S COMPLAINT**

**TO: KENNETH R. MOSS, ESQ. AND GEORGE N. SPIRAKIS, ESQ, ATTORNEYS FOR
PLAINTIFF:**

The Defendants, Roger D. Cox and Cox Millwork & Supply Inc. (hereinafter "Defendants" or "Cox Millwork & Supply Inc.") answering the Complaint of the Plaintiff, above named, alleges and says as follows:

1. That Defendants lack sufficient information to respond to the allegations contained in paragraph 1, and therefore, denies the same.

2. In responding to the allegations in paragraphs 2 through 3, these Defendants admit only to the extent necessary to establish jurisdiction.

3. That Defendants are not required to admit or deny the truth of the allegations of paragraph 4, upon information and belief, such allegations are not intended to state a claim against these Defendants. If and to the extent that such allegations are later held or taken to state a claim against these Defendants, then such allegations together with all inferences to be derived therefrom are denied.

4. That Defendants are not required to admit or deny the truth of the allegations of paragraph 5, upon information and belief, such allegations are not intended to state a claim against these Defendants. If and to the extent that such allegations are later held or taken to state a claim against these Defendants, then such allegations together with all inferences to be derived therefrom are denied.

5. These Defendants admit the allegations in paragraph 6.

6. These Defendants deny the allegations in paragraphs 7 through 16 and demand strict proof thereof.

7. These Defendants admit the allegations in paragraphs 17 and 18.

8. That Defendants are not required to admit or deny the truth of the allegations of paragraphs 19 through 22, upon information and belief, such allegations are not intended to state a claim against these Defendants. If and to the extent that such allegations are later held or taken to state a claim against these Defendants, then such allegations together with all inferences to be derived therefrom are denied.

9. These Defendants deny the allegations in paragraph 23 and demand strict proof thereof.

10. In response to paragraph 24, these Defendants hereby reallege and incorporated by reference paragraphs 1 through 23 as fully and effectively as if set forth herein verbatim.

11. These Defendants deny the allegations in paragraphs 25 through 33 and demand strict proof thereof.

12. In response to paragraph 34, these Defendants hereby reallege and incorporated by reference paragraphs 1 through 33 as fully and effectively as if set forth herein verbatim.

13. These Defendants deny the allegations in paragraphs 35 through 37 and demand strict proof thereof.

14. In response to paragraph 38, these Defendants hereby reallege and incorporated by reference paragraphs 1 through 37 as fully and effectively as if set forth herein verbatim.

15. These Defendants deny the allegations in paragraphs 39 through 42, including subparts, and demand strict proof thereof.

16. In response to paragraph 43, these Defendants hereby reallege and incorporated by reference paragraphs 1 through 42 as fully and effectively as if set forth herein verbatim.

17. These Defendants deny the allegations in paragraphs 44 through 47 and demand strict proof thereof.

18. In response to paragraph 48, these Defendants hereby reallege and incorporated by reference paragraphs 1 through 47 as fully and effectively as if set forth herein verbatim.

19. These Defendants deny the allegations in paragraphs 49 through 53 and demand strict proof thereof.

20. These Defendants deny the allegations of the “Wherefore clause”, including subparts, and the relief and remedies sought therein.

21. That each and every allegation contained herein above not specifically admitted, modified or otherwise addressed is denied.

FURTHER AMENDED ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Sole Negligence)

22. That the injury or damage sustained by Plaintiff, if any, was due to, caused by, and was the direct and proximate result of the sole negligence, recklessness, willfulness, and

wantonness of Plaintiffs or others over whom Defendant had no control and such constitutes a complete defense to any claims for negligence.

FURTHER AMENDED ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Laches)

23. That Plaintiffs neglected for an unreasonable and unexplained length of time to provide notice of any alleged deficiencies to Defendant who has been prejudiced by the delay, and such unreasonable delay and resulting prejudice constitutes a complete defense to all claims.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Statute of Limitations)

24. That all claims asserted against Defendants are barred by the applicable statute of limitations.

FURTHER AMENDED ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Comparative Negligence)

25. That the injury or damage suffered by Plaintiff, if any, was due to, caused by, and was the direct and proximate result of the negligence, carelessness, recklessness, willfulness, and wantonness of Plaintiff, and recovery should be barred or reduced in proportion to such negligence as provided by law.

FURTHER AMENDED ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Intervening & Superseding Cause)

26. That the injury or damage suffered by Plaintiffs, if any, was due to and caused by, and was the direct and proximate result of the intervening and superseding negligence, willfulness, wantonness, and recklessness of Plaintiffs or of others over whom Defendant had no control,

resulting directly and proximately in the damage of which Plaintiffs complain, and such constitutes a complete defense to all claims for negligence.

**FURTHER AMENDED ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**
(Lack of Actual or Constructive Notice)

27. That any damages alleged by the Plaintiff was due to or caused by, a condition or hazard that was not known to Defendant and that the lack of actual or constructive notice and opportunity to repair or correct constitutes an absolute and complete bar to the claims and causes of action complained of by the Plaintiff.

**FURTHER AMENDED ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**
(Punitive Damages Unconstitutional – Procedural Due Process)

28. That to the extent that Plaintiffs seek punitive or exemplary damages, such claims violate the right of Defendant to procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina.

**FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**
(S.C. Code Ann. 15-32-510 et. seq.)

29. Punitive damages are inappropriate in this case since the Defendant did not engage in any malicious, reckless, wrongful or intentional conduct.

30. As the Plaintiff requests punitive damages in its complaint, the Defendant pleads the limitations on damage awards found in S.C. Code Ann. 15-32-510 et. seq., and requests bifurcation in accordance with these code sections. Defendant would further show that any award of punitive damages is subject to the limitations set forth in South Carolina Code §15-32-530.

**FURTHER AMENDED ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**
(Punitive Damages Unconstitutional – Substantive Due Process)

31. That to the extent that Plaintiff seeks punitive or exemplary damages, such claims violate the right of Defendant to substantive due process under the Fifth and Fourteenth Amendments of the United States Constitution and the Constitution of the State of South Carolina.

**FURTHER AMENDED ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**
(Failure to State a Claim)

32. One or more causes of action in Plaintiff's Complaint fails to state any claim upon which relief can be granted as to Defendants, and Plaintiff's Complaint should, therefore, be dismissed pursuant to Rule 12(b)(6), *SCRCP*.

**FURTHER AMENDED ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**
(Failure to Mitigate Damages)

33. That Plaintiff failed to take prompt and reasonable action under the circumstances to avoid the occurrence of additional damage and such failure to mitigate damages constitutes a complete defense as to that portion of damages which could have been otherwise avoided by reasonable and prompt action.

**FURTHER AMENDED ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**
(Spoliation of Evidence)

34. That the primary evidence and proof of the facts alleged has been destroyed, altered, or otherwise lost to the prejudice and detriment of Defendant. That Plaintiff knew or should have known of the importance of such evidence and had a duty to preserve same and such constitutes a complete defense to all claims.

**FURTHER AMENDED ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**
(Setoff)

35. Any recovery by Plaintiffs must be reduced or offset by amounts Plaintiff have received or will recover from others for the same injuries and/or damages claimed in this suit.

**FURTHER AMENDED ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**
(Incorporation of Defenses Raised by Others)

36. Defendant hereby incorporates the defenses raised by any other Defendant to the extent said defenses might be applicable to it.

**FURTHER AMENDED ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**
(Reservation and Non-Waiver)

37. This Defendant reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

**FURTHER AMENDED ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**
(Rule 8(c) SCRCP)

38. To the extent applicable, this Defendant raises all affirmative defenses required by Rule 8(c) SCRCP.

Cox Millwork & Supply Inc's Answer to Plaintiff's Complaint
Case No: 2020-CP-26-06286

ROSS & CRISTALDI, LLC

s/Kirkley G. White
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Attorney for Roger D. Cox & Cox Millwork &
Supply Inc.

Mt. Pleasant, South Carolina

January 14, 2021

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Jack Kelly,

Plaintiff,

vs.

Roger D. Cox, Cox Millwork & Supply Inc.,
Waterside Drive Boat Ramp, LLC and Cox
Properties, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2020-CP-26-06286

**WATERSIDE DRIVE BOAT RAMP,
LLC'S AND COX PROPERTIES, LLC'S,
ANSWER TO PLAINTIFF'S COMPLAINT**

The Defendants, Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC (hereinafter "Defendants") file this Answer to Plaintiff's Complaint and state as follows:

GENERAL DENIAL

Except as otherwise expressly admitted or qualified herein, Defendants deny all of the allegations of Plaintiff's Complaint.

ANSWER

1. Defendants lack sufficient information to respond to the allegations contained in paragraph 1, and therefore, deny the same.

2. Paragraph 2 is admitted.

3. Paragraph 3 is admitted.

4. As to paragraph 4, Defendants admit only that Waterside Drive Boat Ramp, LLC, is a South Carolina limited liability company. The remaining allegations of paragraph 4 are denied.

5. As to paragraph 5, Defendants admit only that Cox Properties, LLC, is a South Carolina limited liability company. The remaining allegations of paragraph 5 are denied.

6. These Defendants admit the allegations in paragraph 6.
7. These Defendants deny the allegations in paragraph 7.
8. These Defendants deny the allegations in paragraph 8.
9. These Defendants deny the allegations in paragraph 9.
10. These Defendants deny the allegations in paragraph 10.
11. These Defendants deny the allegations in paragraph 11.
12. These Defendants deny the allegations in paragraph 12.
13. These Defendants deny the allegations in paragraph 13.
14. These Defendants deny the allegations in paragraph 14.
15. These Defendants deny the allegations in paragraph 15.
16. These Defendants deny the allegations in paragraph 16.
17. These Defendants admit the allegations in paragraph 17.
18. These Defendants admit the allegations in paragraph 18.
19. These Defendants admit the allegations in paragraph 19.

20. As to paragraph 20, Defendants admit that Defendant Cox manages Defendant Waterside Drive Boat Ramp, LLC, from his residence. Defendants specifically deny that Waterside Drive Boat Ramp, LLC, regularly transacts business. The remaining allegations of paragraph 20 are denied.

21. These Defendants admit the allegations in paragraph 21.

22. As to paragraph 22, Defendants admit that Defendant Cox manages Defendant Cox Properties, LLC, from his residence. Defendants specifically deny that Cox Properties, LLC, regularly transacts business. The remaining allegations of paragraph 22 are denied.

23. These Defendants deny the allegations in paragraph 23.

AS TO PLAINTIFF'S FIRST CLAIM

24. In response to paragraph 24, these Defendants hereby reallege and incorporate by reference all of their admissions, denials, and defenses as fully and effectively as if set forth herein verbatim.

25. These Defendants deny the allegations in paragraph 25.

26. These Defendants deny the allegations in paragraph 26.

27. These Defendants deny the allegations in paragraph 27.

28. These Defendants deny the allegations in paragraph 28.

29. These Defendants deny the allegations in paragraph 29.

30. These Defendants deny the allegations in paragraph 30.

31. These Defendants deny the allegations in paragraph 31.

32. These Defendants deny the allegations in paragraph 32.

33. These Defendants deny the allegations in paragraph 33.

AS TO PLAINTIFF'S SECOND CLAIM

34. In response to paragraph 34, these Defendants hereby reallege and incorporate by reference all of their admissions, denials, and defenses as fully and effectively as if set forth herein verbatim.

35. These Defendants deny the allegations in paragraph 35.

36. These Defendants deny the allegations in paragraph 36.

37. These Defendants deny the allegations in paragraph 37.

AS TO PLAINTIFF'S THIRD CLAIM

38. In response to paragraph 38, these Defendants hereby reallege and incorporate by reference all of their admissions, denials, and defenses as fully and effectively as if set forth herein verbatim.

39. These Defendants deny the allegations in paragraph 39, including all subparts.

40. These Defendants deny the allegations in paragraph 40.

41. These Defendants deny the allegations in paragraph 41.

42. These Defendants deny the allegations in paragraph 42.

AS TO PLAINTIFF'S FOURTH CLAIM

43. In response to paragraph 43, these Defendants hereby reallege and incorporated by reference all of their admissions, denials, and defenses as fully and effectively as if set forth herein verbatim.

44. These Defendants deny the allegations in paragraph 44.

45. These Defendants deny the allegations in paragraph 45.

46. These Defendants deny the allegations in paragraph 46.

47. These Defendants deny the allegations in paragraph 47.

AS TO PLAINTIFF'S FIFTH CLAIM

48. In response to paragraph 48, these Defendants hereby reallege and incorporated by reference all of their admissions, denials, and defenses as fully and effectively as if set forth herein verbatim.

49. These Defendants deny the allegations in paragraphs 49.

50. These Defendants deny the allegations in paragraph 50.

51. These Defendants deny the allegations in paragraph 51.

52. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 52 and, therefore, deny the same.

53. These Defendants deny the allegations in paragraph 53.

54. These Defendants deny the allegations of the “PRAYER FOR RELIEF” and the clause beginning “Wherefore”, including subparts, and the relief and remedies sought therein.

FOR A FIRST DEFENSE
(Sole Negligence)

55. That the injury or damage sustained by Plaintiff, if any, was due to, caused by, and was the direct and proximate result of the sole negligence, recklessness, willfulness, and wantonness of Plaintiffs or others over whom Defendant had no control and such constitutes a complete defense to any claims for negligence.

FOR A SECOND DEFENSE
(Laches)

56. That Plaintiffs neglected for an unreasonable and unexplained length of time to provide notice of any alleged deficiencies to Defendant who has been prejudiced by the delay, and such unreasonable delay and resulting prejudice constitutes a complete defense to all claims.

FOR A THIRD DEFENSE
(Comparative Negligence)

57. That the injury or damage suffered by Plaintiff, if any, was due to, caused by, and was the direct and proximate result of the negligence, carelessness, recklessness, willfulness, and wantonness of Plaintiff, and recovery should be barred or reduced in proportion to such negligence as provided by law.

FOR A FOURTH DEFENSE
(Intervening & Superseding Cause)

58. That the injury or damage suffered by Plaintiffs, if any, was due to and caused by, and was the direct and proximate result of the intervening and superseding negligence, willfulness, wantonness, and recklessness of Plaintiffs or of others over whom Defendant had no control, resulting directly and proximately in the damage of which Plaintiffs complain, and such constitutes a complete defense to all claims for negligence.

FOR A FIFTH DEFENSE
(Lack of Actual or Constructive Notice)

59. That any damages alleged by the Plaintiff was due to or caused by, a condition or hazard that was not known to Defendant and that the lack of actual or constructive notice and opportunity to repair or correct constitutes an absolute and complete bar to the claims and causes of action complained of by the Plaintiff.

FOR A SIXTH DEFENSE
(Punitive Damages Unconstitutional – Procedural Due Process)

60. That to the extent that Plaintiffs seek punitive or exemplary damages, such claims violate the right of Defendant to procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina.

FOR A SEVENTH DEFENSE
(S.C. Code Ann. 15-32-510 et. seq.)

61. Punitive damages are inappropriate in this case since the Defendant did not engage in any malicious, reckless, wrongful or intentional conduct.

62. As the Plaintiff requests punitive damages in its complaint, the Defendant pleads the limitations on damage awards found in S.C. Code Ann. 15-32-510 et. seq., and requests bifurcation in accordance with these code sections. Defendant would further show that any award of punitive damages is subject to the limitations set forth in South Carolina Code §15-32-530.

FOR AN EIGHTH DEFENSE
(Punitive Damages Unconstitutional – Substantive Due Process)

63. That to the extent that Plaintiff seeks punitive or exemplary damages, such claims violate the right of Defendant to substantive due process under the Fifth and Fourteenth Amendments of the United States Constitution and the Constitution of the State of South Carolina.

FOR A NINTH DEFENSE
(Failure to State a Claim)

64. One or more causes of action in Plaintiff's Complaint fails to state any claim upon which relief can be granted as to Defendants, and Plaintiff's Complaint should, therefore, be dismissed pursuant to Rule 12(b)(6), *SCRCP*.

FOR A TENTH DEFENSE
(Failure to Mitigate Damages)

65. That Plaintiff failed to take prompt and reasonable action under the circumstances to avoid the occurrence of additional damage and such failure to mitigate damages constitutes a complete defense as to that portion of damages which could have been otherwise avoided by reasonable and prompt action.

FOR AN ELEVENTH DEFENSE
(Spoliation of Evidence)

66. That the primary evidence and proof of the facts alleged has been destroyed, altered, or otherwise lost to the prejudice and detriment of Defendant. That Plaintiff knew or should have known of the importance of such evidence and had a duty to preserve same and such constitutes a complete defense to all claims.

FOR A TWELFTH DEFENSE
(Setoff)

67. Any recovery by Plaintiffs must be reduced or offset by amounts Plaintiff have received or will recover from others for the same injuries and/or damages claimed in this suit.

FOR A THIRTEENTH DEFENSE
(Incorporation of Defenses Raised by Others)

68. Defendant hereby incorporates the defenses raised by any other Defendant to the extent said defenses might be applicable to it.

FOR A FOURTEENTH DEFENSE
(Reservation and Non-Waiver)

69. This Defendant reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

FOR A FIFTEENTH DEFENSE
(Rule 8(c) SCRCP)

70. To the extent applicable, this Defendant raises all affirmative defenses required by Rule 8(c) SCRCP.

FOR A SIXTEENTH DEFENSE
(Outside Scope of Agency Relationship)

71. The acts described in Plaintiff's Complaint, which are denied, are outside the scope of any agency relationship which may exist between Defendant Cox and these Defendants and, thus, the claims against these Defendants should be dismissed.

FOR A SEVENTEENTH DEFENSE
(Outside Scope of Employment)

72. The acts described in Plaintiff's Complaint, which are denied, are outside the scope of any employment relationship which may exist between Defendant Cox and these Defendants and, thus, the claims against these Defendants should be dismissed.

FOR AN EIGHTEENTH DEFENSE
(Duress)

73. Any purported admissions alleged in Plaintiff's Complaint, which are denied, were obtained via duress and are not binding.

FOR A NINETEENTH DEFENSE
(Settlement and Release)

74. Upon information and belief, any causes of action based on the acts described in Plaintiff's Complaint, which are denied, were previously settled and released.

WHEREFORE, these Defendants respectfully request that this Court dismiss Plaintiff's Complaint, with prejudice, award Defendants their costs, and for such other relief as the Court may deem just and proper.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Andrew M. Connor
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*Attorneys for Defendants Waterside Drive Boat Ramp,
LLC, and Cox Properties, LLC*

Charleston, South Carolina
January 15, 2021

RECEIVED**NOTICE OF APPEAL IN A CIVIL CASE**

FEB 27 2023

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

SC Court of Appeals

98278

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable Kristi F. Curtis, Circuit Court Judge

Case No. 2020-CP-26-06286

Jack Kelly, ...Appellant,

vs.

Roger D. Cox, et al. Respondent.

NOTICE OF APPEAL

Jack Kelly, by and through his undersigned attorneys, appeal Order Granting Summary Judgment to All Defendants of the Honorable Kristi F. Curtis dated December 29, 2022, and Form 4 Order of the Honorable Kristi F. Curtis, dated February 3, 2023 denying Appellants' Motion for Reconsideration. Copies of the Orders against which this appeal is made are attached hereto as Exhibits A and B respectively, and made part of this Notice by reference.

Wright, Worley, Pope, Ekster & Moss, PLLC
Attorneys for the Appellant

/s Kenneth R. Moss

Kenneth R. Moss, Esquire, SC Bar No. 15520
George N. Spirakis, SC Bar No. 12024
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Tel: 843/281-9901 Fax: 843/281-9903
KennethMoss@wwpemlaw.com
GeorgeSpirakis@wwpemlaw.com

February 8, 2023
North Myrtle Beach, SC

cc: Kirkley G. White, Esq.
Philip P. Cristaldi, III, Esq.
Emily Christine Sheets, Esq.
863 Coleman Blvd., Ste B
Mt. Pleasant, SC 29464
Attorneys for Respondents

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

FEB 27 2023

SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable Kristi F. Curtis, Circuit Court Judge

Case No. 2020-CP-26-06286

Jack Kelly,.....Appellant,

vs.

Roger D. Cox, et al. Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal upon Kirkley G. White, Philip P. Cristaldi, III, and Emily Christine Sheets, attorneys for Respondent, by emailing same and by depositing a copy by depositing copies of it in the United States Mail, postage prepaid, address to Kirkley G. White, Philip P. Cristaldi, III, and Emily Christine Sheets, 863 Coleman Blvd., Ste B, Mt. Pleasant, SC 29464 on February 8, 2023.

Wright, Worley, Pope, Ekster & Moss, PLLC
Attorneys for the Appellant

A handwritten signature in black ink, appearing to read 'George N. Spirakis', is written over a horizontal line.

George N. Spirakis, SC Bar No. 12024
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Tel: 843/281-9901 Fax: 843/281-9903
GeorgeSpirakis@wwpemlaw.com

February 22, 2023
North Myrtle Beach, SC

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Jack Kelly,

Plaintiff,

v.

Roger D. Cox, Cox Millwork & Supply Inc.,
Waterside Drive Boat Ramp, LLC and Cox
Properties, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2020-CP-26-06286

**ORDER GRANTING SUMMARY
JUDGEMENT TO ALL DEFENDANTS
(ENDS CASE)**

RECEIVED

FEB 27 2023

SC Court of Appeals

This matter came for hearing on November 29, 2022, for a motion for summary judgement as to all Defendants, filed on August 17, 2022. The court having considered the Motion, reply, pleadings, discovery, and depositions on file, together with the arguments of counsel, grants Defendants Roger D. Cox, Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC (hereinafter also "Defendants")'s Motion for Summary Judgement. Thus, final judgement is entered on their behalf, ending this case with prejudice.

In or around October 2016, the Plaintiff was the stepson of Defendant Roger D. Cox. During that time and continuing through the present, Mr. Cox was an owner of the various business entities Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC. Plaintiff filed this action on October 30, 2020, alleging that Mr. Cox committed various acts that were designed to harass, defame, and torture Plaintiff including scratching his car, harming his toothbrush, and throwing his shoes into the waterway. The Defendants filed answers on January 15, 2021, denying the causes of action. At this time substantial discovery has been completed and the facts do not support the causes of action asserted against these Defendants.

STANDARD OF REVIEW

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRPC. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Hancock v. Mid-South Mgmt., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). "However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Moore v. Barony House Restaurant, LLC*, 382 S.C. 35, 40, 674 S.E.2d 500, 503 (Ct. App. 2009). The plain language of Rule 56(c), SCRPC, mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial. *Bray v. Marathon Corp.*, 347 S.C. 189, 553 S.E.2d 477 (Ct. App. 2001).

I. Plaintiff has failed to show that the allegations in this suit relate to Defendants Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC.

Plaintiff has brought claims against Defendants Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC (hereinafter also collectively referred to as the "Businesses") for negligence by respondeat superior and negligent retention and supervision. These claims both fail as a matter of law.

A. Allegations against the Businesses for Respondeat Superior fail.

Under the doctrine of respondeat superior, the employer is "...called to answer for the tortious acts of his servant, the employee, when those acts occur in the course and scope of the employee's employment." *James v. Kelly Trucking Co.*, 661 S.E.2d 329, 377 S.C. 628 (S.C. 2008), citing *Sams v. Arthur*, 135 S.C. 123, 128-131, 133 S.E. 205, 207-08 (1926). "Such liability is not

predicated on the negligence of the employer, but upon the acts of the employee, whether those acts occurred while the employee was going about the employer's business, and the agency principles that characterize the employer-employee relationship.” *James v. Kelly Trucking Co.*, 661 S.E.2d 329, 377 S.C. 628 (S.C. 2008).

Defendant Cox is an owner of the Defendant Businesses and is therefore himself the master. Plaintiff has not presented sufficient evidence that Defendant Cox was acting in the scope of his employment when he is alleged to be committing tortious conduct against the Plaintiff.

“If the servant is doing some act in furtherance of the master's business, he will be regarded as acting within the scope of his employment, although he may exceed his authority.” *Kase v. Ebert*, 392 S.C. 57, 707 S.E.2d 456, 458 (S.C. App. 2011), quoting *Jones v. Elbert*, 211 S.C. 553, 558, 34 S.E.2d 796, 798–99 (1945). “On the other hand, if the servant acts for some independent purpose of his own, wholly disconnected with the furtherance of his master's business, his conduct falls outside the scope of his employment.” *Kase* at 458, quoting *Crittenden v. Thompson–Walker Co.*, 288 S.C. 112, 116, 341 S.E.2d 385, 387 (Ct. App.1986). “If a servant steps aside from the master's business for some purpose wholly disconnected with his employment, the relation of master and servant is temporarily suspended; and this is so no matter how short the time, and the master is not liable for his acts during such time.” *Kase* at 458, quoting *Lane v. Modern Music, Inc.*, 244 S.C. 299, 305, 136 S.E.2d 713, 716 (1964) (emphasis added).

Plaintiff has offered no evidence that Defendant Cox’s alleged actions occurred within the scope of his employment with the Businesses and none of the allegations in Plaintiff’s complaint could be reasonably construed to be “in furtherance of the master’s business.” Plaintiff has described Defendant’s alleged acts as “a campaign to harass, defame and torture Plaintiff.” *See*

Complaint at ¶ 7. These allegations couldn't be reasonably related to any business much less these Businesses which engage in woodwork, boating, and real estate.

In his deposition, Mr. Kelly testified that Cox Millwork & Supply, Inc. is a "woodworking company". (See Dep. J. Kelly at Pg. 64:3-5). Mr. Kelly alleges in his complaint that Defendant Cox began a campaign to harass, defame, and torture Plaintiff. (See Complaint ¶ 4). Specifically, the Complaint alleges that Defendant Cox scratched Plaintiff's BMW, that Defendant Cox threw Plaintiff's tennis shoes in the waterway behind their residence, that Defendant Cox put soap on Plaintiff's toothbrush, and that Defendant Cox used the Plaintiff's toothbrush to wipe his butt. (See Complaint ¶¶ 8-16). While Defendant Cox denies these events occurred as Plaintiff describes them, even if they are true, none of them have anything to do with running, operating, or working at a woodworking company.

As to Waterside Drive Boat Ramp, LLC, Plaintiff testified that the business relations to ownership of a boat ramp, he does not know if the LLC does any business, and he has no specific evidence that Mr. Cox did anything to him as the owner of this business:

Q. What's your understanding of what Waterside Drive Boat Ramp, LLC does?

A. I know it's an Owner –it's an LLC for the boat ramp.

Q. Does it do business?

A. I'm unaware if it does or does not do business.

Q. What evidence do you have that Mr. Cox did anything as an owner, officer, agent of the boat ramp?

A. I have no specific evidence.

(See Dep. J. Kelly at Pg. 67:3-13)

Not one of the allegations in the Complaint relate in any way to the ownership of a boat ramp and the Plaintiff has no testimony to show that the allegations of the Complaint occurred during the operation of this LLC.

Likewise, Plaintiff was asked about Cox Properties, LLC's involvement in the allegations. He testified as follows:

Q. What evidence do you have that Mr. Cox did anything you're alleging in his capacity as an owner, officer, agent of Cox Properties?

A. I'm not sure.

(See Dep. J. Kelly at Pg. 67:14-17)

Owning your own business does not automatically trigger respondeat superior liability for everything you do. Just as working from home does not mean everything one does from home is within the scope of employment. The law as it stands requires that lines be drawn. As previously cited, "If a servant steps aside from the master's business for some purpose wholly disconnected with his employment, the relation of master and servant is temporarily suspended; and this is so no matter how short the time, and the master is not liable for his acts during such time." *Kase* at 458, quoting *Lane v. Modern Music, Inc.*, 244 S.C. 299, 305, 136 S.E.2d 713, 716 (1964). Sleeping, doing the dishes, eating dinner, or brushing your teeth in the morning are all things people do at home. Working at home does not automatically bring actions wholly unrelated to a master's business within the scope of employment.

Plaintiff has no evidence that any of the allegations in the complaint are or could have been reasonably related to Defendant Cox's role as owner or servant of the Businesses. Therefore, Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC's Motion for Summary Judgement against the Plaintiff's claims of respondeat superior is granted.

B. Allegations against the Businesses for negligent retention and supervision fail.

This cause of action is also premised on the master-servant relationship. A business owner (the master) cannot be sued for negligently retaining and supervising themselves. Plaintiff's claim for negligent retention and supervision fails because Defendant Roger D. Cox is an owner of Defendant entities Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC.

South Carolina courts have used the Restatement to describe negligent retention and supervision as:

A master is under a duty to exercise reasonable care so to control his servant while acting outside the scope of his employment as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if

(a) the servant

(i) is upon the premises in possession of the master or upon which the servant is privileged to enter only as his servant, or

(ii) is using a chattel of the master, and

(b) the master

(i) knows or has reason to know that he has the ability to control his servant, and

(ii) knows or should know of the necessity and opportunity for exercising such control.

(emphasis added) *Kase v. Ebert*, 392 S.C. 57, 707 S.E.2d 456, 459-460 (S.C. App. 2011), citing *Degenhart v. Knights of Columbus*, 309 S.C. 114, 116-17, 420 S.E.2d 495, 496 (1992).

Therefore, Plaintiff's claim fails as a matter of law because Defendant Cox is the master of the Businesses, and he cannot negligently retain and supervise himself and therefore the Businesses' Motion for Summary Judgement on this claim of negligent retention and supervision is granted.

II. Plaintiff has no evidence that any of the alleged "outrage" caused by Defendant Cox led to damages incurred by Plaintiff.

Plaintiff's complaint contains a series of acts allegedly committed by Defendant Cox. Defendant Cox strongly disputes these allegations. However, solely for the purposes of this Motion and the arguments contained herein, Defendant Cox will take the following acts at face value to outline how they fail to meet the requirements of intentional infliction of emotional distress. Plaintiff has alleged that:

- a. Defendant Cox "intentionally snuck out in the night and scratched Plaintiff's new BMW and further used some liquid paint remover to damage the vehicle's paint.

Defendant Cox further damaged the headlights to obstruct the headlights intended purpose.”

- b. Defendant Cox “continued to sneak around and scratch Plaintiff’s vehicle in order to get him in trouble with his mother and biological father.”
- c. Defendant Cox “took Plaintiff’s new shoes and tossed them into the waterway behind their residence to make it look like Plaintiff does not take care of his belongings.
- d. Defendant Cox “also took additional of Plaintiff’s clothing to further traumatize the Plaintiff.
- e. “Defendant Cox admitted that he took Plaintiff’s toothbrush and put soap on it.”
- f. “Defendant Cox admitted that he used the Plaintiff’s toothbrush to wipe his butt.”

See Complaint at ¶¶ 8-16.

The Supreme Court of South Carolina has explained “that in order to recover for intentional infliction of emotional distress, the complaining party must establish that:

- (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct;
- (2) the conduct was so "extreme and outrageous" so as to exceed "all possible bounds of decency" and must be regarded as "atrocious, and utterly intolerable in a civilized community;"
- (3) the actions of the defendant caused plaintiff's emotional distress; and
- (4) the emotional distress suffered by the plaintiff was "severe" such that "no reasonable man could be expected to endure it."

Hansson v. Scalise Builders of S.C., 650 S.E.2d 68 (S.C. 2007), citing *Ford v. Hutson*, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981).

In addition to the elements the Court in *Ford* stated, the Plaintiff must show both extreme and outrageous conduct and show that the conduct caused distress of an “extreme or severe nature”. *Hansson v. Scalise Builders of S.C.*, 650 S.E.2d 71 (S.C. 2007), citing *Ford v. Hutson*, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981).

In *Hansson* the court found that the Plaintiff did not meet the burden of proof as his damages were limited to loss of sleep, a dentist, and a couple hundred dollars. *Id.* In addition, Plaintiff’s relationships with others, nor his employment suffered. *Id.*

Here, even if the Plaintiff's allegations are true and even if those allegations are in fact "outrageous," there are no real damages.

The Plaintiff has testified that he performs well in school:

Q: I believe the last time you were being deposed you testified you were premed at Wofford; is that right?

A: Yes Ma'am.

Q: Are you still premed at Wofford?

A: According to administration, yes.

Q: Why do you qualify it that way?

A: I'm registered under the premed track of Wofford.

Q: Are you taking premed courses?

A: Yes.

Q: Are you currently a junior?

A: Yes, ma'am.

Q: When your first semester grades came out, what did they look like? What was your GPA?

A: I don't recall my first semester GPA.

Q: Did you have any grades on that transcript below a C?

A: No, ma'am. I've never had a grade below a C.

(See Dep. J. Kelly, Part 2 at Pg. 83:7-25 and Pg. 84:1).

The Plaintiff has testified that he has been able to seek and hold employment that he wanted to hold:

Q: Have any of the experiences that you allege in this lawsuit kept you from pursuing or taking a job opportunity?

A: As of now, no.

(See Dep. J. Kelly, Part 2 at Pg. 106:23-25 and Pg. 107:1).

The Plaintiff has not been treated by a medical professional; he has only sought periodic counseling when he is in school at Wofford:

Q: I'm going to go backwards for just a second, and I apologize. I can't remember if I've asked you this or somebody else has asked you. Other than your guidance counselor in high school and the counselors at Wofford, are there any other counselors that you've seen?

A: What do you consider a counselor?

Q: A licensed therapist or a psychologist or a psychiatrist.

A: I don't believe I've seen anyone else.

(See Dep. J. Kelly, Part 2 at Pg. 102:12-21).

In addition, his car was repaired, and his toothbrush and shoes were replaced, so there is no monetary damage:

Q: I want to be clear about the property damage. The property damage, my understanding is that that includes the 2005 BMW, which was repaired, correct?

A: Incompletely repaired, yes.

Q: And has since been sold; is that correct?

A: I'm not sure how the movement of the BMW was, but it is no longer my primary vehicle that I use.

Q: You were never the owner of the 2005 BMW, correct?

A: No, ma'am.

Q: And then the only other property damage that I'm aware of are some tennis shoes.

A: Yes. Expensive tennis shoes.

Q: Those tennis shoes were replaced or additional tennis shoes were purchased, correct?

A: Yes.

Q: Is there any other property damage that you allege as a result of the allegations in this suit?

A: Not that I'm aware of at this time, but there could be. I'm drawing a blank.

(See Dep. J. Kelly, Part 2 at Pg. 113:12-25 and Pg. 114:1-10).

Based on the lack of damages demonstrated by the Plaintiff, there is no damage evidence to submit to the jury and therefore Defendant Cox's Motion for Summary Judgement as to intentional infliction of emotional distress and violation of S.C. Code § 20-7-490 is granted.

III. There is no evidence to support that Defendant Cox violated S.C. Code § 44-29-145.

To prove negligence per se, the plaintiff must show that the defendant owed them a duty of care arising from a statute. *Norton v. Opening Break of Aiken, Inc.*, 443 S.E.2d 406, 408 313 S.C. 508 (S.C. App. 1994), citing *Whitlaw v. Kroger Co.*, 306 S.C. 51, 53, 410 S.E.2d 251, 252 (1991). To do this, a plaintiff must show:

(1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered; and (2) that he is a member of the class of persons the statute is intended to protect. If the plaintiff makes this showing, he has proven the first element of a claim for negligence: viz., that the defendant owes him a duty of care. If he then shows that the defendant violated the statute, he has proven the second element of a negligence cause of action: viz., that the defendant, by act or omission, failed to exercise due care. This constitutes proof of negligence per se.

Id.

Plaintiff claims that Defendant Cox committed a felony by violating S.C. Code § 44-29-145 for knowingly exposing him to HIV. This reckless and defamatory accusation must be dismissed. Section 44-29-145 is a criminal statute that says in pertinent part:

It is unlawful for a person who knows that he is infected with Human Immunodeficiency Virus (HIV) to:

- (1) knowingly engage in sexual intercourse, vaginal, anal, or oral, with another person without first informing that person of his HIV infection;
- (2) knowingly commit an act of prostitution with another person;
- (3) knowingly sell or donate blood, blood products, semen, tissue, organs, or other body fluids;
- (4) forcibly engage in sexual intercourse, vaginal, anal, or oral, without the consent of the other person, including one's legal spouse; or
- (5) knowingly share with another person a hypodermic needle, syringe, or both, for the introduction of drugs or any other substance into, or for the withdrawal of blood or body fluids from the other person's body without first informing that person that the needle, syringe, or both, has been used by someone infected with HIV.

A person who violates this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than ten years.

Plaintiff has no evidence that Defendant Cox violated this statute.

First, and arguably most important, Defendant Cox does not have HIV. Therefore, he can't have violated Section 44-29-145. One must both have HIV and know about their infection. Defendant Cox has no knowledge of an HIV infection because he does not have HIV. Plaintiff has not produced any evidence to the contrary.

Plaintiff's mom was married to Defendant Cox for years and they were sexually active:

Q: Since you are married to him, I assume you were sexually active with him. Is that fair to assume?

A: Yes.

(See Dep. D. Sarte at Pg. 52:1-4).

She was asked if she was aware of Defendant Cox having HIV. She responded, "I'm not."

Q: I'm asking if you're aware of my client having HIV.

A: I'm not.

(See Dep. D. Sarte at Pg. 51:20-22).

Plaintiff's mom was also asked if she was aware of Defendant Cox having any other STDs:

Q: And you don't have any knowledge as to Mr. Cox having any sort of STD; is that correct?

A: I have no knowledge.

(See Dep. D. Sarte at Pg. 52:22-24).

Again she responded, "I am not." *Id.* She had "no knowledge" of Defendant Cox having any sort of STD. *Id.* at 52.

In his deposition, Plaintiff testified he had no evidence that Mr. Cox has HIV:

Q: You've also alleged that Mr. Cox violated South Carolina Code 44-29-145. What evidence do you have that my client has HIV or any other sexually transmitted disease?

A: I do not have evidence.

(See Dep. J. Kelly at Pg. 67:18-22).

Plaintiff also testified that he has not received an STD test and has no knowledge that Mr. Cox transmitted HIV to him:

Q: But you haven't had an STD test?

A: Correct.

Q: So it's my understanding that you have no evidence that Mr. Cox has transmitted HIV or any other sexually transmitted disease to you; is that correct?

A: Correct.

(See Dep. J. Kelly at Pg. 68:4-10).

There is no evidence that Defendant committed negligence per se and therefore Defendant Cox's Motion for Summary Judgement on this claim is granted.

CONCLUSION

Defendants Roger D. Cox, Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC's Motion for Summary Judgement ending this case on all claims filed in this lawsuit is GRANTED.

Order Granting MSJ
Case No.: 2020-CP-26-06286

AND IT IS SO ORDERED.

The Honorable Kristi F. Curtis
Presiding Judge

Myrtle Beach, South Carolina
December 15, 2022

ELECTRONICALLY FILED - 2023 Feb 21 2:58 PM - Horry - COMMON PLEAS - CASE#2020CP2606286
ELECTRONICALLY FILED - 2022 Dec 29 2:04 PM - Horry - COMMON PLEAS - CASE#2020CP2606286



Horry Common Pleas

Case Caption: Jack Kelly VS Roger D Cox , defendant, et al

Case Number: 2020CP2606286

Type: Order/Summary Judgment

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

EXHIBIT B

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2606286

Jack Kelly
PLAINTIFF(S)

Roger D Cox et al
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:

Plaintiff's motion for reconsideration of this court's order granting summary judgment as to all defendant 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 02/03/2023 .

RECEIVED

FEB 27 2023

SC Court of Appeals

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), SCRCF.

ELECTRONICALLY FILED - 2023 Feb 23 2:52 PM - HONORARY - COMMON PLEAS - CASE#2020CP2606286



Horry Common Pleas

Case Caption: Jack Kelly VS Roger D Cox , defendant, et al

Case Number: 2020CP2606286

Type: Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 Horry County

4 DEPOSITION OF JACK KELLY
5 NOVEMBER 22, 2021

6 JACK KELLY,
7

8 Plaintiff,

9 vs.

CASE NO. 2020-CP-26-06286

10 ROGER D. COX, COX MILLWORK & SUPPLY, INC.,
11 WATERSIDE DRIVE BOAT RAMP, LLC and
12 COX PROPERTIES, LLC,

13 Defendants.
14

15 TIME: 11:04 a.m.

16 LOCATION: WRIGHT, WORLEY, POPE, EKSTER
17 & MOSS, PLLC
18 N. MYRTLE BEACH, SOUTH CAROLINA

19
20
21 REPORTED BY: EILEEN MADDEN, RPR
22 CLARK BOLEN COURT REPORTING
23 AND VIDEOCONFERENCING
24 CHARLESTON, SC 29405
25 843-762-6294
 WWW.CLARK-ASSOCIATES.COM
 office@clark-associates.com

1 A P P E A R A N C E S

2 ON BEHALF OF PLAINTIFF:

3 WRIGHT, WORLEY, POPE, EKSTER
4 & MOSS, PLLC
5 BY: GEORGE N. SPIRAKIS, ESQ.
6 628A Sea Mountain Highway
7 N. Myrtle Beach, SC 29582

8 ON BEHALF OF DEFENDANTS:

9 ROSS & CRISTALDI, LLC
10 BY: KIRKLEY G. WHITE, ESQ.
11 863 Coleman Blvd., Suite B
12 Mt. Pleasant, SC 29464

13
14 ALSO PRESENT: ROGER D. COX
15
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1 JACK KELLY,
2 having been first duly sworn, was examined and
3 testified as follows:

4 EXAMINATION

5 BY MS. WHITE:

6 Q. Mr. Kelly, my name is Kirkley White, and
7 I represent Mr. Cox in the lawsuit that you've
8 brought against him and several of the LLCs that
9 he is a member of.

10 Have you ever had your deposition taken
11 before?

12 A. I do not believe so.

13 Q. I'm sure your attorney went over the
14 rules with you, but I'm going to go over a few
15 things to make sure this goes smoothly. Okay?

16 A. Okay.

17 Q. The first thing I want to let you know
18 is that the purpose of my questions today will
19 not be to trick or confuse you. So if I ask you
20 anything and you don't understand what I'm asking
21 you, please ask me to rephrase it. Okay?

22 A. Okay.

23 Q. The second thing that I'll ask you, and
24 you're doing a good job so far, but because the
25 court reporter is taking down everything that we

1 say, I ask that you give me verbal answers to
2 everything I ask you. It's okay if you nod your
3 head or say uh-huh or huh-uh, but make sure to
4 give me a verbal response too so that we have a
5 clear record. Okay?

6 A. Yes.

7 Q. The other thing I ask -- I can be pretty
8 conversational, and it's easy to be
9 conversational in a deposition, but just try to
10 wait for me to finish my question before you
11 start to answer, and I'll try to give you enough
12 time to answer before I roll into my next
13 question. Is that fair?

14 A. Yes.

15 Q. If you answer my question, I'm going to
16 assume that you understood my question. Is that
17 fair?

18 A. Yes.

19 Q. If you need to take a break, use the
20 restroom, get a snack, whatever, I'm happy to
21 accommodate that. We can take a break any time
22 you need to. But I just want to let you know if
23 you do discuss your testimony during that break
24 I'm allowed to ask you questions about that.
25 Okay?

1 A. Yes.

2 Q. Have you taken any substances that would
3 affect your ability to testify?

4 A. No.

5 Q. Did you take any medication at all this
6 morning?

7 A. No.

8 Q. Mr. Kelly, state your full name for the
9 record, please.

10 A. Jack Austin Kelly.

11 Q. And, Mr. Kelly, what is your date of
12 birth?

13 A. [REDACTED] 2001.

14 Q. That makes you 20?

15 A. Yes.

16 Q. What's your current address?

17 A. [REDACTED], Myrtle Beach,
18 South Carolina 29577.

19 Q. How long have you lived there?

20 A. I believe around two years.

21 Q. Who lives with you?

22 A. My mother.

23 Q. And her name is?

24 A. [REDACTED].

25 Q. Where did you live before the [REDACTED]

1 [REDACTED] address?

2 A. With my dad.

3 Q. Where was that?

4 A. [REDACTED], with a Y, [REDACTED]
5 [REDACTED].

6 Q. How long did you live there?

7 A. I believe a year.

8 Q. And what's your father's name?

9 A. [REDACTED].

10 Q. Is that with a Y or an A? I mean a Y or
11 an I?

12 A. I.

13 Q. What was the reason that you lived with
14 your father as opposed to your mother during that
15 time frame?

16 A. My mother lived with us there.

17 Q. And where did you live before that?

18 A. [REDACTED], Myrtle Beach, South
19 Carolina 29577, I believe.

20 Q. Who lived there with you at that
21 address?

22 A. Derek Cox, [REDACTED], and [REDACTED]
23 [REDACTED].

24 Q. And how long did you live there?

25 A. Four, five years.

1 Q. I'm going to ask you questions. The
2 answers might be a little obvious. I just have
3 to make sure that I get them on the record. Are
4 you married?

5 A. I am not.

6 Q. Do you have any children?

7 A. I do not.

8 Q. You're currently in school, correct?

9 A. Correct.

10 Q. And you go to Wofford?

11 A. Correct.

12 Q. What are you studying at Wofford?

13 A. Biology, premed with a business minor.

14 Q. Are you there on a scholarship?

15 A. I am.

16 Q. Full ride or just partial?

17 A. Not full ride.

18 Q. And what year did you start going to
19 Wofford?

20 A. I believe fall of 2019.

21 Q. And what's your anticipated graduation
22 date?

23 A. Spring of 2023.

24 Q. Do you play any sports?

25 A. I do not.

1 Q. Do you engage in any sort of
2 extracurricular activities?

3 A. I do.

4 Q. What do you do?

5 A. Member of Greek Life, orientation stuff.

6 Q. I take it you never served in the
7 military; is that correct?

8 A. Correct.

9 Q. Do you go to church anywhere?

10 A. I do not. While at school I do not;
11 when I'm home I do.

12 Q. Where do you go when you're at home?

13 A. Wellspring Church.

14 Q. Are you a member there?

15 A. Currently, yes.

16 Q. How long have you been a member of
17 Wellspring Church?

18 A. Five years, I would say.

19 Q. During the time that you lived with Mr.
20 Cox were you a member there?

21 A. Yes.

22 Q. Other than your mother and your father,
23 do you have any blood relatives that live in
24 Horry County?

25 A. I'm not positive. I'm not 100 percent

1 sure. I have one relative, but I'm not sure if
2 he lives in Horry County or if he's a blood
3 relative. But I know -- I have like an uncle. I
4 don't know if he's actually an uncle.

5 Q. What do you mean you don't know if he's
6 actually an uncle?

7 A. Like a family friend uncle. But I know
8 it's through my dad's side. But I don't know if
9 I'm related to him or if my dad is related to
10 him. I might be distantly related, but I don't
11 know about blood relation.

12 Q. The reason I'm asking is I just don't
13 want any of your family members on the jury, just
14 like you probably wouldn't want my family members
15 on the jury. What is this uncle's name?

16 A. Uncle Mike.

17 Q. Do you know his last name?

18 A. No.

19 Q. Do you know what town he lives in?

20 A. No.

21 Q. Does your dad still live at the [REDACTED]
22 [REDACTED] address?

23 A. Yes.

24 Q. Have you ever been arrested?

25 A. No.

1 Q. Have you ever been involved in any other
2 lawsuit?

3 A. No.

4 Q. Have you ever had a job?

5 A. Yes.

6 Q. Where have you had a job before?

7 A. Southern House of Pancakes.

8 Q. When did you work there?

9 A. Summer, in high school. I worked there
10 for two summers.

11 Q. What years would that have been
12 approximately?

13 A. I want to say sophomore year to junior
14 year, summer, and junior to senior, summer. But
15 I'm not positive.

16 Q. Did you work there while you lived with
17 Mr. Cox?

18 A. Yes.

19 Q. What did you do when you worked there?

20 A. I was a busboy.

21 Q. Did you ever miss any time from work as
22 a result of any of the things that you've alleged
23 Mr. Cox has done?

24 A. No.

25 Q. Do you have a primary care physician?

1 A. I believe so.

2 Q. Who's your primary care physician?

3 A. I do not know.

4 Q. When was the last time you saw a doctor?

5 A. Within a year.

6 Q. Is your doctor in the Myrtle Beach area?

7 A. Yes, I believe so.

8 Q. Do you know whereabouts?

9 A. Near Socastee, I believe.

10 Q. Ever had any surgeries?

11 A. No.

12 Q. Ever broken any bones?

13 A. No.

14 Q. Ever treated with a chiropractor?

15 A. No.

16 Q. Have you ever treated with a
17 psychologist?

18 A. Like therapy?

19 Q. Yes.

20 A. Yes.

21 Q. What's the name of your therapist?

22 A. I've had a couple while at Wofford.

23 They're on a document. But I believe the main

24 one I'm seeing now is [REDACTED], and then I've

25 spoken to [REDACTED], as well as [REDACTED]

1 who all work at Wofford.

2 Q. What do they do at Wofford?

3 A. They all work in the counseling
4 department, as well as have other roles.

5 Q. When you say "counselors," are they
6 licensed physicians or are they just counselors
7 for the school?

8 A. I believe they're licensed physicians.

9 Q. What kind of treatment have you had with
10 these counselors at Wofford?

11 A. I've had counseling appointments.

12 Q. And what was the counseling for?

13 A. What happened with the lawsuit,
14 regarding the lawsuit.

15 Q. How many counseling sessions do you
16 think you've had?

17 A. Probably close to 10, 15, maybe 20, in
18 that range.

19 Q. Do you have to pay for these sessions or
20 are they part of your tuition at school?

21 A. They're provided by the school.

22 Q. How did you get set up with that?

23 A. I'm not sure when I first found out
24 about it, like when I started using the
25 counseling services.

1 Q. Was about it before or after you filed
2 this lawsuit?

3 A. I want to say after. I'm not 100
4 percent positive.

5 Q. Well, let me ask you this, when is the
6 last year that you lived with Mr. Cox?

7 A. My senior year of high school.

8 Q. You graduated high school in 2019; is
9 that right?

10 A. Yes. I believe spring of 2019 is when I
11 graduated high school.

12 Q. What year do you think you started
13 getting counseling at Wofford?

14 A. I believe freshman year was my first
15 counseling appointment.

16 Q. What high school did you go to?

17 A. The Academy for Arts, Science and
18 Technology.

19 Q. Did you play any sports while you were
20 in high school?

21 A. I did not.

22 Q. What was your GPA when you graduated?

23 A. I'm not sure.

24 Q. Do you know what your rank was when you
25 graduated?

1 A. No.

2 Q. Do you think you were in the top of your
3 class, bottom of your class, middle of the class?

4 A. I was in the upper third.

5 Q. Did that change over time while you were
6 in school?

7 A. Yes. My rank and grade point average
8 fluctuated throughout school. There was
9 fluctuation.

10 Q. Can you explain that a little bit more?

11 A. My grades were not the same in my
12 freshman year as they were in my senior year.

13 Q. How so?

14 A. My grades were, I would say, better my
15 freshman and sophomore year and towards the end
16 -- tended to dip at the end.

17 Q. But you don't know what your rank was
18 when you graduated?

19 A. I do not.

20 Q. Do you know what your rank was at the
21 end of your freshman year?

22 A. I do not recall.

23 Q. Then how do you know there was
24 fluctuation?

25 A. Because just knowing based off of what I

1 remember of my grades, but I couldn't tell you my
2 GPA.

3 Q. What was the reason for the fluctuation?

4 A. What was going on while residing at [REDACTED]
5 [REDACTED].

6 Q. But you still got a scholarship to
7 Wofford, didn't you?

8 A. I did.

9 Q. Do you know what percentage of your
10 tuition is covered by your scholarship?

11 A. I do not.

12 Q. Did you have any guarantee of a
13 scholarship prior to what was going on with Mr.
14 Cox?

15 A. I do not believe so.

16 Q. Despite what was going on at home you
17 still got a scholarship to go to Wofford?

18 A. Yes.

19 Q. While you were in high school, did you
20 ever see a psychiatrist?

21 A. I spoke to our school counselor.

22 Q. What was the school counselor's name?

23 A. [REDACTED].

24 Q. What did you talk to [REDACTED] about?

25 A. What was going on at home.

1 Q. Can you be a little bit more specific?

2 A. What would you like me to be more
3 specific about?

4 Q. What did you talk to her about? What
5 did you tell her?

6 A. What was currently going on at home and
7 just the struggle I was going through.

8 Q. How many times do you think you talked
9 to [REDACTED]?

10 A. I'll say around four times.

11 Q. Aside from [REDACTED], and the school
12 counselor, did you see any sort of counselor?
13 Psychologist? Psychiatrist?

14 A. Not to my knowledge.

15 Q. Is there a reason that you haven't
16 sought help from a psychologist?

17 A. I speak to the people at school. But
18 are you regarding more being at home?

19 Q. Yeah, I'm just wondering -- I understand
20 that you talked to your counselors at school.
21 But is there a reason that you haven't sought
22 help from a psychologist specifically?

23 A. I'm not sure if there's a reason
24 specifically why I haven't.

25 Q. How old were you when you first met Mr.

1 Cox?

2 A. I want to say 12 or 13.

3 Q. And what was your relationship with Mr.
4 Cox when you first met him?

5 A. Adult.

6 Q. I guess maybe my question was poor,
7 actually, now that I think about it. What was
8 the reason that you first met Mr. Cox?

9 A. My mother.

10 Q. And can you be a little bit more
11 specific than just your mother? Was she dating
12 him? Were they married? What was going on?

13 A. The first time I met him it was an adult
14 friend. I didn't know if they were -- I have no
15 details on what their relationship status was at
16 the time I met him.

17 Q. And at some point you moved in with him;
18 is that correct?

19 A. That is true.

20 Q. And how old were you when you moved in
21 with him?

22 A. I'm unsure of the exact age.

23 Q. Approximately how many years after you
24 met Mr. Cox did you live with him?

25 A. Can you repeat your question?

1 Q. How many years passed between the time
2 that you met Mr. Cox and the time you moved in
3 with him?

4 A. I'm unsure. It's the same question over
5 again from the second one, the one prior.

6 Q. I don't think I understand your answer.
7 Say that again.

8 A. I am unsure.

9 Q. You don't recall the timeline? Is that
10 what you're saying?

11 A. Yes.

12 Q. At the time that you moved in with Mr.
13 Cox, how involved was your father, [REDACTED],
14 with you?

15 A. I'd say fairly involved.

16 Q. Is there a reason that you hesitated so
17 long before answering?

18 A. I was trying to ensure that I give you
19 the most accurate answer.

20 Q. But you weren't living with your father
21 immediately prior to moving in with Mr. Cox; is
22 that correct?

23 A. Can you rephrase that?

24 Q. Sure. Immediately before moving in with
25 Mr. Cox, were you living with your father in the

1 time period prior?

2 A. I would spend some time with my father,
3 yes. My primary residence was with my mother.

4 Q. But your father did not live there; is
5 that correct?

6 A. Correct.

7 Q. That's what I'm trying to get to. Once
8 you moved in with Mr. Cox, did Mr. Cox provide a
9 household for you?

10 A. He did.

11 Q. Did he provide food for you?

12 A. Food was in the house, yes, but I would
13 not say that he was the one purchasing the food.

14 Q. Did he provide clothes and shoes for
15 you?

16 A. I would not say that, no.

17 Q. Do you know specifically that he didn't?

18 A. I can pretty confidently say that he did
19 not provide clothes or shoes for me.

20 Q. Were you active in sports at the time
21 that you lived with Mr. Cox?

22 A. Yes.

23 Q. Did Mr. Cox come to your sporting
24 events?

25 A. I do not recall.

1 Q. You don't recall him coming or you don't
2 know that he came? Well, let me ask that
3 differently. Did he not come to your sporting
4 events or you don't recall him specifically being
5 there?

6 A. I do not recall him specifically being
7 there.

8 Q. Do you have any reason to deny that he
9 would have been there?

10 A. Can you repeat that?

11 Q. Sure. Do you have any reason to deny
12 that Mr. Cox did in fact go to sporting events
13 for you during the time frame that you lived with
14 him?

15 A. I just don't recall like if he was there
16 more times or not, or if at all. I don't recall.

17 Q. How was Mr. Cox's relationship with your
18 mother when you moved in?

19 A. I do not specifically know how their
20 relationship was.

21 Q. Would you say that Mr. Cox was an active
22 participant in your life when you lived with him?

23 A. No.

24 Q. How was he not an active participant in
25 your life?

1 A. I'm unsure. I just -- I don't feel that
2 he was an active participant in my life.

3 Q. Did y'all do family dinners together?

4 A. Yes.

5 Q. Did y'all do family activities together?

6 A. Sure, yes.

7 Q. Did y'all go on any family vacations
8 together?

9 A. I don't believe so.

10 Q. What about school, did he participate in
11 any of your school activities at all?

12 A. Not to my knowledge.

13 Q. Before you got to your driver's license,
14 did he take you places?

15 A. Yes.

16 Q. During the time that you lived with Mr.
17 Cox, how often did you see your father?

18 A. Can you repeat that?

19 Q. Sure. During the time you lived with
20 Mr. Cox, how often did you see your father?

21 A. I would say it varied throughout my
22 residence at [REDACTED].

23 Q. I'm going to get into the details of
24 what's being alleged or that you've alleged that
25 Mr. Cox has done, but can you just kind of start

1 with just generally telling me when the problems
2 started and what those problems were.

3 THE WITNESS: Can we take a break before
4 we start that?

5 MS. WHITE: Sure.

6 (A recess was taken.)

7 BY MS. WHITE:

8 Q. Before we took a break I was asking you
9 just generally to explain to me when the problems
10 started and what those problems were.

11 A. The problems started, I believe -- and a
12 lot of this gets a little blurry just because I
13 went through trying to heal from what has
14 happened. I have shut out a lot of what has
15 happened.

16 The problems, I believe, started around
17 sophomore year, end of freshman year, sophomore
18 year when I first got my car. I'm not sure of
19 the exact date of when I got my first car. I
20 know there were damages occurring to my car that
21 we later found out to be Mr. Cox.

22 From that point on other things began to
23 occur, whether it be property going missing,
24 destruction of property, specifically only my
25 property, however. And that's all that I believe

1 I know.

2 That's all I knew in high school. It
3 wasn't until college, my freshman year, beginning
4 this lawsuit, that I was made aware of the other
5 things that were occurring with my toothbrush.

6 Q. Let's dig into it. The pleading that
7 was filed states that in October of 2016 Mr. Cox
8 snuck out and damaged your BMW. Does that date
9 sound correct?

10 A. Yes.

11 Q. Who purchased that BMW?

12 A. I believe my father.

13 Q. The pleading states that the BMW was
14 new, but I have a subpoena response, and we can
15 mark it. I'll show it to you. Give me just a
16 second. The subpoena response that I got from
17 Beach Ford states that the BMW was a 2005. Does
18 that sound correct?

19 A. Yes.

20 Q. So the car was new to you, but it was
21 not a new vehicle; is that correct?

22 A. Correct.

23 Q. So it was about a little over 10 years
24 old at the point when you got the vehicle; is
25 that correct?

1 A. I believe so.

2 Q. Did the BMW already have any body damage
3 to it when it was purchased for you?

4 A. First observing the car and my parents
5 inspecting it before purchase, not to any of our
6 knowledge.

7 Q. No scratches on it? No dents?

8 A. Not to my knowledge.

9 Q. And what specifically was damaged on the
10 BMW by Mr. Cox?

11 A. Headlights were scratched, side panels
12 of the car were keyed, and then marks on the
13 vehicle where paint was peeling off.

14 Q. And how do you know that Mr. Cox caused
15 this damage to your vehicle?

16 A. I was made aware by my parents.

17 Q. What do you mean you were made aware by
18 your parents?

19 A. My parents told me.

20 Q. And how did your parents come to learn
21 that it was Mr. Cox?

22 A. I'm not sure of the details.

23 Q. Was the BMW repaired?

24 A. I do not believe that can be answered
25 with just a yes or no.

1 Q. Then answer it how it can be answered.

2 A. Mr. Cox did repair -- I say repair as
3 intently, the vehicle. However, it was not done
4 properly to restore it to where its original
5 condition was. The car was painted. Half of the
6 car was painted, and the key marks, as well as
7 damages on the other half, the less damaged half,
8 were still present.

9 Q. Was your mom involved at all in what
10 repairs were to be made to the vehicle?

11 A. I'm not sure. I cannot speak for what
12 she does or does not know.

13 MS. WHITE: Let's look at the Ford
14 subpoena response. I'll give you a copy of this.
15 We'll mark this one Exhibit 1.

16 (Exhibit 1 was marked for
17 identification.)

18 BY MS. WHITE:

19 Q. Before I start asking questions, flip
20 through it and tell me if you've ever seen this
21 document before. Have you seen it before?

22 A. I do not recall seeing this document
23 before.

24 Q. Flip to -- do you see at the bottom
25 where it has the Beach Ford subpoena response?

1 A. I do.

2 Q. That's what's called a Bates stamp. So
3 if I refer to a Bates stamp, that's what I mean.
4 Flip to Bates stamp 16.

5 I'm going to have you read it into the
6 record. Do you see -- there's a box that says,
7 "Category: Customer Communication." There's a
8 second box that says that, "Category: Customer
9 Communication."

10 A. I do.

11 Q. Do you see there's a paragraph starting
12 with [REDACTED]? Can you read that paragraph for
13 me, please?

14 A. "[REDACTED] called back and advised she
15 is the owner of the vehicle. She stated that she
16 is fine with all repairs written as is and just
17 wants the paint to match good and wants to add
18 cleaning/buffing to the headlights. I added this
19 on the estimate and sent her a copy via email
20 that what is on the estimate now is exactly what
21 we are doing unless she wants to add anything
22 else. She understood - assigned tech - repairs
23 underway."

24 Q. Thank you. According to what is
25 documented in this subpoena response, would you

1 agree that your mother agreed to the repairs as
2 stated in this subpoena response?

3 A. That's what the subpoena response says.

4 Q. Do you have photos of the damage to the
5 vehicle before it was repaired?

6 A. Do I?

7 Q. Yes.

8 A. Yes.

9 Q. You do?

10 A. Yes.

11 Q. Is there a reason those have not been
12 produced to us?

13 A. No, I don't believe so. I believe I
14 sent them in.

15 Q. We haven't received those, so if you
16 could produce those to your attorney I would
17 appreciate that, because we have not received
18 them.

19 Do you have photos of the vehicle after
20 the repairs were made?

21 A. I'm unsure.

22 Q. So how are we supposed to know based on
23 what's in the documents for the repair that the
24 repairs weren't sufficient as you've described
25 them?

1 A. I can see if I have pictures of after
2 the repairs had been made.

3 Q. But you didn't actually own the vehicle,
4 did you?

5 A. Me personally?

6 Q. Correct.

7 A. I did not.

8 Q. And you didn't pay for the repairs?

9 A. No.

10 Q. Who paid for the repairs?

11 A. There should be a billing statement on
12 here, I believe.

13 Q. The first two pages are the invoice. Do
14 you know who paid for the repairs?

15 A. Not to my knowledge, no. That's why I
16 was wondering if there was an invoice.

17 Q. So you haven't suffered any monetary
18 loss as a result of what happened to the BMW,
19 have you?

20 A. To the best of my knowledge, no.

21 Q. Do you still have the BMW?

22 A. No, I do not.

23 Q. What vehicle do you have now?

24 A. Toyota 4Runner.

25 Q. How long after getting the BMW did you

1 get the 4Runner?

2 A. I'm unsure of the timetable.

3 Q. Who bought the 4Runner?

4 A. My parents.

5 Q. Do you have an idea how long after the
6 BMW was repaired that you got the 4Runner?

7 A. I'm unsure of the timetable.

8 Q. So what damages did you have as a result
9 of what was done to the BMW?

10 A. Can you rephrase your question?

11 Q. Sure. What damages do you assert that
12 you have as a result of the damage that was done
13 to the BMW?

14 A. Physical, none; mentally, emotionally,
15 many.

16 Q. Can you explain that?

17 A. I was in a house with a man who -- not
18 going after me, went after my property, which has
19 brought me a great deal of pain mentally,
20 sleepless nights, distrust with men, distrust
21 with authority, self-doubt, issues with
22 self-worth, issues with trust, to name a few.

23 Q. You didn't see any of these things
24 happen to your vehicle, though, did you?

25 A. You mean as in watching Derek Cox go

1 after my property?

2 Q. Yes.

3 A. Specifically, no.

4 Q. And you didn't have to pay for any of
5 the repairs; is that correct?

6 A. Correct.

7 Q. What year is your 4Runner?

8 A. I believe 2018.

9 Q. So you were driving a newer vehicle
10 after the repairs to your BMW were already made
11 that you didn't watch get damaged, but you have
12 trauma because of that. Is that what I'm
13 understanding from you?

14 A. Can you repeat that?

15 Q. I'm just trying to understand how you
16 have trauma from something that you didn't
17 witness happen.

18 A. I don't believe that you need to watch
19 something happen to experience trauma from it.

20 Q. Did Mr. Cox ever threaten you
21 physically?

22 A. In terms of his words, no; his actions,
23 yes.

24 Q. How did he threaten you physically in
25 terms of his actions?

1 A. The car being one, as well as all the
2 other things I stated prior.

3 Q. Well, how does that threaten you
4 physically? I don't understand.

5 A. The actions were not to me physically,
6 but there was all the -- there was a fear that
7 what is stopping him from going after my property
8 to my body.

9 Q. Did he ever threaten to do that to you?

10 A. No.

11 Q. Did you ever have any sort of physical
12 altercation with him?

13 A. Not to my knowledge.

14 Q. Did he ever verbally abuse you?

15 A. Not to my knowledge, but it could have
16 happened.

17 Q. Did you have any emotional issues before
18 you moved in with Mr. Cox?

19 A. Such as?

20 Q. Well, the things that you're describing
21 today, lack of self-worth, self-doubt, things
22 like that. Did you experience any of that before
23 you moved in with Mr. Cox?

24 A. Not to my knowledge.

25 Q. So you didn't have any of those issues

1 as a result of your relationship with your
2 father?

3 A. Not to my knowledge.

4 Q. According to the complaint you've
5 asserted that Mr. Cox erased security footage
6 from the home security system. What evidence do
7 you have of that?

8 A. What I was made aware of by my parents.

9 Q. So you don't actually have any firsthand
10 knowledge of him doing that?

11 A. What I do recall from the situation is
12 we did have security footage in the house, a
13 security system. There was a security box at the
14 time. And the last I recall seeing the security
15 box was Mr. Cox leaving [REDACTED] with
16 it and then hearing that there -- that's really
17 the last I ever heard of it.

18 Q. What do you mean a security box?

19 A. It was like a hard drive of what was on
20 the security footage.

21 Q. And he left with it before or after the
22 damage was done to your vehicle?

23 A. After the damages were done.

24 Q. And why do you specifically recall him
25 leaving with it?

1 A. That's what I recall. I don't know why
2 I specifically recall that, but that's what I do
3 recall.

4 Q. You don't know what happened with the
5 security box?

6 A. I don't recall the details of what
7 happened after with the security box, no.

8 Q. Did you ever ask him what happened to
9 the security footage?

10 A. No. Communication with Mr. Cox was
11 minimal.

12 Q. The complaint also alleges that Mr. Cox
13 took your shoes and tossed them into the
14 waterway. Who purchased these shoes?

15 A. I'm not sure who purchased the shoes.

16 Q. What kind of shoes were they?

17 A. Adidas Ultraboost. They were gray and
18 black.

19 Q. Do you know how much they cost?

20 A. I could not give you the exact price of
21 what they cost.

22 Q. Did you ever get a new pair of Adidas?

23 A. I did.

24 Q. Who bought you the new pair of Adidas?

25 A. My mom.

1 Q. I'm sorry, did you say your mom?

2 A. Uh-huh.

3 Q. Did you witness the shoes being tossed
4 into the waterway?

5 A. I did not.

6 Q. How do you know that Mr. Cox did it?

7 A. I believe it's written in the confession
8 letter.

9 Q. Tell me what you know about that
10 confession letter.

11 A. That is a list of everything in this
12 lawsuit, signed by Mr. Cox.

13 Q. Who drafted it?

14 A. I'm not sure who drafted the letter.

15 Q. So you don't know that Mr. Cox
16 specifically wrote that letter?

17 A. Specifically, no, because I was not
18 there at the time that the letter was drafted.

19 Q. Were you present when he signed it?

20 A. I was not.

21 MS. WHITE: I do have copies of that
22 letter. Go ahead and mark that.

23 (Exhibit 2 was marked for
24 identification.)

25 BY MS. WHITE:

1 Q. What does omission mean?

2 A. I'm not sure. I don't have a dictionary
3 in front of me.

4 Q. It doesn't say Letter of Admission,
5 though, does it?

6 A. No. It says Letter of Omission.

7 Q. Whose handwriting is this? Do you know?

8 A. I believe it is Mr. Cox.

9 Q. And what's the basis of that belief?

10 A. I know it's not mine, and I do not
11 believe it to be my mother's. I'm unsure who
12 else's handwriting it would be besides me and my
13 mom and Mr. Cox.

14 Q. But you don't know specifically that it
15 is his handwriting; is that correct?

16 A. I would feel comfortable saying it is
17 Mr. Cox, but I could not say without a shadow of
18 a doubt that it is Mr. Cox.

19 Q. Fair enough. Do you know the
20 circumstances around what happened when this
21 letter was signed?

22 A. I do not know the exact details of what
23 occurred with this letter, no.

24 Q. Do you know any details about what
25 occurred?

1 A. I know my mom confronted Mr. Cox and
2 this was the outcome of the confrontation, I
3 believe.

4 Q. Was this before or after your mom and
5 Mr. Cox got divorced?

6 MR. SPIRAKIS: Off the record for a
7 moment.

8 MS. WHITE: Sure.

9 (Discussion off the record.)

10 BY MS. WHITE:

11 Q. At some point your mom requested a
12 divorce from Mr. Cox; is that correct?

13 A. I'm unsure if she has.

14 Q. At some point your mom and Mr. Cox
15 separated; is that correct?

16 A. I believe so.

17 Q. Was this Letter of Omission signed
18 before or after that request for separation was
19 made?

20 A. Do you, by chance, know when the letter
21 of separation was made?

22 Q. I don't. That's why I'm asking you
23 about it. It looks like there's a date up there
24 but it's kind of cut off so I can't tell. I
25 didn't know if you had anymore information about

1 that.

2 A. I do not.

3 Q. Well, the last line says, "I will make
4 car payments on the CLS 550." And I don't have
5 my glasses, so I'm having a little trouble
6 reading it. And the next line says, "At payoff I
7 will sign over title." Do you know what that's
8 about?

9 A. I know my mom drives a CLS 550.

10 Q. Do you know, as part of their separation
11 agreement, if there was anything regarding the
12 CLS 550?

13 A. I cannot speak on their separation. I
14 was not separating from either of the parties.

15 Q. I'm aware of that. I was just asking if
16 you knew. What damages do you still have as a
17 result of your shoes being thrown away?

18 A. The same damages I stated with regard to
19 the vehicle.

20 Q. But you didn't witness it happen?

21 A. Correct.

22 Q. And you got new shoes?

23 A. Yes.

24 Q. Did you treat with any physicians due to
25 any of your mental anguish as a result of the

1 arguments that you've alleged that Mr. Cox and
2 your mother engaged in?

3 A. I do not recall.

4 Q. The complaint also states that Mr. Cox
5 put soap on your toothbrush. What evidence do
6 you have of this happening?

7 A. I was uninformed of anything to do with
8 my toothbrush until college, when this lawsuit
9 started. I believe there is evidence of that. I
10 do not currently have it on me at the time.

11 Q. What evidence is there of that?

12 A. I believe there is video evidence of it
13 as well as on this letter.

14 Q. Tell me the circumstances, how you were
15 first made aware of the soap being put on your
16 toothbrush.

17 A. I was made aware with the start of the
18 lawsuit as my mom communicated with my attorney
19 of the details that had occurred between Mr. Cox
20 and myself.

21 Q. Did you know about the toothbrush issue
22 before or after you filed the lawsuit?

23 A. After I filed the lawsuit.

24 Q. Is that the same for what you've alleged
25 that Mr. Cox has done with the toothbrush and his

1 body, did you find out about that after you filed
2 the lawsuit?

3 A. Yes.

4 Q. And there are some videos that you are
5 not in possession of; is that correct?

6 A. At this time I'm not in possession of
7 them.

8 Q. But at some point you've been in
9 possession of them?

10 A. I've seen parts of the videos.

11 Q. And who showed you these videos?

12 A. I believe my mother.

13 Q. Do you know why your mom took those
14 videos?

15 A. I do not specifically recall.

16 Q. Has your mom ever explained to you why
17 she took those videos?

18 A. I do not believe so.

19 Q. Do you know when the videos were taken?

20 A. While I was a resident at [REDACTED]

21 [REDACTED].

22 Q. Do you know what year?

23 A. I do not.

24 Q. Do you know what room Mr. Cox was in
25 when those videos were taken?

1 A. I believe the upstairs bathroom that Mr.
2 Cox, my mother and myself all used.

3 Q. You shared a bathroom with your mom and
4 your stepfather when you lived there?

5 A. Yes.

6 Q. Did you have your own bathroom in his
7 house?

8 A. At the time the video was taken I did
9 not.

10 Q. At some point when you lived with them
11 did you have your own bathroom?

12 A. When I was moved downstairs I did.

13 Q. Why did you go from using your own
14 bathroom to the bathroom that your mother and Mr.
15 Cox shared?

16 A. It was the opposite order. I went from
17 using a bathroom with Mr. Cox and my mother to
18 then using my own bathroom.

19 Q. Let me ask this, why, at any point, were
20 you sharing a bathroom with Mr. Cox and your
21 mother?

22 A. I have always shared a bathroom with my
23 mother as well as -- the only reason that I know
24 of is that I've always shared a bathroom with my
25 mom. I guess you could say the only other

1 bathroom upstairs was with Mr. Cox's daughter,
2 [REDACTED].

3 Q. How many bathrooms are in the house?

4 A. Half baths or full baths?

5 Q. Let's talk full baths.

6 A. Three. But I'm not sure if all three
7 were functional throughout my stay at Mr. Cox's.

8 Q. What do you mean they weren't
9 functional?

10 A. The one bathroom that I did end up using
11 when I was moved from upstairs to downstairs, I'm
12 not sure if that bathroom was always working like
13 as a full bath. I'm not sure if the shower was
14 always working. I never used that bathroom for
15 more than to wash my hands before, prior to
16 moving downstairs.

17 Q. Do you have any reason to believe that
18 it wouldn't work as a full bathroom?

19 A. Not that I hadn't used it before --
20 prior to moving down there, yeah.

21 Q. So you haven't used it, but you don't
22 know that it didn't function?

23 A. Yes.

24 Q. Three full baths. How many half baths
25 were in the house?

1 A. I believe two.

2 Q. Out of five bathrooms in the house that
3 you could have kept your toothbrush, you kept
4 your toothbrush in the bathroom where Mr. Cox and
5 your mother shared a bathroom?

6 A. That statement is correct.

7 Q. Did that come up as a point of
8 contention between you and Mr. Cox?

9 A. I'm unsure what you're saying.

10 Q. Was that a stress point in your
11 relationship between you and Mr. Cox, that you
12 kept your toothbrush in the bathroom that he
13 shared with your mother?

14 A. I'm unsure if it was or was not.

15 Q. Did he ever express to you he wished
16 that you would use a different bathroom in the
17 house?

18 A. He may have, he may not. I do not
19 recall.

20 Q. Do you think maybe it was an invasion of
21 Mr. Cox's privacy to have you share a bathroom
22 with him when there were four other bathrooms in
23 the house that you could have brushed your teeth
24 in?

25 A. Could you repeat that question?

1 Q. Do you think that Mr. Cox maybe felt
2 like his privacy, and specifically his marital
3 privacy, was violated to an extent by you being
4 present in their bathroom?

5 A. I cannot speak on Mr. Cox's emotions or
6 mental state at the time.

7 Q. If you were married would you feel that
8 way?

9 A. I'm currently not married. I cannot
10 speak on how I would feel in the future.

11 Q. Fair enough. Is there a reason that you
12 had to use their bathroom?

13 A. To my knowledge, no.

14 Q. And you don't think it's odd at all that
15 you shared a bathroom with your mother when you
16 were in high school?

17 A. I personally do not.

18 Q. This toothbrush that Mr. Cox allegedly
19 put soap on and did other things on, at the time
20 that you filed this lawsuit, did you still have
21 that toothbrush?

22 A. I am unsure if I still had that
23 toothbrush in my possession.

24 Q. Is it fair to assume that you don't
25 still use that same toothbrush?

1 A. It would be fair to assume that.

2 Q. So at the time that you lived with him
3 you weren't aware of Mr. Cox doing anything to
4 your toothbrush; is that correct?

5 A. To my best knowledge, yes.

6 Q. Do you remember what color your
7 toothbrush was?

8 A. I could not recall specifically the
9 color of the toothbrush.

10 Q. Do you remember what type of toothbrush
11 it was?

12 A. I believe I used an Oral B toothbrush,
13 soft bristles. But I'm not sure that was the
14 toothbrush, like if that was the exact
15 toothbrush.

16 Q. Whenever you were using the toothbrush
17 at that time period, did you ever notice anything
18 strange about your toothbrush?

19 A. Can you repeat that question?

20 Q. Whenever you were using your toothbrush
21 when you lived with Mr. Cox, did you ever notice
22 anything that seemed off or strange about your
23 toothbrush when you were using it?

24 A. I do recall switching toothbrushes
25 because of like a numbing taste when I brushed my

1 teeth at times and using it -- getting a new
2 toothbrush earlier than when you would normally
3 get a new toothbrush.

4 Q. How often do you switch out your
5 toothbrushes?

6 A. I wouldn't say there's a timetable on
7 it. It's more of when the bristles appear to be
8 worn.

9 Q. So you got a numbing sensation?

10 A. Numbing and just an odd taste.

11 Q. Did you ever bring that to your mom or
12 Mr. Cox's attention?

13 A. I brought that to my mom's attention.

14 Q. Do you know how much time had passed
15 between the time that the video was taken and the
16 time that you were made aware that things were
17 happening to your toothbrush?

18 A. I do not.

19 Q. Do you know why your mom wouldn't have
20 told you about that?

21 A. I cannot speak on why she would or would
22 not have done something.

23 Q. But is it fair to say that at the time
24 it happened your mom had a video of it and didn't
25 disclose it to you?

1 A. Yes.

2 MS. WHITE: I have the videos here
3 today. I'm not going to introduce them into the
4 record. And, I, for the record, reserve my right
5 to have these videos excluded as evidence
6 pursuant to Rules 4243 and 611 because they are
7 embarrassing and I believe their probative value
8 does not outweigh the prejudicial effect.

9 BY MS. WHITE:

10 Q. I'm going to show you these videos. I
11 want you to show me in these videos -- you've
12 seen these, right?

13 A. I have seen parts of them. I have not
14 seen the complete videos.

15 MS. WHITE: We're going to watch them.
16 I want you to show me specifically in these
17 videos where Mr. Cox does the things that you
18 allege that you say that he's done. Give me just
19 a second. They're going to have to download.
20 Actually, do you want to take a break for a
21 minute and I can download these?

22 (A recess was taken.)

23 MS. WHITE: Mr. Kelly, I'm going to show
24 you these videos. I have on a screen protector.
25 If you want to walk around and watch with him,

1 you don't have to, whatever you want to do. But
2 I'm going to walk around with you and watch it
3 with you so you can point out to me at what point
4 Mr. Cox has done the things that you've alleged
5 that he's done. If you want to hit play on that.

6 (Video is played.)

7 BY MS. WHITE:

8 Q. That video, can you --

9 A. Can I re-watch the video so I make an
10 accurate representation?

11 MS. WHITE: Absolutely. Feel free to.

12 (Video is played.)

13 THE WITNESS: That right there is --
14 I've brushed my teeth multiple times in my life.
15 I've never once taken a toothbrush of mine or
16 someone else's and removed it to behind myself,
17 as well as then looked behind while my toothbrush
18 was not in front of me but would be behind my
19 back.

20 MS. WHITE: Play that again. Tell me
21 what you're talking about.

22 (Video is played.)

23 THE WITNESS: Right here. When the
24 video is paused, would you say that is --

25 MS. WHITE: Well, I'm the one asking

1 questions so let me ask the questions.

2 BY MS. WHITE:

3 Q. There's a toothbrush in his hand; is
4 that correct?

5 A. Yes. And then as you play the video you
6 see that the toothbrush appears to go behind Mr.
7 Cox's back.

8 Q. Do you see specifically where that
9 toothbrush goes?

10 A. Specifically, no.

11 Q. So you don't know where that toothbrush
12 went, do you?

13 A. According to the video, no. And then as
14 the video plays, the toothbrush comes back in.

15 (Video is played.)

16 Q. Well, pause that. Rewind a little bit.
17 Because when he turned, you can see that the
18 toothbrush is still in his right hand there,
19 can't you?

20 A. No, that would be toothpaste, I believe.
21 Watch. (Video is played.) That I believe to be
22 toothpaste.

23 Q. Can you tell for sure?

24 A. I can tell because I would never -- as
25 that appears to be a toothbrush that he just

1 picked up, I would never hold two toothbrushes
2 and put them together.

3 Q. Well, I'm not asking what you would do
4 with a toothbrush. I'm asking you what the video
5 shows.

6 A. What I'm telling you is that I don't see
7 -- I see that being a toothbrush.

8 Q. Can you tell specifically that it's your
9 toothbrush?

10 A. The question I'm answering is if that is
11 a toothbrush or not. That right there in his
12 right hand is toothpaste, as you can see, when he
13 continues to move. When his hand comes back,
14 there's only toothpaste in his hand is what I'm
15 answering.

16 Could I say that's my toothbrush at the
17 time? I could not because I do not currently
18 recall what color my toothbrush was at the time.
19 However, I could recall where my placement of my
20 toothbrush was at the time.

21 Q. From watching this video you don't know
22 specifically that that's your toothbrush,
23 correct?

24 A. That's a fair statement.

25 Q. And you don't know specifically what he

1 does with the toothbrush when he turns; is that
2 correct?

3 A. I only can see that the toothbrush is in
4 his hand and then goes behind his back.

5 Q. And you can't tell specifically what's
6 done with the toothbrush, can you?

7 A. I cannot specifically from this video.

8 Q. Do you want to watch it some more or are
9 you good with that individual?

10 A. I'll watch it one more time. (Video is
11 played.) That appears to be -- right there is
12 the original toothbrush in his hand. The
13 toothbrush disappears, and then it eventually --
14 back into frame, same toothbrush.

15 Q. But you don't know where the toothbrush
16 goes when it disappears, do you?

17 A. I cannot clearly say from this video.

18 MS. WHITE: I'm going to show you -- you
19 can click out of this. The second one should be
20 up. Exit out of that video. There's that video.
21 You can make that one larger. We'll watch this
22 one.

23 (Video is played.)

24 BY MS. WHITE:

25 Q. Does that show Mr. Cox doing anything

1 inappropriate with a toothbrush in that video?

2 A. Can I re-watch it to make sure?

3 Q. Feel free.

4 (Video is played.)

5 A. That right there is another toothbrush
6 and that right there is, as you continue to watch
7 the video, Mr. Cox's toothbrush, as that is the
8 toothbrush he puts in his mouth. Where -- what I
9 can see is that a toothbrush was picked up and
10 was clearly rubbed on something on the counter,
11 which from using that bathroom is usually where
12 the soap was placed in the bathroom.

13 Q. But you can't tell specifically from
14 that video that there's soap that he's putting on
15 that toothbrush?

16 A. I cannot specifically see a bar of soap.

17 Q. Can you tell specifically that it's your
18 toothbrush that he's holding?

19 A. My name is not on it, no. However, the
20 placement of the toothbrush, where it is put back
21 is in the location of where my toothbrush was on
22 that side of the sink.

23 Q. Do you need to watch the video again?

24 A. I do not.

25 Q. Can you explain to me from watching

1 those two videos -- were those the only two
2 videos that you've seen that your mother had
3 related to the incidents with your toothbrush?

4 A. I believe so. I'm not positive.

5 Q. Can you explain to me what part of
6 either of these videos has caused you the
7 emotional trauma that you're alleging?

8 A. Can you repeat that question?

9 Q. Sure. Can you explain to me what part
10 of either of those videos has caused you the
11 emotional trauma that you're alleging?

12 A. The videos show suspicious actions that
13 have occurred with a toothbrush that is clearly
14 not Mr. Cox's. And, specifically, the videos
15 show that his actions were to -- of someone in
16 that bathroom, which are either myself or my
17 mother's.

18 And during my experience, noticing that
19 there was numbness and distaste of my toothbrush,
20 as well as speaking on this letter that clearly
21 states, "I wiped my butt with Jack's toothbrush.
22 I put soap on Jack's toothbrush." Those
23 statements, along with that video, have caused me
24 a lot of mental struggles of why someone would do
25 those actions.

1 Q. But you don't know specifically that it
2 was your toothbrush that Mr. Cox did anything to
3 from those videos, do you?

4 A. The video alone does not show that.
5 However, I would not personally make a judgment
6 off of one thing without all of the -- without
7 looking at everything.

8 Q. But my question is, specifically when
9 you watch the videos, you can't tell that they're
10 toothbrushes, can you?

11 A. I can tell you that they're not Mr.
12 Cox's toothbrush.

13 Q. How do you know that they're not his
14 toothbrush?

15 A. Because the toothbrush that is used to
16 scrub against what I believe to be soap is not
17 the one that is placed inside Mr. Cox's mouth.

18 Q. Well, how do you know that he didn't use
19 the toothbrush for something else, like maybe his
20 eyebrows or for cleaning the grout in the
21 bathroom or for anything else that people might
22 use a toothbrush for?

23 A. I cannot speak on that.

24 Q. I'm going to talk about some of the
25 things that you specifically alleged in this

1 lawsuit. Your first cause of action is
2 intentional infliction of emotional distress.

3 What evidence do you have that you've
4 suffered emotional distress?

5 A. How I feel.

6 Q. Have you treated with any physicians for
7 your emotional distress?

8 A. I do not believe so.

9 Q. Do you take any medication as a result
10 of your emotional distress?

11 A. I do not believe so.

12 Q. You're currently in college. How is
13 your GPA right now in college?

14 A. It's good, not as great as I would like.

15 Q. What is your GPA? Do you know it?

16 A. Currently it is a 3.7.

17 Q. It's a pretty good GPA. Do you know
18 what your rank is in college?

19 A. Ranks are not disclosed by the college.

20 Q. You've alleged that you have suffered
21 great pain of the mind and body. What evidence
22 do you have of that?

23 A. How I feel. Mental -- the things I
24 stated before, distrust of men, distrust of
25 authority, problems with men and authority,

1 self-doubt, issues with self-esteem, sleepless
2 nights, to name a few.

3 Q. How has your distrust of authority
4 manifested itself?

5 A. I'm not sure what you're trying to ask.

6 Q. Well, if you have issues with authority,
7 have you had any problems complying with
8 authority since these events?

9 A. Yes.

10 Q. How so?

11 A. Issues with teachers.

12 Q. Can you give me an example of an issue
13 you've had with a teacher?

14 A. My senior year I was required to take a
15 government class I believe it was called. And
16 one of the teachers did not -- and me did not
17 very much get along as there was much of a
18 distrust as was -- as the class was taught as the
19 students were child-like and it caused issues
20 with me and him. There was issues in the
21 classroom with me not wanting to participate,
22 listen.

23 Q. Explain that again. What are you
24 talking about being child-like?

25 A. Like the teacher was -- it was a senior

1 -- class of seniors needing to get a credit to
2 graduate. And it was taught very much like a
3 fifth grade classroom.

4 Q. By the teacher?

5 A. Uh-huh.

6 Q. And how did what happened with Mr. Cox
7 affect your relationship with that teacher?

8 A. He's a man, automatically create a
9 distrust there. Can you repeat the question?

10 Q. My question was, how did the situation
11 with Mr. Cox affect your relationship with that
12 teacher?

13 A. I mean, with what happened with myself
14 and Mr. Cox caused issues with male figures and
15 male authority figures, as there was a distrust
16 to what has happened. And at the end of the day,
17 it caused an issue with all authority, because at
18 the end of the day I did not trust authority.

19 As Mr. Cox being my stepfather while I
20 was -- partially while I was a resident,
21 inflicted what cannot -- truly be seen as
22 emotional and mental damages to myself.

23 Q. At the time that you had this teacher,
24 what actions of Mr. Cox were you aware of?

25 A. I was aware of the shoes. I was aware

1 of the car. I was not aware of the toothbrush.
2 The toothbrush -- I was not made aware of the
3 toothbrush until, like I said, until the lawsuit
4 began. And that was -- I was informed of that my
5 freshman year of college.

6 I believe those were all of the actions
7 that I was aware of of Mr. Cox at the time.
8 However, I could have been -- that is what I'm
9 confident that I was aware of at the time was of
10 the shoes and car.

11 Q. After living with Mr. Cox you lived with
12 your dad for some time, right?

13 A. Yes.

14 Q. Do you have any issues with your dad?

15 A. Me and my dad don't have a great
16 relationship.

17 Q. Do you have issues with him as being a
18 male figure in your life?

19 A. I have issues with all male figures in
20 my life, yes.

21 Q. Can you give me other examples of that?

22 A. Teachers, like I said before.

23 Q. You gave me one example of one teacher.
24 Are there other examples or is that the only one?

25 A. There's other examples. I just can't

1 recall them at the time.

2 Q. You've also alleged that you have
3 physical manifestations of emotional distress.
4 What are those physical manifestations?

5 A. Can you simplify that? I'm not clear
6 what that means.

7 Q. Sure. In your complaint that you filed
8 you've alleged that your emotional distress
9 manifests itself physically. I'm asking for
10 examples of what those physical manifestations
11 are.

12 A. Sleepless nights. There's a lot of
13 nights when I was made aware of some of the stuff
14 that was going on, specifically during the car,
15 there was a lot of sleepless nights throughout
16 high school. A lot of nights I did go to sleep
17 crying myself to sleep. A lot of hiding my true
18 emotions as I didn't really understand why or how
19 -- why this was occurring. I didn't -- I didn't
20 get it. It didn't make sense to me as I've never
21 once felt that I provoked any of these actions
22 against myself.

23 Q. Was your mother aware that you were not
24 sleeping and that you were crying yourself to
25 sleep?

1 A. I cannot -- I'm not sure if she was
2 aware. I know -- I don't believe she was aware.

3 Q. You identified earlier [REDACTED] as
4 someone that you have talked to about your issues
5 as a result of your relationship with Mr. Cox; is
6 that correct?

7 A. Yes.

8 Q. How many times do you think you've
9 spoken to [REDACTED]?

10 A. I would say maybe two or three times.

11 Q. And is [REDACTED] a woman or a man?

12 A. [REDACTED] is a woman.

13 Q. Has [REDACTED] recommended any treatment
14 for you?

15 A. Not to my knowledge.

16 Q. What about [REDACTED], how many
17 times do you think you've spoken to [REDACTED]
18 [REDACTED]?

19 A. I believe three or four times.

20 Q. Has [REDACTED] recommended any
21 treatment for you?

22 A. What do you mean by "treatment?"

23 Q. Well, if you've spoken to them about
24 what's going on, have they recommended any
25 medication, any sort of psychotherapy, journaling

1 or anything like that?

2 A. No.

3 Q. Do you keep a journal?

4 A. I do not.

5 Q. [REDACTED], is that how you pronounce
6 it?

7 A. I believe so.

8 Q. How many times have you spoken to [REDACTED]
9 [REDACTED]?

10 A. I would say about 10 times. She's who I
11 currently have spoken with at Wofford.

12 Q. Has [REDACTED] recommended any treatment
13 for you?

14 A. Yes. She asked me to do different
15 exercises and stuff. She asked me to recall back
16 to times with what has happened with myself and
17 Mr. Cox, as well as different activities to try
18 to work on coping. Something that I've really
19 focused on with my time with her.

20 Q. What kind of exercises does she
21 recommend?

22 A. I know one of the things we did was try
23 to figure out what made me actually happy. And
24 just trying to find like just a general happiness
25 in life. That was one of the main things we

1 worked on, just trying to find things that make
2 you happy.

3 Q. Have you found anything that makes you
4 happy?

5 A. One of the big things I do for coping is
6 I fish.

7 Q. When is the last time, obviously other
8 than today, that you saw Mr. Cox?

9 A. In person?

10 Q. Yes.

11 A. I believe before I left for school.
12 I've seen his car before while being in Myrtle
13 Beach. But I don't think I've seen Mr. Cox in
14 person.

15 Q. When is the last time you spoke to him?

16 A. I believe before I left for school. I
17 don't believe I've spoken to Mr. Cox.

18 Q. Did he ever apologize to you for
19 anything that happened?

20 A. Best of my knowledge, I don't believe
21 so.

22 Q. Are you aware that he requested to have
23 a conversation with you so that he could
24 apologize? There's a recording that your mother
25 took of a conversation that they had. Have you

1 listened to that recording?

2 A. I do not believe I have.

3 Q. Are you aware that he requested to have
4 a conversation with you so that he could talk to
5 you about these things and apologize to you?

6 A. I'm not aware of that.

7 Q. And if he did in fact want to have a
8 conversation to apologize with you, would you
9 have -- would you have had that conversation with
10 him before you filed this lawsuit?

11 A. Can you repeat that question?

12 Q. Sure. Before you filed this lawsuit, if
13 Mr. Cox asked to sit down with you and talk about
14 these things and apologize to you about these
15 things, would you have entertained that
16 conversation?

17 A. I'm unsure if I would have at the time.

18 Q. Would it make you feel differently about
19 the situation if he had come to you and talked to
20 you and apologized to you?

21 A. I don't believe so.

22 Q. Is that a part of your emotional
23 distress stemming from this is that he never
24 apologized to you?

25 A. I think it's a small portion of it, yes.

1 But I think at the end of the day it's the
2 actions itself.

3 Q. What is the business of Cox Millwork, to
4 your understanding?

5 A. It's a woodworking company.

6 Q. And did Mr. Cox ever do any work at
7 home?

8 A. Yes.

9 Q. What type of work did he do at home?

10 A. There were plans at home most of the
11 time on the island. I believe Mr. Cox answered
12 phone calls regarding work at home. To the best
13 of my knowledge, I believe that's all I can
14 recall. There easily could be more examples.

15 Q. What evidence do you have that Mr. Cox
16 did any of the things that you are alleging in
17 his capacity as an officer or agent or owner of
18 Cox Millwork?

19 A. Can you repeat your question, please?

20 Q. Sure. What evidence do you have that
21 Mr. Cox did anything that you're alleging in your
22 complaint in his capacity as an officer, agent or
23 owner of Cox Millwork?

24 A. Being an owner of Cox Millwork, I
25 believe him to be always on -- a part of the

1 corporation, the company, as well as doing work
2 at home. And the actions inside that house can
3 be connected, if you would like.

4 Q. Is Mr. Cox working when he's brushing
5 his teeth?

6 A. I'm not aware if he is or not. I do not
7 know Mr. Cox's work schedule specifically.

8 Q. Would you agree with me that although a
9 person might own a business, that everything that
10 they do isn't in their capacity as an owner of
11 that business?

12 A. Can you repeat that question?

13 Q. Sure. Would you agree with me that if a
14 person owns a business, that everything that they
15 do is not in their capacity as an owner of that
16 business?

17 A. What do you mean by in capacity?

18 Q. Well, are they doing it on behalf of
19 that business? When Mr. Cox is brushing his
20 teeth, is he brushing his teeth on behalf of Cox
21 Millwork?

22 A. I believe as an owner of the business
23 your actions are connected to the business. If
24 that can help answer your question.

25 Q. Are a person's actions always connected

1 to their business if they own a business?

2 A. I would say so.

3 Q. And what's the basis of your belief for
4 that?

5 A. If someone were to own a business and
6 break the law, say a DUI, would that not reflect
7 poorly on the business as an owner of the
8 business?

9 Q. Well, reflecting poorly and doing
10 something in your capacity as an owner of the
11 business are different, but I'll move on from the
12 question.

13 Why did you sue Cox Millwork?

14 A. Cox Millwork is connected to the
15 lawsuit.

16 Q. How are they connected to the lawsuit?

17 A. If I'm doing schoolwork at school, I'm a
18 student. If I'm doing schoolwork at home, I'm
19 still technically a student. It applies the same
20 with Cox Millwork. With Mr. Cox, he did work and
21 he's the owner of that business. When he comes
22 home and is still doing work he is still the
23 owner and still doing work for that business.

24 Q. And is he doing work for the business
25 when he's brushing his teeth?

1 A. He's in preparation for his day for that
2 work.

3 Q. What's your understanding of what
4 Waterside Drive Boat Ramp, LLC does?

5 A. I know it's an owner -- it's an LLC for
6 the boat ramp.

7 Q. Does it do business?

8 A. I'm unaware if it does or does not do
9 business.

10 Q. What evidence do you have that Mr. Cox
11 did anything as an owner, agent or officer of the
12 boat ramp?

13 A. I have no specific evidence.

14 Q. What evidence do you have that Mr. Cox
15 did anything you're alleging in his capacity as
16 an owner, officer, agent of Cox Properties?

17 A. I'm not sure.

18 Q. You've also alleged that Mr. Cox
19 violated South Carolina Code 44-29-145. What
20 evidence do you have that my client has HIV or
21 any other sexually transmitted disease?

22 A. I do not have evidence.

23 Q. Have you had an STD test?

24 A. I have not.

25 Q. Have you ever had an STD test?

1 A. I have not.

2 Q. Have you ever been sexually active?

3 A. Yes.

4 Q. But you haven't had an STD test?

5 A. Correct.

6 Q. So it's my understanding that you have
7 no evidence that Mr. Cox has transmitted HIV or
8 any other sexually transmitted disease to you; is
9 that correct?

10 A. Correct.

11 Q. You've also alleged that Mr. Cox
12 violated South Carolina Code 20-7-49. What
13 evidence do you have that you have an injury by
14 way of intellectual or psychological capacity?

15 A. The mental trauma. And that I think
16 goes along with the intellectual damages that
17 mentally has harmed me as well as
18 psychologically, the self-doubt and sleepless
19 nights, and how that has affected me.

20 Q. Are you aware that the statute states
21 that the existence of the impairment must be
22 supported by the opinion of a mental health
23 professional or medical professional?

24 A. I'm not aware of what the full statute
25 states.

1 Q. Have you seen a mental health
2 professional or a medical professional?

3 A. I've spoken to multiple therapists.

4 Q. But you don't have any sort of diagnosis
5 as it relates to any sort of mental impairment;
6 is that correct?

7 A. They have not made me aware of any
8 diagnosis or impairment.

9 Q. The only physician that we've been made
10 aware of is a pediatrician that you saw while you
11 were living in Myrtle Beach. Are there any other
12 physicians that you've seen since you've lived
13 with Mr. Cox?

14 A. To my knowledge, no.

15 Q. Who taught you to drive?

16 A. Primarily my dad. Yes, primarily my
17 dad.

18 Q. Did Mr. Cox ever teach you to drive?

19 A. I have driven with Mr. Cox once, to the
20 best of my knowledge.

21 Q. Did he ride you around and teach you how
22 to drive one time?

23 A. I think that's an overexaggeration. We
24 drove from the mall to [REDACTED].

25 Q. I'm going to go through a list of

1 witnesses that you have responded with in your
2 interrogatories. Who is [REDACTED]? Is
3 that how you pronounce that?

4 A. Yes.

5 Q. Who is [REDACTED]?

6 A. She is a friend of mine that I was
7 dating at the time.

8 Q. Do you have a phone number for [REDACTED]
9 [REDACTED]?

10 A. I do. I don't personally have it
11 memorized.

12 Q. Do you have your phone with you?

13 A. I do but it is off.

14 Q. Can you turn your phone on and get her
15 contact information for me?

16 A. I can. I have the phone number.

17 Q. Okay.

18 A. [REDACTED].

19 Q. What have you spoken to [REDACTED]
20 about as it relates to this case?

21 A. The mental struggles that I have had,
22 the pain that I've suffered as a result of Mr.
23 Cox's actions.

24 Q. Y'all are no longer dating?

25 A. It's complicated.

1 Q. Isn't it always? When did it become
2 complicated?

3 A. Junior -- this current year, fall.

4 Q. Who is [REDACTED]?

5 A. That's my best friend from back home.

6 Q. Do you have -- is [REDACTED] a man?

7 A. Yes.

8 Q. Do you have [REDACTED] contact
9 information?

10 A. Yes. [REDACTED].

11 Q. When is the last time you talked to [REDACTED]
12 [REDACTED] about this case?

13 A. I actually saw him last night. He was
14 aware that I was coming in today for a
15 deposition.

16 Q. And [REDACTED] is [REDACTED]
17 [REDACTED] father?

18 A. Correct.

19 Q. And you have problems with male figures,
20 but you felt comfortable telling him about what
21 was going on in this case?

22 A. He was aware through [REDACTED] as well as
23 through the church. And I believe I talked to
24 him slightly about what has happened.

25 Q. Do you have contact info for him or

1 would I get that through [REDACTED]?

2 A. I could see if I have his contact
3 information. I'm not sure if it's up-to-date or
4 not but I believe it is. I believe it's
5 [REDACTED].

6 Q. [REDACTED].

7 A. Yes.

8 Q. Ex-girlfriend?

9 A. Yes.

10 Q. Do you have contact info for her?

11 A. I do. [REDACTED].

12 Q. And [REDACTED], do you have contact
13 info for [REDACTED]?

14 A. I do not. I can double-check just to
15 make sure.

16 Q. That's okay. [REDACTED], who is [REDACTED]
17 [REDACTED]?

18 A. [REDACTED] of Wellspring Church where I go
19 to church.

20 Q. And do you have contact info for [REDACTED]
21 [REDACTED]?

22 A. I do not.

23 Q. How often did you speak to [REDACTED]
24 about what was going on?

25 A. I spoke to him, I believe, around two or

1 three times.

2 Q. Who is [REDACTED]?

3 A. He was my youth group leader.

4 Q. Do you have contact info for him?

5 A. I believe so. I have two numbers for

6 [REDACTED]. Would you like both?

7 Q. Please.

8 A. I'm not sure which one is the right
9 number. [REDACTED].

10 Q. Okay.

11 A. And then [REDACTED].

12 Q. [REDACTED].

13 A. Yes.

14 Q. Who is he?

15 A. He's my youth pastor. I worked with him
16 specifically on preparing a message that I gave
17 about what had happened with me and Mr. Cox to
18 our youth ministry.

19 Q. You gave a message to your youth
20 ministry about what's going on with Mr. Cox?

21 A. Not in full detail but, yes.

22 Q. Tell me a little bit more about that.

23 A. It was regarding a series just on trying
24 to move forward. And at the time I was going
25 through what happened with Mr. Cox. I don't

1 recall specifically what I did know at the time,
2 but I knew incidents had occurred it.

3 It was tough. A lot of what was given
4 in the message was incomplete. [REDACTED] and myself
5 did not feel it was -- were not comfortable with
6 sharing much detail.

7 I talked about in the message the
8 importance of trying to find peace in every
9 situation and was honest with them, the ministry,
10 that peace is not something that once -- that you
11 can immediately have, and that it is something
12 you fight for every day. That's just what I've
13 experienced with Mr. Cox. I have better days,
14 and I have worse days still to this day.

15 I discussed some of the struggles that
16 I've had with not being able to sleep,
17 self-doubt, stuff like that, things that I
18 mentioned in there.

19 Usually the student messages were given
20 just by the student on stage talking to the
21 ministry. Myself and [REDACTED] didn't feel
22 that that was something that I should do. That I
23 was still passionate enough to try to use my
24 testimony to help others. And he was on stage
25 with me. And my message was more as a Q&A rather

1 than an individual message. It was very
2 difficult to prepare for, as well as to give. I
3 did breakdown crying on stage.

4 Q. What did you do to prepare for that Q&A
5 session?

6 Do you need to take a break?

7 (A recess was taken.)

8 MS. WHITE: Mr. Kelly is not able to
9 continue with his deposition today. Therefore, I
10 are reserving the right to keep his deposition
11 open and we will reconvene and re-notice for a
12 future date.

13 MR. SPIRAKIS: I am in complete
14 agreement with that. He's not able to
15 emotionally continue today.

16 (The deposition was adjourned at
17 1:08 p.m.)

18

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1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF HORRY

4 I, Eileen Madden, Registered
5 Professional Reporter and Notary Public for the
6 State of South Carolina at Large, do hereby
7 certify that the witness in the foregoing
8 deposition was by me duly sworn to testify to the
9 truth, the whole truth and nothing but the truth
10 in the within-entitled cause; that said
11 deposition was taken at the time and location
12 therein stated; that the testimony of the witness
13 and all objections made at the time of the
14 examination were recorded stenographically by me
15 and were thereafter transcribed by computer-aided
16 transcription; that the foregoing is a full,
17 complete and true record of the testimony of the
18 witness and of all objections made at the time of
19 the examination; and that the witness was given
20 an opportunity to read and correct said
21 deposition and to subscribe the same.

22 Should the signature of the witness not
23 be affixed to the deposition, the witness shall
24 not have availed himself/herself of the
25 opportunity to sign or the signature has been
waived.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal on November 29, 2021, at
Myrtle Beach, Horry County, South Carolina.

Eileen Madden
NCRA REGISTERED PROFESSIONAL
REPORTER, RPR
Notary Public,
State of South Carolina at Large
My Commission expires:
July 30, 2029

ROSS & CRISTALDI_{LLC}
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April 9, 2021

Via Certified Mail - Return Receipt Requested

Beach Ford Lincoln
851 Jason Blvd.
Myrtle Beach, SC 29577

Re: Kelly v. Roger D. Cox, et al.
Case No.: 2020-CP-26-06286

Dear Sir or Madam:

This firm represents Roger D. Cox and Cox Millwork & Supply Inc. in the above-referenced matter. Enclosed for service upon you is a subpoena for you to produce all records of whatever kind, electronic, paper or otherwise in your possession related to a 2005 BMW X5 brought in for repairs by Jack Kelly, Dawn Sarte, or Brian Kelly.

Please provide a copy of these documents to my office via U.S. mail or other means by April 30, 2021. If the charges for copying the requested documents will exceed \$100.00, please contact my office prior to reproduction.

Thank you for your attention to this matter. Should you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

ROSS & CRISTALDI, LLC

Kirkley G. White

KGW/tc

Enclosures

cc: All counsel of record (*via email only, with enclosures*)

164154

ERIK

133191

MZE6

10/18/17

CELL: [REDACTED]

FOCB527424

DEREK COX

100,000 /

MYRTLE BEACH, SC 29577

05/BMW SAV/X5-SERIES/4DR SAV

5 U X F A 1 3 5 1 5 L Y 2 1 7 3 2

10/04/17

MO: 100000

JOB# 1 CHARGES-----

LABOR-----				
J# 1 12FOZ	BODY	TECH(S):153413		1284.80
SUBLET-----PO#-----VEND INV#-INV.DATE-DESCRIPTION-----				
197158	335140	10/13/17	MOULDING	67.59
197158	335140	10/13/17	EMBLEM	34.10
197158	335140	10/13/17	EMBLEM	34.10
TOTAL - SUBLET				135.79

JOB# 1 TOTALS-----		
	LABOR	1284.80
	SUBLET	135.79

JOB# 2 CHARGES----- JOB# 1 JOURNAL PREFIX FOCB JOB# 1 TOTAL 1420.59

LABOR-----			
J# 2 12FOZ*4	PAINT/REFINISH	TECH(S):152142 88316	633.60
	REFINISH		
	REFINISH COMPLETED		

MISC-----CODE-----DESCRIPTION-----CONTROL NO-----		
	MAT	BODY SHOP MATERIALS
TOTAL - MISC		519.27
		519.27

JOB# 2 TOTALS-----		
	LABOR	633.60
	MISC	519.27
JOB# 2 JOURNAL PREFIX FOCB JOB# 2 TOTAL		1152.87

ESTIMATE-----
 CUSTOMER HEREBY ACKNOWLEDGES RECEIVING
 ORIGINAL ESTIMATE OF \$0.00 (+TAX)
 COMMENTS-----
 CUSTOMER PAY
 SEE ESTIMATE - DAMAGE PER CUSTOMER

164154

CELL: [REDACTED]

133191

MZE6

10/18/17

FOCB527424

DEREK COX

100,000 /

MYRTLE BEACH, SC 29577

05/BMW SAV/X5-SERIES/4DR SAV

5 U X F A 1 3 5 1 5 L Y 2 1 7 3 2

10/04/17

MO: 100000

TOTALS-----

 * NEXT RECOMMENDED SERVICE: *
 * 10/04/2017 / 100000 MI 03FOZTRANSER PREMIUM TRANS SER *

CASH[] CHECK[] CHARGE[] CREDIT CARD[]

TOTAL LABOR....	1918.40
TOTAL PARTS....	0.00
TOTAL SUBLET...	135.79
TOTAL G.O.G....	0.00
TOTAL MISC CHG.	519.27
TOTAL MISC DISC	0.00
TOTAL TAX.....	10.86

TOTAL INVOICE \$ 2584.32

THANK YOU FOR CHOOSING BEACH AUTOMOTIVE GROUP
 ALL NEW FORD/LINCOLN PARTS & LABOR: WARRANTY 24 MONTHS
 WITH UNLIMITED MILEAGE. MAZDA WARRANTY PARTS & LABOR
 12 MONTHS OR 12,000 MILES, WHICHEVER COMES FIRST. ALL USED
 PARTS WARRANTY IS 30 DAYS OR 3,000 MILES, WHICHEVER COMES
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 WITH QUESTIONS CONCERNING OUR BODY SHOP.

CUSTOMER SIGNATURE

DUPLICATE INVOICE

CAROLINAS COLLISION CENTERS AT BEACH FORD

Workfile ID: 4a8e8703
PartsShare: 4Kybhf
Federal ID: 56-1898951

For repair status updates online visit
www.myrepairsupdate.com use your telephone
number to access your claim status
851 Jason Blvd., P.O. Box 3609, MYRTLE BEACH,
SC 29578
Phone: (843) 839-8133
FAX: (843) 946-7221

Preliminary Supplement 2 with Summary

RO Number: 527424

Written By: [REDACTED]

Insured: COX, DEREK
Type of Loss:
Point of Impact: 02 Right Front Pillar (Right Side)

Policy #:
Date of Loss:

Claim #:
Days to Repair: 9

Owner:
COX, DEREK

344 WATERSIDE DR
MYRTLE BEACH, SC 29577
(843) 458-2353 Cell

Inspection Location:
CAROLINAS COLLISION CENTERS AT
BEACH FORD
851 Jason Blvd.
P.O. Box 3609
MYRTLE BEACH, SC 29578
Repair Facility
(843) 839-8133 Business

Insurance Company:
CUSTOMER PAY

VEHICLE

2005 BMW X5 AWD 4D UTV 6-3.0L Gasoline EFI WHITE

VIN: 5UXFA13515LY21732	Interior Color: GRAY	Mileage In: 100,000	Vehicle Out: 10/18/2017
License: MZE668	Exterior Color: WHITE	Mileage Out:	
State: SC	Production Date: 8/2005	Condition: Good	Job #: CS

TRANSMISSION

Overdrive
6 Speed Transmission
4 Wheel Drive

POWER

Power Steering
Power Brakes
Power Windows
Power Locks
Power Mirrors
Heated Mirrors
Power Driver Seat
Power Passenger Seat

Dual Mirrors

Console/Storage
Wood Interior Trim

CONVENIENCE

Air Conditioning
Intermittent Wipers
Tilt Wheel
Cruise Control
Rear Defogger
Keyless Entry
Alarm
Message Center
Steering Wheel Touch Controls

Home Link

RADIO

AM Radio
FM Radio
Stereo
Search/Seek
CD Player

SAFETY

Drivers Side Air Bag
Passenger Air Bag
Anti-Lock Brakes (4)
4 Wheel Disc Brakes
Traction Control

Head/Curtain Air Bags

ROOF

Luggage/Roof Rack

SEATS

Bucket Seats
Leather Seats

WHEELS

Aluminum/Alloy Wheels

PAINT

Clear Coat Paint

OTHER

Fog Lamps

TRUCK

Get live updates at www.carwise.com/e/3hVJBa

Preliminary Supplement 2 with Summary

RO Number: 527424

2005 BMW X5 AWD 4D UTV 6-3.0L Gasoline EFI WHITE

Memory Package
DECORRear Window Wiper
Telescopic WheelStability Control
Front Side Impact Air Bags

Power Trunk/Liftgate

Preliminary Supplement 2 with Summary

RO Number: 527424

2005 BMW X5 AWD 4D UTV 6-3.0L Gasoline EFI WHITE

Line	Oper	Description	Part Number	Qty	Extended Price \$	Labor	Paint
1		FRONT BUMPER					
2	*	R&I Partial R&I bumper assy- Drop Cover to Paint Fender				0.5	
3		FRONT LAMPS					
4		R&I RT Signal lamp w/yellow bulb				0.3	
5		R&I LT Signal lamp w/yellow bulb				0.3	
6	*	S02 Rpr RT Headlamp assy w/yellow turn signal - clean and buff				1.0	
7	*	S02 Rpr LT Headlamp assy w/yellow turn signal - clean and buff				1.0	
		Note: customer stating she will go with cleaning lights first to see how it comes out					
8		HOOD & GRILLE					
9	*	Rpr Hood				2.5	3.0
10		R&I Emblem				0.2	
11		R&I RT Grille w/o titan				0.3	
12		R&I LT Grille w/o titan				0.3	
13		FENDER					
14	*	Rpr RT Fender assy				3.0	2.0
15		Overlap Major Adj. Panel					-0.4
16		Blnd LT Fender assy					1.0
17		Repl RT Nameplate 3.0l	51147008539	1	34.10	0.3	
18		Repl LT Nameplate 3.0l	51147008538	1	34.10	0.3	
19		FRONT DOOR					
20	*	Rpr RT Door shell				4.0	2.1
21		Overlap Major Adj. Panel					-0.4
22	S02	Repl RT Body side mldg	51138402650	1	67.59	0.3	
23		R&I RT Belt w/strip matte black				0.3	
24		R&I RT Mirror base w/o heated w/o power folding w/o auto dim				1.0	
25		R&I RT Handle, outside primed				0.4	
26		R&I RT R&I trim panel				0.8	
27		REAR DOOR					
28	*	Rpr RT Door shell				4.0	2.0
29		Overlap Major Adj. Panel					-0.4
30		R&I RT Belt w/strip matte black				0.3	
31	*	R&I RT Body side mldg				0.3	
32		R&I RT Handle, outside primed				0.4	
33		R&I RT R&I trim panel				0.8	
34		QUARTER PANEL					
35	*	Rpr RT Quarter panel				2.0	2.6
36		Overlap Major Adj. Panel					-0.4
37		Clear Coat					2.5

Preliminary Supplement 2 with Summary

RO Number: 527424

2005 BMW X5 AWD 4D UTV 6-3.0L Gasoline EFI WHITE

38	#	Refn	Clear Undamaged Roof Rail - No Break In Qtr				0.6
39		R&I	Fuel door			0.5	
40		Blnd	Fuel door				0.2
41	#	R&I	Drip Molding Roof - RT side			0.2	
42		R&I	RT Wheel flare w/running board			0.5	
43		R&I	RT Quarter glass BMW standard			2.4	
44	*	R&I	RT Upper molding matte black			Incl.	
45		R&I	RT Lower molding matte black			Incl.	
46	REAR LAMPS						
47		R&I	RT Tail lamp assy w/white signal			0.5	
48	REAR BUMPER						
49	*	R&I	Partial R&I - Drop Cover to paint Qtr			0.5	
50	#	S02	Subl	HAZARDOUS WASTE DISPOSAL	1	2.00	
51	#	S02	Subl	COVER CAR	1	2.00	
52	#	S02	Subl	CORROSION PROTECTION	1	4.43	
SUBTOTALS					144.22	29.2	14.4

NOTES

Prior Damage Notes:
NORMAL WEAR

ESTIMATE TOTALS

Category	Rate	Cost \$
Parts		144.22
Body Labor	29.2 hrs @ \$ 45.00 /hr	1,314.00
Paint Labor	14.4 hrs @ \$ 45.00 /hr	648.00
Paint Supplies	14.4 hrs @ \$ 30.00 /hr	432.00
Subtotal		2,538.22
Sales Tax	\$ 576.22 @ 8.0000 %	46.10
Grand Total		2,584.32

Preliminary Supplement 2 with Summary

RO Number: 527424

2005 BMW X5 AWD 4D UTV 6-3.0L Gasoline EFI WHITE

SUPPLEMENT SUMMARY

Line	Oper	Description	Part Number	Qty	Extended Price \$	Labor	Paint
Changed Items							
47	#	Subl HAZARDOUS WASTE DISPOSAL		1	-3.00		
50	#	S02 Subl HAZARDOUS WASTE DISPOSAL		1	2.00		
48	#	COVER CAR		1	-5.00		
51	#	S02 COVER CAR		1	2.00		
49	#	Subl CORROSION PROTECTION		1	-7.00		
52	#	S02 Subl CORROSION PROTECTION		1	4.43		
Deleted Items							
21	*	R&I RT Body side mldg				-0.3	
Added Items							
6	*	S02 Rpr RT Headlamp assy w/yellow turn signal - clean and buff				1.0	
NOTE: customer stating she will go with cleaning lights first to see how it comes out							
7	*	S02 Rpr LT Headlamp assy w/yellow turn signal - clean and buff				1.0	
NOTE: customer stating she will go with cleaning lights first to see how it comes out							
22		S02 Repl RT Body side mldg	51138402650	1	67.59	0.3	
SUBTOTALS					61.02	2.0	0.0

RATE CHANGES

Body Labor	(Est)	27.2 hrs	@	\$ -3.00 /hr	(48.00	to	45.00)	=	-81.60
Paint Labor	(Est)	14.4 hrs	@	\$ -3.00 /hr	(48.00	to	45.00)	=	-43.20
Paint Supplies	(Est)	14.4 hrs	@	\$ -2.00 /hr	(32.00	to	30.00)	=	-28.80

TOTALS SUMMARY

Category	Basis	Rate	Cost \$
Parts			61.02
Body Labor	2.0 hrs @	\$ 45.00 /hr	90.00
Additional Supplement Labor			-124.80
Additional Supplement Materials/Supplies			-28.80
Subtotal			-2.58
Sales Tax	\$ 32.22 @	8.0000 %	2.58

Preliminary Supplement 2 with Summary**RO Number: 527424**

2005 BMW X5 AWD 4D UTV 6-3.0L Gasoline EFI WHITE

CUMULATIVE EFFECTS OF SUPPLEMENT(S)

Estimate	4,608.08	Erik Kulick
Supplement S01	-2,023.76	Erik Kulick
Supplement S02	0.00	Erik Kulick
Job Total:	\$ 2,584.32	

THIS IS AN ESTIMATE BASED ON THE DAMAGE THAT WAS VISIBLE
WHEN IT WAS WRITTEN. IT IS NOT A FIRM QUOTAION AND MAY
CHANGE DURING THE REPAIR PROCESS DUE TO ADDITIONAL
DAMAGE--PARTS PRICE CHANGES AND OTHER FACTORS

Preliminary Supplement 2 with Summary

RO Number: 527424

2005 BMW X5 AWD 4D UTV 6-3.0L Gasoline EFI WHITE

Estimate based on MOTOR CRASH ESTIMATING GUIDE and potentially other third party sources of data. Unless otherwise noted, (a) all items are derived from the Guide EEE1955, CCC Data Date 04/09/2021, and potentially other third party sources of data; and (b) the parts presented are OEM-parts. OEM parts are manufactured by or for the vehicle's Original Equipment Manufacturer (OEM) according to OEM's specifications for U.S. distribution. OEM parts are available at OE/Vehicle dealerships or the specified supplier. OPT OEM (Optional OEM) or ALT OEM (Alternative OEM) parts are OEM parts that may be provided by or through alternate sources other than the OEM vehicle dealerships with discounted pricing. Asterisk (*) or Double Asterisk (**) indicates that the parts and/or labor data provided by third party sources of data may have been modified or may have come from an alternate data source. Tilde sign (~) items indicate MOTOR Not-Included Labor operations. The symbol (<>) indicates the refinish operation WILL NOT be performed as a separate procedure from the other panels in the estimate. Non-Original Equipment Manufacturer aftermarket parts are described as Non OEM, A/M or NAGS. Used parts are described as LKQ, RCY, or USED. Reconditioned parts are described as Recond. Recored parts are described as Recore. NAGS Part Numbers and Benchmark Prices are provided by National Auto Glass Specifications. Labor operation times listed on the line with the NAGS information are MOTOR suggested labor operation times. NAGS labor operation times are not included. Pound sign (#) items indicate manual entries.

Some 2021 vehicles contain minor changes from the previous year. For those vehicles, prior to receiving updated data from the vehicle manufacturer, labor and parts data from the previous year may be used. The CCC ONE estimator has a list of applicable vehicles. Parts numbers and prices should be confirmed with the local dealership.

The following is a list of additional abbreviations or symbols that may be used to describe work to be done or parts to be repaired or replaced:

SYMBOLS FOLLOWING PART PRICE:

m=MOTOR Mechanical component. s=MOTOR Structural component. T=Miscellaneous Taxed charge category. X=Miscellaneous Non-Taxed charge category.

SYMBOLS FOLLOWING LABOR:

D=Diagnostic labor category. E=Electrical labor category. F=Frame labor category. G=Glass labor category. M=Mechanical labor category. S=Structural labor category. (numbers) 1 through 4=User Defined Labor Categories.

OTHER SYMBOLS AND ABBREVIATIONS:

Adj.=Adjacent. Algn.=Align. ALU=Aluminum. A/M=Aftermarket part. Blend=Blend. BOR=Boron steel. CAPA=Certified Automotive Parts Association. D&R=Disconnect and Reconnect. HSS=High Strength Steel. HYD=Hydroformed Steel. Incl.=Included. LKQ=Like Kind and Quality. LT=Left. MAG=Magnesium. Non-Adj.=Non Adjacent. NSF=NSF International Certified Part. O/H=Overhaul. Qty=Quantity. Refn=Refinish. Repl=Replace. R&I=Remove and Install. R&R=Remove and Replace. Rpr=Repair. RT=Right. SAS=Sandwiched Steel. Sect=Section. Subl=Sublet. UHS=Ultra High Strength Steel. N=Note(s) associated with the estimate line.

CCC ONE Estimating - A product of CCC Information Services Inc.

The following is a list of abbreviations that may be used in CCC ONE Estimating that are not part of the MOTOR CRASH ESTIMATING GUIDE:

BAR=Bureau of Automotive Repair. EPA=Environmental Protection Agency. NHTSA=National Highway Transportation and Safety Administration. PDR=Paintless Dent Repair. VIN=Vehicle Identification Number.

Preliminary Supplement 2 with Summary

RO Number: 527424

2005 BMW X5 AWD 4D UTV 6-3.0L Gasoline EFI WHITE

RECALL INFO

2005 BMW X5 AWD 4D UTV 6-3.0L Gasoline EFI WHITE

VIN:	SUXFA13515LY21732	Interior Color:	GRAY	Mileage In:	100,000	Vehicle Out:	10/18/2017
License:	MZE668	Exterior Color:	WHITE	Mileage Out:			
State:	SC	Production Date:	8/2005	Condition:	Good	Job #:	CS

CAROLINAS COLLISION CENTERS AT BEACH FORD

RO Number: 527424

Owner:	COX, DEREK	Year:	2005	Exterior Color:	WHITE
Vehicle In:	10/9/2017	Make:	BMW	Paint Code:	
Vehicle Out:	10/18/2017	Model:	X5 AWD	License:	MZE668
Estimator:		Body Style:	4D UTV	Mileage In:	100000
Insurance:	CUSTOMER PAY	VIN:	5UXFA13515LY21732	Job Number:	CS

Work Order - CHAD SCHEUER

Line	Inc	Operation	Qty	Part Number	Description	Labor Type	Part Type	Assigned Hours	Tech Initials
1					FRONT BUMPER				
2		Remove / Install	0	51117129294	Partial R&I bumper assy- Drop Cover to Paint Fender	Body		0.5	
3					FRONT LAMPS				
4		Remove / Install	0	63137164490	RT Signal lamp w/yellow bulb	Body		0.3	
5		Remove / Install	0	63137164489	LT Signal lamp w/yellow bulb	Body		0.3	
6		Repair	0	63127164424	RT Headlamp assy w/yellow turn signal - clean and buff	Body		1.0	
7		Repair	0	63127164423	LT Headlamp assy w/yellow turn signal - clean and buff	Body		1.0	
8					HOOD & GRILLE				
9		Repair	0	41617121102	Hood	Body		2.5	
10		Remove / Install	0	51148132375	Emblem	Body		0.2	
11		Remove / Install	0	51137113734	RT Grille w/o titan	Body		0.3	
12		Remove / Install	0	51137113733	LT Grille w/o titan	Body		0.3	
13					FENDER				
14		Repair	0	41357121008	RT Fender assy	Body		3.0	
17		Remove / Replace	1	51147008539	RT Nameplate 3.0i	Body	OEM	0.3	
18		Remove / Replace	1	51147008538	LT Nameplate 3.0i	Body	OEM	0.3	
19					FRONT DOOR				
20		Repair	0	41518256824	RT Door shell	Body		4.0	
22		Remove / Replace	1	51138402650	RT Body side mldg	Body	OEM	0.3	
23		Remove / Install	0	51328251592	RT Belt w/strip matte black	Body		0.3	
24		Remove / Install	0	51167039898	RT Mirror base w/o heated w/o power folding w/o auto dim	Body		1.0	
25		Remove / Install	0	51218257738	RT Handle, outside primed	Body		0.4	
26		Remove / Install	0	51417079848	RT R&I trim panel	Body		0.8	
27					REAR DOOR				
28		Repair	0	41528256828	RT Door shell	Body		4.0	
30		Remove / Install	0	51348251596	RT Belt w/strip matte black	Body		0.3	
31		Remove / Install	0	51138402654	RT Body side mldg	Body		0.3	
32		Remove / Install	0	51218257738	RT Handle, outside primed	Body		0.4	
33		Remove / Install	0	51427079688	RT R&I trim panel	Body		0.8	
34					QUARTER PANEL				
35		Repair	0	41217129094	RT Quarter panel	Body		2.0	
39		Remove / Install	0	51177001027	Fuel door	Body		0.5	
41		Remove / Install	0		Drip Molding Roof - RT side	Body		0.2	
42		Remove / Install	0	51718402338	RT Wheel flare w/running board	Body		0.5	

CAROLINAS COLLISION CENTERS AT BEACH FORD

RO Number: 527424

Owner:	COX, DEREK	Year:	2005	Exterior Color:	WHITE
Vehicle In:	10/9/2017	Make:	BMW	Paint Code:	
Vehicle Out:	10/18/2017	Model:	X5 AWD	License:	MZE668
Estimator:		Body Style:	4D UTV	Mileage In:	100000
Insurance:	CUSTOMER PAY	VIN:	5UXFA13515LY21732	Job Number:	CS

43	Remove / Install	0 51368402620	RT Quarter glass BMW standard	Body	2.4	
44	INC Remove / Install	0 51368408318	RT Upper molding matte black	Body	0.0	
45	INC Remove / Install	0 51368402588	RT Lower molding matte black	Body	0.0	
46			REAR LAMPS			
47	Remove / Install	0 63217164474	RT Tail lamp assy w/white signal	Body	0.5	
48			REAR BUMPER			
49	Remove / Install	0 51127027046	Partial R&I - Drop Cover to paint Qtr	Body	0.5	
Subtotals:				Body	29.2	
Grand Total:					29.2	

SUBLET				
Line	Description	Part Type	Part Number	Qty
48	REAR BUMPER			
50	HAZARDOUS WASTE DISPOSAL	HAZARDOUS WASTE		1
52	CORROSION PROTECTION	Paint Materials		1

CAROLINAS COLLISION CENTERS AT BEACH FORD

RO Number: 527424

Owner:	COX, DEREK	Year:	2005	Exterior Color:	WHITE
Vehicle In:	10/9/2017	Make:	BMW	Paint Code:	
Vehicle Out:	10/18/2017	Model:	X5 AWD	License:	MZE668
Estimator:		Body Style:	4D UTV	Mileage In:	100000
Insurance:	CUSTOMER PAY	VIN:	5UXFA13515LY21732	Job Number:	CS

Work Order - MIKE SHEPHEARD

Line	Inc	Operation	Qty	Part Number	Description	Labor Type	Part Type	Assigned Hours	Tech Initials
8					HOOD & GRILLE				
9		Repair	0	41617121102	Hood	Refinish / Paint		1.5	
13					FENDER				
14		Repair	0	41357121008	RT Fender assy	Refinish / Paint		1.0	
15			0		Overlap Major Adj. Panel	Refinish / Paint		-0.2	
16		Blend	0	41357121007	LT Fender assy	Refinish / Paint		0.4	
19					FRONT DOOR				
20		Repair	0	41518256824	RT Door shell	Refinish / Paint		1.1	
21			0		Overlap Major Adj. Panel	Refinish / Paint		-0.2	
27					REAR DOOR				
28		Repair	0	41528256828	RT Door shell	Refinish / Paint		1.0	
29			0		Overlap Major Adj. Panel	Refinish / Paint		-0.2	
34					QUARTER PANEL				
35		Repair	0	41217129094	RT Quarter panel	Refinish / Paint		1.3	
36			0		Overlap Major Adj. Panel	Refinish / Paint		-0.2	
37			0		Clear Coat	Refinish / Paint		1.3	
38		Refinish	0		Clear Undamaged Roof Rail - No Break In Qtr	Refinish / Paint		0.3	
40		Blend	0	51177001027	Fuel door	Refinish / Paint		0.1	
Subtotals:						Refinish / Paint		7.2	
Grand Total:								7.2	

SUBLET

Line	Description	Part Type	Part Number	Qty
48	REAR BUMPER			
50	HAZARDOUS WASTE DISPOSAL	HAZARDOUS WASTE		1
52	CORROSION PROTECTION	Paint Materials		1

CAROLINAS COLLISION CENTERS AT BEACH FORD

RO Number: 527424

Owner:	COX, DEREK	Year:	2005	Exterior Color:	WHITE
Vehicle In:	10/9/2017	Make:	BMW	Paint Code:	
Vehicle Out:	10/18/2017	Model:	X5 AWD	License:	MZE668
Estimator:		Body Style:	4D UTV	Mileage In:	100000
Insurance:	CUSTOMER PAY	VIN:	5UXFA13515LY21732	Job Number:	CS

Work Order -

Line	Inc	Operation	Qty	Part Number	Description	Labor Type	Part Type	Assigned Hours	Tech Initials
8					HOOD & GRILLE				
9		Repair	0	41617121102	Hood	Refinish / Paint		1.5	
13					FENDER				
14		Repair	0	41357121008	RT Fender assy	Refinish / Paint		1.0	
15			0		Overlap Major Adj. Panel	Refinish / Paint		-0.2	
16		Blend	0	41357121007	LT Fender assy	Refinish / Paint		0.6	
19					FRONT DOOR				
20		Repair	0	41518256824	RT Door shell	Refinish / Paint		1.0	
21			0		Overlap Major Adj. Panel	Refinish / Paint		-0.2	
27					REAR DOOR				
28		Repair	0	41528256828	RT Door shell	Refinish / Paint		1.0	
29			0		Overlap Major Adj. Panel	Refinish / Paint		-0.2	
34					QUARTER PANEL				
35		Repair	0	41217129094	RT Quarter panel	Refinish / Paint		1.3	
36			0		Overlap Major Adj. Panel	Refinish / Paint		-0.2	
37			0		Clear Coat	Refinish / Paint		1.2	
38		Refinish	0		Clear Undamaged Roof Rail - No Break In Qtr	Refinish / Paint		0.3	
40		Blend	0	51177001027	Fuel door	Refinish / Paint		0.1	
Subtotals:						Refinish / Paint		7.2	
Grand Total:								7.2	

SUBLET

Line	Description	Part Type	Part Number	Qty
48	REAR BUMPER			
50	HAZARDOUS WASTE DISPOSAL	HAZARDOUS WASTE		1
52	CORROSION PROTECTION	Paint Materials		1

BEACH FORD

Owner:	COX, DEREK	Insurance:	CUSTOMER PAY	Estimator:		Vehicle Out:	10/18/20
RO Number:	527424	Claim Number:					
Year:	2005	Color:	WHITE	License Plate:	MZE668	Production Date:	8/2005
Make:	BMW	Body Style:	4D UTV	State:	SC	Mileage In:	100,000
Model:	X5 AWD	Engine:	6-3.0L Gasoline	VIN:	5UXFA13515LY21732	Condition:	Good

Notes - All Notes

Category:	Customer Communication	Type:	Call, general	Author:	Erik Kulick	Date:	10/18/2017 2:25:35 PM	Critical:	
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CUSTOMER CAME BY AND PAID FOR VEHICLE - SON PICKING UP A LITTLE LATER THIS AFTERNOON

Category:	Customer Communication	Type:	Call, repair delayed	Author:		Date:	10/11/2017 1:38:55 PM	Critical:	
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called back and advised she is the owner of the vehicle. she stated that she is fine with all repairs written as is and just wants the paint to match good and wants to add cleaning/buffing to the headlights. i added this on the estimate and sent her a copy via email that what is on the estimate now is exactly what we are doing unless she wants to add anything else - she understood - assigned tech - repairs underway

Category:		Type:	Estimate Line - Line 6	Author:		Date:		Critical:	
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RT Headlamp assy w/yellow turn signal - clean and buff
customer stating she will go with cleaning lights first to see how it comes out

Category:		Type:	Estimate Line - Line 7	Author:		Date:		Critical:	
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LT Headlamp assy w/yellow turn signal - clean and buff
customer stating she will go with cleaning lights first to see how it comes out

Category:		Type:	Estimate	Author:		Date:		Critical:	
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Category:		Type:	Towing Worksheet	Author:		Date:		Critical:	
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Category:		Type:	Damage - Impact	Author:		Date:		Critical:	
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RT PS DAMAGE - SCRATCHES - PAINT PEELING
HOOD PAINT PEELING
BOTH HEADLIGHTS
REPLACING BOTH HOOD VENTS DUE TO DAMAGE TO RT HOOD VENT

Category:		Type:	Damage - Prior	Author:		Date:		Critical:	
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NORMAL WEAR

Category:		Type:	Vehicle Owner - COX, DEREK	Author:		Date:		Critical:	
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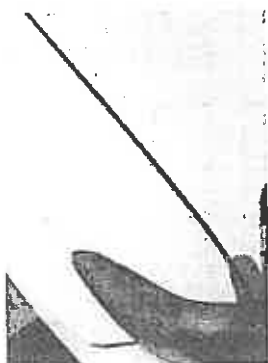
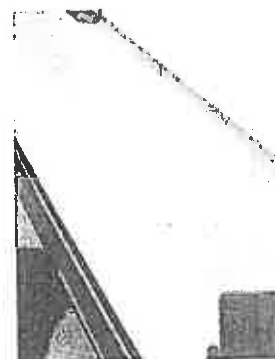
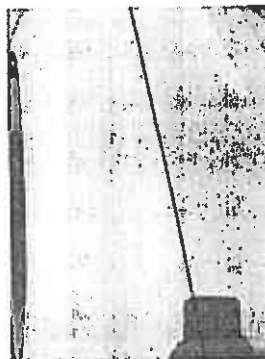
CAROLINAS COLLISION CENTERS AT BEACH FORD

851 Jason Blvd., P.O. Box 3609, MYRTLE BEACH, SC 29578

Phone: (843) 839-8133, Fax: (843) 946-7221

Image Report

Owner:	COX, DEREK	Insurance:	CUSTOMER PAY	Estimator:		Vehicle Out:	10/18/201
RO Number:	527424	Claim Number:					
Year:	2005	Color:	WHITE	License Plate:	MZE668	Production Date:	8/2005
Make:	BMW	Body Style:	4D UTV	State:	SC	Mileage In:	100,000
Model:	X5 AWD	Engine:	6-3.0L Gasoline EFI	VIN:	5UXFA13515LY21732	Condition:	Good

9/14/2017 E01
Comments:9/14/2017 E01
Comments:9/14/2017 E01
Comments:9/14/2017 E01
Comments:9/14/2017 E01
Comments:9/14/2017 E01
Comments:

CAROLINAS COLLISION CENTERS AT BEACH FORD

851 Jason Blvd., P.O. Box 3609, MYRTLE BEACH, SC 29578

Phone: (843) 839-8133, Fax: (843) 946-7221

Image Report

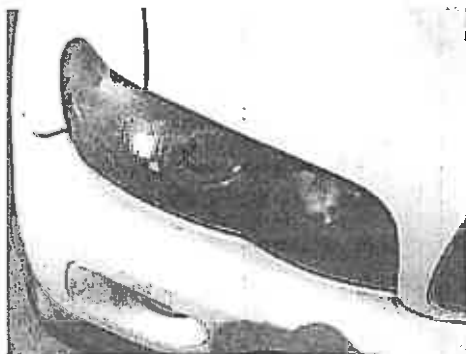
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RO Number:	527424	Claim Number:					
Year:	2005	Color:	WHITE	License Plate:	MZE668	Production Date:	8/2005
Make:	BMW	Body Style:	4D UTV	State:	SC	Mileage In:	100,000
Model:	X5 AWD	Engine:	6-3.0L Gasoline EFI	VIN:	SUXFA13515LY21732	Condition:	Good



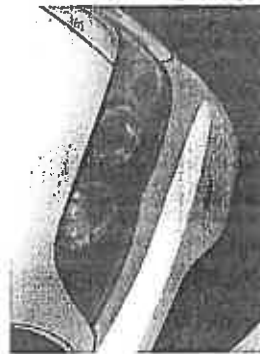
9/14/2017 E01
Comments:



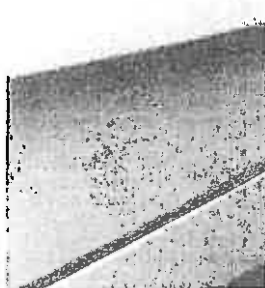
9/14/2017 E01
Comments:



9/14/2017 E01
Comments:



9/14/2017 E01
Comments:



9/14/2017 E01
Comments:



9/14/2017 E01
Comments:

CAROLINAS COLLISION CENTERS AT BEACH FORD

851 Jason Blvd., P.O. Box 3609, MYRTLE BEACH, SC 29578

Phone: (843) 839-8133, Fax: (843) 946-7221

Image Report

Owner:	COX, DEREK	Insurance:	CUSTOMER PAY	Estimator:		Vehicle Out:	10/18/201
RO Number:	527424	Claim Number:					
Year:	2005	Color:	WHITE	License Plate:	MZE668	Production Date:	8/2005
Make:	BMW	Body Style:	4D UTV	State:	SC	Mileage In:	100,000
Model:	X5 AWD	Engine:	6-3.0L Gasoline EFI	VIN:	5UXFA13515LY21732	Condition:	Good



9/14/2017 E01

Comments:



9/14/2017 E01

Comments:



9/14/2017 E01

Comments:



9/14/2017 E01

Comments:



9/14/2017 E01

Comments:



9/14/2017 E01

Comments:

CAROLINAS COLLISION CENTERS AT BEACH FORD

851 Jason Blvd., P.O. Box 3609, MYRTLE BEACH, SC 29578

Phone: (843) 839-8133, Fax: (843) 946-7221

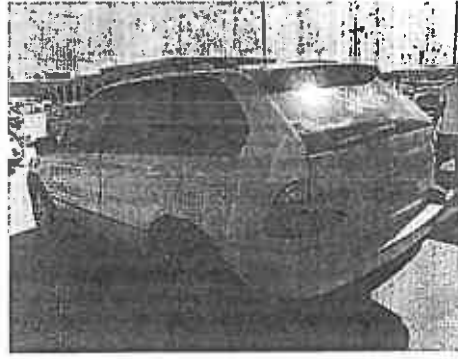
Image Report

Owner:	COX, DEREK	Insurance:	CUSTOMER PAY	Estimator:	[REDACTED]	Vehicle Out:	10/18/201
RO Number:	527424	Claim Number:					
Year:	2005	Color:	WHITE	License Plate:	MZE668	Production Date:	8/2005
Make:	BMW	Body Style:	4D UTV	State:	SC	Mileage In:	100,000
Model:	X5 AWD	Engine:	6-3.0L Gasoline EFI	VIN:	SUXFA1351SLY21732	Condition:	Good



9/14/2017 E01

Comments:



9/14/2017 E01

Comments:

Verizon

3:27 PM

100% 79%

Done

1 of 11



LETTER OF OMISSION

7/17/15

- I threw my Jack's Steer into waterway.
- I wiped my butt w/ Jack's Toothbrush
- I scratched Jack's Car Headlights
- I put soap on Jack's toothbrush
- I will make ~~car~~ payments on the CLS 550 till paid
- At payoff I will sign over title

(Handwritten signature)

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 Horry County

4 VOLUME II

5 DEPOSITION OF JACK KELLY
6 APRIL 4, 2022

7 JACK KELLY,

8 Plaintiff,

9 vs.

CASE NO. 2020-CP-26-06286

10 ROGER D. COX, COX MILLWORK & SUPPLY, INC.,
11 WATERSIDE DRIVE BOAT RAMP, LLC and
12 COX PROPERTIES, LLC,

13 Defendants.
14 _____

15 TIME: 10:04 a.m.

16 LOCATION: WRIGHT, WORLEY, POPE, EKSTER
17 & MOSS, PLLC
18 N. MYRTLE BEACH, SC
19

20
21 REPORTED BY: EILEEN MADDEN, RPR
22 CLARK BOLEN COURT REPORTING
23 AND VIDEOCONFERENCING
24 CHARLESTON, SC 29405
25 843-762-6294
 WWW.CLARKBOLEN.COM
 office@clarkbolen.com

1 A P P E A R A N C E S

2 ON BEHALF OF PLAINTIFF:

3 WRIGHT, WORLEY, POPE, EKSTER
4 & MOSS, PLLC
5 BY: GEORGE N. SPIRAKIS, ESQ.
6 628A Sea Mountain Highway
7 N. Myrtle Beach, SC 29582

8 ON BEHALF OF DEFENDANTS:

9 ROSS & CRISTALDI, LLC
10 BY: EMILY C. SHEETS, ESQ.
11 863 Coleman Blvd., Suite B
12 Mt. Pleasant, SC 29464

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EXAMINATION

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1 JACK KELLY,
2 having been first duly sworn, was examined and
3 testified as follows:

4 EXAMINATION

5 BY MS. SHEETS:

6 Q. Jack, good morning.

7 A. Morning.

8 Q. Emily Sheets, and I represent Mr. Cox
9 and his business entities in this lawsuit. This
10 is day two of your deposition. I know this is
11 the second time you've been deposed.

12 Let me remind you of the ground rules
13 here a little bit. I'm going to ask you a series
14 of questions today. If I ask you a question at
15 some point that you do not understand, please
16 tell me. I'm happy to rephrase it. I have zero
17 interest in confusing you or asking anything that
18 doesn't make sense. Is that fair?

19 A. Yes, ma'am.

20 Q. I do not anticipate that we are going to
21 be together for much more than an hour to an hour
22 and a half today. At any point, if you want a
23 break, for whatever the reason is, you tell me.
24 The only thing that I ask is please answer the
25 question that's pending before you take the break

1 because it really just makes everybody's life
2 easier. Is that fair?

3 A. I'll try my best to do that.

4 Q. You are doing a very good job so far
5 answering audibly. The longer you and I talk
6 here today -- I'm from the South. I tend to get
7 very conversational. At some point it's going to
8 be easy for you to nod your head or give a
9 nonverbal answer. Please try not to do that. It
10 makes our court reporter's job a lot harder.
11 Okay?

12 A. Yes, ma'am.

13 Q. Jack, where are you currently living
14 when you're not at Wofford?

15 A. My mom's house.

16 Q. What's her current address?

17 A. [REDACTED], Myrtle Beach,
18 South Carolina 29577.

19 Q. And I believe that that is the same
20 address that you gave last time for when you're
21 not living at Wofford; is that correct?

22 A. Correct.

23 Q. Is your dad still here in Myrtle Beach?

24 A. Yes. He's still in Myrtle Beach right
25 now.

1 Q. What is his address?

2 A. He currently sold his place. But the
3 address was [REDACTED]
4 Myrtle Beach, South Carolina 29577.

5 Q. When is the last time you lived with
6 your dad?

7 A. Do you have it on record and I can
8 confirm that that's the same date?

9 Q. I don't. That's why I'm asking.

10 A. I don't have an exact answer. I don't
11 really know.

12 Q. Were you under the age of 18?

13 A. I don't believe so.

14 Q. So sometime between 18 and present you
15 have lived at your dad's house; is that correct?

16 A. Yes.

17 Q. Is there a particular reason why you've
18 lived at your dad's house for a portion and your
19 mom's house for a portion?

20 A. I don't think there's a particular
21 reason. Just where I stay.

22 Q. Since, I guess, moving away from home
23 and going to college, you just from time to time
24 pick a parent and stay there when you're not at
25 school; is that right?

1 A. I don't have any set schedule where I
2 stay, when I stay.

3 Q. Gotcha. So you're kind of able to
4 sometimes stay at your mom's and sometimes stay
5 at your dad's; is that right?

6 A. Yes.

7 Q. I believe that the last time you were
8 being deposed you testified that you were premed
9 at Wofford; is that right?

10 A. Yes, ma'am.

11 Q. Are you still premed at Wofford?

12 A. According to administration, yes.

13 Q. Why do you qualify it that way?

14 A. I'm registered under the premed track of
15 Wofford.

16 Q. And are you taking premed courses?

17 A. Yes.

18 Q. Are you currently a junior?

19 A. Yes, ma'am.

20 Q. When your first semester grades came
21 out, what did they look like? What was your GPA?

22 A. I don't recall my first semester GPA.

23 Q. Did you have any grades on that
24 transcript below a C?

25 A. No, ma'am. I've never had a grade below

1 a C.

2 Q. Did you have any grades in that first
3 semester transcript, from sort of 2021 to 2022,
4 below a B?

5 A. 2021 to 2022, that would be --

6 Q. The fall semester of this year.

7 A. Fall semester of this year. Wofford
8 does a -- like a plus and minus scale. Are you
9 including that, or just like B and below? Any B
10 grade and below?

11 Q. Yes.

12 A. Yes.

13 Q. How many courses have you received a C+
14 to C- in for the semester you just completed?

15 A. Zero.

16 Q. During your time at Wofford, from your
17 freshman year to the present, have you ever
18 received a C+ or below in a course?

19 A. No, ma'am.

20 Q. Are you still on a full-ride scholarship
21 to Wofford?

22 A. I've never been on a full ride to
23 Wofford. It's dependent on -- some of my
24 scholarships are dependent on -- vast
25 information.

1 Q. Do you pay any tuition to attend
2 Wofford?

3 A. Yes.

4 Q. How much a year do you or your parents
5 or someone pay on your behalf, pay for you to
6 attend Wofford?

7 A. Changes every year.

8 Q. Are any of the scholarship or financial
9 aid money that you received dependent upon your
10 grades?

11 A. All scholarships that I have, have some
12 sort of GPA requirement.

13 Q. What is the lowest GPA requirement of
14 any of those scholarships?

15 A. I want to say a 3.0.

16 Q. Have you ever failed to meet the GPA
17 requirements of any of the scholarship money that
18 you receive?

19 A. I don't believe so.

20 Q. Of the scholarship money that you
21 receive from Wofford, do any of those have social
22 requirements? Let me explain what I mean. Some
23 scholarships can be withdrawn if you've been on
24 academic probation. Some scholarships can be
25 withdrawn if you're on Greek Life probation.

1 Based on either of those circumstances, have you
2 ever had a scholarship withdrawn from you?

3 A. No, ma'am.

4 Q. You are currently in a fraternity at
5 Wofford, correct?

6 A. No, ma'am.

7 Q. Have you been in a fraternity at
8 Wofford?

9 A. I have.

10 Q. What fraternity were you in at Wofford?

11 A. Sigma Nu.

12 Q. Tell me about Sigma Nu. Do they have a
13 GPA requirement?

14 A. I believe so. I'm not sure what it is.

15 Q. Have you ever failed to meet the GPA
16 requirement of Sigma Nu while you were a member?

17 A. No, ma'am.

18 Q. When did you pledge Sigma Nu?

19 A. Spring of freshman year.

20 Q. When you pledged for Sigma Nu, what were
21 the requirements to be admitted into the
22 fraternity?

23 A. Can you clarify?

24 Q. Sure. I'll represent to you that my
25 understanding of fraternities in college requires

1 some form of an initiation period, and they will
2 require certain tasks of pledges to be completed
3 before they are admitted in the fraternity. Did
4 that happen for you when you pledged Sigma Nu?

5 A. There was an initiation period, yes.

6 Q. During your initiation period for Sigma
7 Nu, what were the requirements of you?

8 A. We were required to learn the history of
9 the fraternity, required to just get to know the
10 brothers, become involved in the fraternity,
11 like, to learn about it. That's what I would say
12 was the main goal of our initiation.

13 Q. What did you do to get to know the
14 brothers in the fraternity?

15 A. Meet with them, talk with them,
16 spreadsheet where we keep all the information on
17 the brothers, names, mothers' maiden names,
18 birthdays, stories that they have from the
19 fraternity, quotes. That's all I recall from
20 that.

21 Q. Some fraternities will at times appoint
22 a big brother to a little brother. Did Sigma Nu
23 follow that same policy?

24 A. Yes.

25 Q. What was the name of your big brother

1 while you were a member of Sigma Nu?

2 A. [REDACTED].

3 Q. I think in your last deposition you
4 provided [REDACTED] telephone number. Do you
5 recall that?

6 A. I don't recall much from the deposition,
7 to be honest.

8 Q. Sure. Are you and [REDACTED] still
9 acquainted --

10 A. [REDACTED].

11 Q. Are you and [REDACTED] still acquainted
12 with one another?

13 A. We both attend Wofford.

14 Q. Are you still friends?

15 A. I wouldn't say, no.

16 Q. Why not?

17 A. I'm no longer a part of the fraternity.

18 Q. Did you leave the fraternity by your own
19 decision, or were you asked to leave the
20 fraternity?

21 A. I left the fraternity on my own
22 decision.

23 Q. Why did you leave?

24 A. I no longer felt that I was a part of
25 the brotherhood that I wanted to be a part of.