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Feb 06 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Appellate Case No. 2024-001254

Eric Bernard Bowman, ... Appellant,

v.

Wallace Blair Crosby, ... Respondent,

AND

Samantha Albert..... Respondent.

v.

Eric Bernard Bowman, ... Appellant.

RECORD ON APPEAL

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State Bar No.: 15177
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Attorney for Respondent

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDUCIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2020-CP-10-03043
	)	
ERIC BERNARD BOWMAN,	)	
	)	
Plaintiff,	)	
	)	ORDER
v.	)	
	)	
WALLACE BLAIR CROSBY,	)	
	)	
Defendant.	)	
	)	
	)	IN THE COURT OF COMMON PLEAS
Samantha Albert,	)	NINTH JUDUCIAL CIRCUIT
	)	CASE NO.: 2020-CP-10-03043
Plaintiff,	)	
	)	
v.	)	
	)	
Eric Bernard Bowman,	)	
	)	
Defendant.	)	
	)	

This case came before the Court on June 10 to June 13, 2024 for a jury trial on Plaintiff's claims, Plaintiff's cross-claims, and Third-Party Plaintiff's claims. A full trial was held, and the jury returned a verdict in favor of the Defendant Wallace Blair Crosby. Plaintiff Eric Bernard Bowman moved for judgment notwithstanding the verdict ("JNOV"). The Court must deny a motion for JNOV if the evidence yields more than one reasonable inference or its inference is in doubt. (Strange v. S.C. Dep't of Highways & Pub. Transp., 314 S.C. 427, 445 S.E.2d 439 (1994)). Moreover, a motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict. (Gastineau v. Murphy, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998)). In considering a motion for JNOV, the Court is concerned with the existence of

evidence, not its weight. (Curcio v. Caterpillar, Inc., 355 S.C. 316, 585 S.E.2d 272 (2003)).
Based on the foregoing, Plaintiff's motion for JNOV is DENIED, without the need for a hearing.
The Court finds that, viewed in the light most favorable to the non-moving party,
sufficient evidence exists to support a jury finding in favor of Defendant Crosby. The Court
further finds that the verdict is well within the evidence presented, is not unduly liberal, and is
not actuated by passion or prejudice.

Presiding Judge, Circuit Court
Ninth Judicial Circuit

This ____ day of _____, 2024
_____, South Carolina



Charleston Common Pleas

Case Caption: Eric Bernard Bowman , plaintiff, et al VS Wallace Blair Crosby ,
defendant, et al
Case Number: 2020CP1003043
Type: Order/Other

So Ordered

s/Jennifer B. McCoy #2764

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDUCIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2020-CP-10-03043
	)	
ERIC BERNARD BOWMAN,	)	
	)	
Plaintiff,	)	
	)	ORDER
v.	)	
	)	
WALLACE BLAIR CROSBY,	)	
	)	
Defendant.	)	
	)	
	)	IN THE COURT OF COMMON PLEAS
Samantha Albert,	)	NINTH JUDUCIAL CIRCUIT
	)	CASE NO.: 2020-CP-10-03043
Plaintiff,	)	
	)	
v.	)	
	)	
Eric Bernard Bowman,	)	
	)	
Defendant.	)	
	)	

This court conducted a post-trial review of the punitive damages awarded by the jury in the trial of this matter on June 13, 2024. Upon careful consideration of the testimony and evidence presented at trial, the court makes the following findings in accordance with Sections 15-32-520 and 15-32-530 of the South Carolina Code of Laws and applicable case law:

This case involved claims, counter-claims, and cross-claims among parties allegedly involved in an altercation outside Dunleavy's Pub on Sullivan's Island, SC in 2018. First-party Plaintiff Eric Bowman pled guilty in General Sessions Court to Assault and Battery Third Degree in 2023. This civil action was subsequently tried and a verdict rendered in favor of Defendant/Counter-claim Plaintiff Wallace Blair Crosby on his claims of Assault & Battery as against Eric Bernard Bowman in the following amounts¹:

\$1,865,483.20 (Actual Damages) and \$2,798,224.80 (Punitive Damages)

Our Supreme Court has determined the appropriate factors that may be considered by the trial court to ensure that a punitive damage award is proper: (1) defendant's degree of culpability; (2) duration of the conduct; (3) defendant's awareness or concealment; (4) the existence of similar

¹ The jury did not find for any claimant on any other claim, counter-claim, or cross-claim.

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SC Court of Appeals

past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) defendant's ability to pay; and finally, (8) "other factors" deemed appropriate. Gamble v. Stevenson, 305 S.C. 104, 111–12, 406 S.E.2d 350, 354 (1991).

- 1) Based on the overwhelming majority of the testimony and evidence, it appears that Bowman bore the greatest degree of culpability on the night of the incident – indeed striking Crosby twice with his golf cart/low speed vehicle;
- 2) Again – Crosby was struck twice – even Bowman admitted he hit him and slammed on brakes to make Crosby fall off the cart;
- 3) According to testimony, Bowman left the scene after the incident to go home and covered up his golf cart with a tarp, indicating awareness and arguably concealment;
- 4) No other similar past conduct was admitted as evidence at trial;
- 5) There is a strong likelihood that the jury's verdict will deter similar conduct in the future – many residents utilize golf carts on Sullivan's Island according to the testimony of several witnesses;
- 6) The jury's award is reasonably related to the actual harm resulting from Bowman's conduct,;
- 7) Testimony of the value of Bowman's Sullivan's Island home and the value of the recent sale of his company would indicate Bowman's worth/ability to pay to be substantial; and
- 8) The ratio of actual to punitive damages in the jury's award is reasonable and indicates that the jury listened carefully to the evidence presented at trial as well as the arguments of the attorneys, particularly the closing arguments. Furthermore, the jury deliberated for a reasonable amount of time and asked for a calculator at one point, indicating thorough thought into the amounts awarded. Given the verdict, no analysis under S.C. Code Ann. § 15-32-530 is required.

THEREFORE, this court finds the jury award proper and no revision necessary.

Presiding Judge, Circuit Court
Ninth Judicial Circuit

This ____ day of _____, 2024
_____, South Carolina



Charleston Common Pleas

Case Caption: Eric Bernard Bowman , plaintiff, et al VS Wallace Blair Crosby ,
defendant, et al
Case Number: 2020CP1003043
Type: Order/Jury Verdict

So Ordered

s/Jennifer B. McCoy #2764

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020 CP-10-03043

WALLACE BLAIR CROSBY

ERIC BERNARD BOWMAN

SAMANTHA ALBERT CROSBY
PLAINTIFF(S)

ERIC BERNARD BOWMAN
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ **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:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Wallace Blair Crosby	Eric Bernard Bowman	\$1,865,483.20 (Actual Damages)
Wallace Blair Crosby	Eric Bernard Bowman	\$2,798,224.80 (Punitive Damages)
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

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SC Court of Appeals

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
	CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, 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 judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Charleston Common Pleas

Case Caption: Eric Bernard Bowman , plaintiff, et al VS Wallace Blair Crosby ,
defendant, et al
Case Number: 2020CP1003043
Type: Order/Other

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2024-06-14 10:49:23 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Eric Bernard Bowman,

Plaintiff,

vs.

Wallace Blair Crosby,

Defendant.

Samantha Albert,

Third-Party Plaintiff,

vs.

Eric Bernard Bowman,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2020-CP-10-3043

VERDICT FORM

FILED

JUN 14 2024

JULIE J. ARMSTRONG
CLERK, C.P. & G.S.

ERIC BOWMAN V. WALLACE CROSBY

1. Do you find Plaintiff Bowman proved, by the preponderance of the evidence, his claim for False Imprisonment?

___ YES X NO

2. If you answered "YES" to the claim for False Imprisonment, what, if any, are the damages that Mr. Bowman suffered as a proximate result? If you answered "NO", skip to the next question.

\$ _____ Actual Damages

Do you also find Bowman has proven, by Clear and Convincing Evidence, that Crosby's conduct was willful, wanton, and reckless? If "YES" then answer this question, if no then skip to the next question.

\$ _____ Punitive Damages

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SC Court of Appeals

3. Do you find Plaintiff Bowman proved, by the preponderance of the evidence, his claim for Assault?

____ YES X NO

4. If you answered "YES" to the claim for Assault, what, if any, are the damages that Mr. Bowman suffered as a proximate result? If you answered "NO", skip to the next question.

\$ _____ Actual Damages

Do you also find Bowman has proven, by Clear and Convincing Evidence, that Crosby's conduct was willful, wanton, and reckless? If "YES" then answer this question, if no then skip to the next question.

\$ _____ Punitive Damages

5. Do you find Plaintiff Bowman proved, by the preponderance of the evidence, his claim for Battery?

____ YES X NO

6. If you answered "YES" to the claim for Battery, what, if any, are the damages that Mr. Bowman suffered as a proximate result? If you answered "NO", skip to the next question.

\$ _____ Actual Damages

Do you also find Bowman has proven, by Clear and Convincing Evidence, that Crosby's conduct was willful, wanton, and reckless? If "YES" then answer this question, if no then skip to the next question.

\$ _____ Punitive Damages

7. Do you find Plaintiff Bowman proved, by the preponderance of the evidence, his claim for Intentional Infliction of Emotional Distress?

____ YES X NO

8. If you answered "YES" to the claim for Intentional Infliction of Emotional Distress, what, if any, are the damages that Mr. Bowman suffered as a proximate result? If you answered "NO", skip to the next question.

\$ _____ Actual Damages

Do you also find Bowman has proven, by Clear and Convincing Evidence, that Crosby's conduct was willful, wanton, and reckless? If "YES" then answer this question, if no then skip to the next question.

\$ _____ Punitive Damages

9. Do you find Plaintiff Bowman proved, by the preponderance of the evidence, his claim for Slander?

____ YES X NO

10. If you answered "YES" to the claim for Slander, what, if any, are the damages that Mr. Bowman suffered as a proximate result? If you answered "NO", skip to the next question.

\$ _____ Actual Damages

Do you also find Bowman has proven, by Clear and Convincing Evidence, that Crosby's conduct was willful, wanton, and reckless? If "YES" then answer this question, if no then skip to the next question.

\$ _____ Punitive Damages

CROSS-CLAIM PLAINTIFF WALLACE CROSBY V. ERIC BOWMAN

11. You are instructed that Eric Bowman has been found legally liable for the civil charges of 1) Assault and 2) Battery. As such, what, if any, are the damages that Mr. Crosby suffered as a proximate result?

\$ 1,865,483.20 Actual Damages

12. If you awarded Actual Damages to BJ Crosby, do you also find Crosby has proven, by Clear and Convincing Evidence, that Bowman's conduct was willful, wanton, and reckless? If "YES" then answer this question, if no then skip to the next question.

\$ 2,798,224.80 Punitive Damages

**THIRD-PARTY PLAINTIFF SAMANTHA ALBERT V.
ERIC BOWMAN**

13. Do you find for Plaintiff Samantha Albert-Crosby proved by the preponderance of the evidence her claim for Intentional of Infliction of Emotional Distress?

 YES X NO

14. If you answered "YES" to question 13 above, what, if any, are the damages that Plaintiff Albert-Crosby suffered as a proximate result? If you answered "NO", skip to the next question.

\$ Actual Damages

15. If you answered "YES" to Question 13, and found actual damages in Question 14, do you also find Albert-Crosby has proven, by Clear and Convincing Evidence, that Bowman's conduct was willful, wanton, and reckless? If "YES" then answer this question, if no then skip to the end.

\$ Punitive Damages

JB 2022

FOREPERSON
June 13, 2024

WHEN YOU HAVE COMPLETED THE QUESTIONNAIRE, NOTIFY THE BAILIFF.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDUCIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2020-CP-10-_____
ERIC BERNARD BOWMAN,	)	
	)	
Plaintiff,	)	
	)	SUMMONS
v.	)	(Jury Trial Demanded)
	)	
WALLACE BLAIR CROSBY,	)	
	)	
Defendant.	)	
_____	)	

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is hereby served upon you, and to serve a copy of your Answer to the Complaint to said Plaintiff's attorneys M. Dawes Cooke, Jr. and Andreas J. Mosby, at their office located at 288 Meeting Street, Suite # 200 (29401), Post Office Drawer H, Charleston, South Carolina 29402, within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

[SIGNATURE BLOCK ON THE NEXT PAGE]

BARNWELL WHALEY
PATTERSON & HELMS, LLC

s/ M. Dawes Cooke, Jr.

M. Dawes Cooke, Jr. (S.C. Bar No. 1376)

Andreas J. Mosby (S.C. Bar No. 104448)

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Attorneys for Plaintiff

July 21, 2020
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDUCIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2020-CP-10 _____
ERIC BERNARD BOWMAN,	)	
	)	
Plaintiff,	)	
	)	COMPLAINT
v.	)	(Jury Trial Demanded)
	)	
WALLACE BLAIR CROSBY,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff, Eric Bernard Bowman, (hereinafter, "Plaintiff") would respectfully allege and show unto this Honorable Court:

PARTIES

1. That Plaintiff is a citizen and resident of Charleston, County South Carolina.
2. Upon information and belief, the Defendant, Wallace Blair Crosby (hereinafter, "Defendant") is a citizen and resident of Charleston County, South Carolina.

JURISIDCTION AND VENUE

3. Defendant is subject to the personal jurisdiction of this Honorable Court because the incidents and damages complained of occurred in South Carolina.
4. This Honorable Court has subject matter jurisdiction over the controversy because the damages are within the jurisdictional limits of the Court.
5. Venue is proper in Charleston County pursuant to S.C. Code Ann. §15-7-30 (1976) as Charleston County is the location where "defendant resides at the time the cause of action arose" and where the "most substantial part of the alleged act or omission giving rise to the cause of action occurred."

FACTUAL BACKGROUND

6. On October 5, 2018, Plaintiff and his wife were patrons at Dunleavy's Pub on Sullivan's Island, where they were frequent patrons as residents of the island.

7. The party that Plaintiff and his wife was with proceeded to place orders at the bar. No tab was opened to Plaintiff's knowledge.

8. When Plaintiff and his wife were ready to leave, Plaintiff walked up to the bar and asked if Dunleavy's accepted AMEX cards as a form of payment. Plaintiff was informed that Dunleavy's did not accept AMEX cards.

9. Plaintiff and his wife were left with no means to pay at that time, since the AMEX card was the only card that they had with them.

10. Plaintiff and his wife intended to come back later to pay, as this is a common practice at Dunleavy's, especially among Sullivan's Island residents including the Plaintiff.

11. Upon information and belief, Defendant, whose girlfriend was a bartender at Dunleavy's that night who was under a great deal of stress from having worked a long and extremely busy day, took exception to their leaving without paying first.

12. As Plaintiff and his wife were attempting to depart Dunleavy's in their vehicle, an LSV (golf cart), they were confronted by Defendant and another patron.

13. Defendant positioned himself immediately in front of the golf and refused to move, such that Plaintiff was unable to drive forward down a one way street.

14. Defendant began to harass Plaintiff and his wife in a threatening manner, stating that they could not leave without first paying their tab.

15. The other patron positioned himself immediately behind the golf cart and refused to move, such that Plaintiff was unable to back his vehicle up. Defendant blocked the way going forward.

16. As a result of the actions of Defendant, Plaintiff was deprived of the ability to operate the golf cart in either a forward or backward fashion, thereby denying him and his wife freedom of movement, and consequently, the ability to retreat. As such, Plaintiff and his wife were effectively detained and being held against their will.

17. Defendant was not an employee of Dunleavy's and he was not a law enforcement officer.

18. Defendant was not authorized in any manner to confront, detain, and/or deny Plaintiff and his wife of freedom of movement.

19. By his words and actions, Defendant falsely accused Plaintiff and his wife of stealing from Dunleavy's.

20. Defendant proceeded to punch and kick the golf cart, causing substantial damage to the windshield, front hood and right fender.

21. Plaintiff's wife, in fear, fled from the front passenger seat of the golf cart and sought shelter in Dunleavy's.

22. Plaintiff warned Defendant that if he did not move from in front of the vehicle, that he would be struck.

23. Defendant did not move after the warning, and Plaintiff proceeded to drive forward at a slow speed. Upon information and belief, instead of moving out of the way Defendant swung his fist at Plaintiff's vehicle, striking and breaking the windshield.

24. Plaintiff, once removed from the altercation, immediately called 911 to request that law enforcement report to the location to address the situation and check on the well-being of his wife, who remained at the establishment.

25. Defendant had no legal right to arrest the Plaintiff or his wife, as he did by blocking their means of egress from the premises. He had no legal right to accuse the Plaintiff and his wife of a crime, and he had no right to assault them or to damage their vehicle.

26. As a result of Defendant's actions, Plaintiff suffered extreme emotional distress, public humiliation, personal injury, and damage to his property.

FOR A FIRST CAUSE OF ACTION
(False Imprisonment)

27. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in Paragraphs 1 through 26 hereinabove.

28. Defendant's violent, physical and verbal threats as well as his physical presence blocking Plaintiff's route of egress were sufficient acts of restraint, which made Plaintiff fear for his and his wife's safety and feel that they were unable to leave Dunleavy's without risk of serious bodily injury.

29. Defendant's violent, physical and verbal threats show that the restraint of Plaintiff was intentional because they indicate that Defendant demanded that Plaintiff remain on Dunleavy's premises.

30. Defendant's restraint of Plaintiff was unlawful because he had no power or authority to arrest or restrain him in any way.

31. As a direct and proximate result of Defendant falsely imprisoning Plaintiff, Plaintiff suffered and endured severe physical, mental and emotional pain and suffering, mental anguish, public humiliation, loss of enjoyment of life, and damage to his property.

FOR A SECOND CAUSE OF ACTION
(Assault)

32. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in Paragraphs 1 through 31 hereinabove.

33. Plaintiff was faced with the unlawful threat of force and imminent violence when Defendant intentionally used his body as a barrier to prevent Plaintiff from driving his golf cart forward, while also verbally harassing Plaintiff and physically punching and kicking the Plaintiff's golf cart.

34. Defendant possessed the present ability to injure Plaintiff pursuant to the violent, physical and verbal threats that Plaintiff faced.

35. Plaintiff was subject to a reasonable apprehension of imminent injury or offensive contact as a result of Defendant's conduct.

36. As a direct and proximate result of Defendant assaulting Plaintiff, Plaintiff suffered and endured severe physical, mental and emotional pain and suffering, mental anguish, loss of enjoyment of life and other damages.

FOR A THIRD CAUSE OF ACTION
(Battery)

37. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in Paragraphs 1 through 36 hereinabove.

38. Defendant's punching and kicking of Plaintiff's golf cart were both harmful and offensive.

39. Plaintiff neither expressly nor impliedly consented to Defendant's touching of his golf cart.

40. Defendant's volitional act of punching and kicking the Plaintiff's golf cart was done with either specific or general intent.

41. This unwanted and unlawful touching was committed against Plaintiff's golf cart that he and his wife were sitting in, which qualifies as property within Plaintiff's immediate custody or possession.

42. As a direct and proximate result of Defendant battering Plaintiff, Plaintiff suffered and endured severe physical, mental and emotional pain and suffering, mental anguish, loss of enjoyment of life and other damages in excess of \$25,000.

FOR A FOURTH CAUSE OF ACTION
(Malicious Destruction of Property)

43. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in Paragraphs 1 through 42 hereinabove.

44. Defendant, by repeatedly punching and kicking Plaintiff's golf cart, engaged in the willful, unlawful and malicious destruction of the personal property of Plaintiff.

45. Defendant acted with intent to cause damage to Plaintiff's golf cart when he voluntarily punched the windshield of the golf cart several times, while also kicking the exterior of the golf cart.

46. As a direct and proximate result of Defendant's malicious destruction of Plaintiff's golf cart, Plaintiff has suffered actual and consequential damages, including, but not limited to, repair costs and loss of use of the golf cart.

FOR A FIFTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

47. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in Paragraphs 1 through 46 hereinabove.

48. Defendant's violent, physical and verbal threats, in addition to the false accusations directed toward Plaintiff and his wife, were reckless and substantially certain to inflict severe emotional distress.

49. Defendant's violent, physical and verbal threats, in addition to the false accusations directed toward Plaintiff were outrageous, exceed all possible bounds of decency, and are utterly intolerable in a civilized community.

50. As a direct and proximate result of Defendant's conduct, Plaintiff, a businessman, has suffered severe emotional distress. Significantly, the false accusations and unlawfully attempted arrest have made headlines in South Carolina, and as a result, the Defendant's wrongful conduct has scarred Plaintiff in engaging and interacting with those in his community in both personal and professional capacities.

51. The emotional distress suffered by Plaintiff was so severe that no reasonable person could be expected to endure it.

52. As a direct and proximate result of Defendant's intentional infliction of emotional distress to Plaintiff, Plaintiff suffered and endured severe physical, mental and emotional pain and suffering, mental anguish, loss of enjoyment of life and other damages in excess of \$25,000.

FOR A SIXTH CAUSE OF ACTION
(Slander)

53. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in Paragraphs 1 through 52 hereinabove.

54. By blocking Plaintiff's route of egress from the Dunleavy's premises and loudly accusing him of wrongly walking out on his tab, Defendant publicly accused Plaintiff and his wife of a crime, to wit theft from Dunleavy's. Defendant published his defamatory statements both orally and by his actions.

55. This accusation was false, as it was well understood and accepted that regular Dunleavy's patrons like Plaintiff and his wife could return later to pay their tabs, which Plaintiff fully intended to do.

56. Defendant had no privilege to defame the Plaintiff. If he did have any privilege, he exceeded the scope of that privilege.

57. Because Defendant accused the Plaintiff of a crime, his statements were actionable per se.

58. Defendant acted with actual malice to the Plaintiff.

59. As a direct and proximate result of Plaintiff's slanderous statements, Plaintiff has suffered damage to his reputation and has suffered public humiliation.

60. As a result of the foregoing, Plaintiff is entitled to recover actual and punitive damages from the Defendant.

PRAYER FOR RELIEF

Wherefore, Plaintiff demands judgment against Defendant for all damages available under the law and in equity arising from the causes of action, including actual damages, consequential

damages, punitive damages, and pre-judgment interest to the extent permitted by law, for costs, and for such other further relief as the Court deems just and proper.

BARNWELL WHALEY
PATTERSON & HELMS, LLC

s/ M. Dawes Cooke, Jr.

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Attorneys for Plaintiff

July 21, 2020
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

) CASE NO.: 2020-CP-10-3043

Eric Bernard Bowman,

Plaintiff,

vs.

Wallace Blair Crosby,

Defendant.

**ANSWER, COUNTERCLAIM AND
THIRD-PARTY COMPLAINT**

(Jury Trial Demanded)

Samantha Albert,

Third-Party,

Plaintiff,

vs.

Eric Bernard Bowman,

Defendant.

**TO: M. DAWES COOKE, JR., ESQ., AND ANDREAS J. MOSBY, ESQ., ATTORNEYS
FOR ERIC BERNARD BOWMAN:**

Defendant Wallace Blair Crosby ("Crosby") hereby answers the Complaint by denying each and every allegation not expressly admitted and would further show as follows:

FOR A FIRST DEFENSE

1. Upon information and belief, admits allegations of Paragraph 1.
2. Denies the allegation of Paragraph 2. Defendant is a resident of Dorchester County.
3. Paragraph 3 calls for a legal conclusion that requires no response. To the extent a response is required, the allegations are denied.
4. Paragraph 4 calls for a legal conclusion that requires no response. To the extent a response is required, the allegations are denied.

5. Paragraph 5 calls for a legal conclusion that requires no response. To the extent a response is required, the allegations are denied.
6. Crosby admits that portion of Paragraph 6 as alleges or could be construed to allege that on October 5, 2018 Plaintiff and his wife were patrons at Dunleavy's Pub on Sullivan's Island. Lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations, therefore, the allegations are denied.
7. Denies the allegations of Paragraph 7. Plaintiff Bowman personally placed orders at the bar, effectively opened a tab, as the orders were not paid for at the time that drinks were served to Plaintiff.
8. Defendant denies the allegations of Paragraph 8.
9. Lacks sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 9, therefore, denies the allegations.
10. Denies the allegations of Paragraph 10.
11. Denies the allegations of Paragraph 11.
12. Admits that portion of Paragraph 12 as alleges or could be construed to allege that Crosby spoke to Bowman; this conversation did not take place until after Plaintiff was confronted by Samantha Albert, the bartender who served him. All other allegations are denied.
13. Denies the allegations in Paragraph 13. Notwithstanding the same, Plaintiff admits that he was standing in front of Bowman's LSV when he engaged him in conversation. There was ample room, between Bowman's LSV and Crosby, for Bowman to drive away without striking Crosby if he so desired. Bowman was neither threatened or provoked by Crosby before Bowman decided to drive his LSV into Crosby in a dangerous, reckless, and illegal manner severely, resulting in Crosby being hit by the golf cart, thrown to the ground and injured, followed by a subsequent and repeated contact when Bowman again accelerated

his LSV, striking Crosby again, whose hands were outstretched in order to protect himself, ultimately resulting in the LSV windshield shattering upon Bowman causing contact with Crosby's hands. Further, the LSV bumper was damaged upon Bowman causing it to strike Crosby's legs.

14. Denies the allegations of Paragraph 14.
15. Denies the allegations of Paragraph 15.
16. Denies the allegations of Paragraph 16.
17. Admits the allegations of Paragraph 17.
18. Denies the allegations of Paragraph 18.
19. Denies the allegations of Paragraphs 19, 20, 21, 22, 23, 24, 25, and 26.
20. Paragraph 27 is procedural paragraph that requires no response. To the extent a response is required, the allegations are denied.
21. Denies the allegations of Paragraphs 28, 29, 30, and 31.
22. Paragraph 32 is a procedural paragraph that requires no response. To the extent a response is required, the allegations are denied.
23. Denies the allegations of Paragraphs 33, 34, 35, and 36.
24. Paragraph 37 is a procedural paragraph that requires no response. To the extent a response is required, the allegations are denied.
25. Denies the allegations of Paragraphs 38, 39, 40, and 42.
26. Paragraph 43 is a procedural paragraph that requires no response. To the extent a response is required, the allegations are denied.
27. Denies the allegations of Paragraphs 44, 45, and 46.
28. Paragraph 47 is a procedural paragraph that requires no response. To the extent a response is required, the allegations are denied.

29. Denies the allegations of Paragraphs 48, 49, 50, 51, and 52.

30. Paragraph 53 is a procedural paragraph that requires no response. To the extent a response is required, the allegations are denied.

31. Denies the allegations of Paragraphs 54, 55, 56, 57, 58, 59, and 60.

FOR A SECOND DEFENSE

32. Plaintiff's claims should be dismissed pursuant to South Carolina Rules of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE
(Limitation on Punitive Damages)

33. Defendant would show that any award of punitive damages is subject to the limitations set forth in S.C. Code §15-32-530.

FOR A FOURTH DEFENSE
(Improper Claim for Punitive Damages)

34. Punitive damages are inappropriate in this case since the Defendant did not engage in any malicious, reckless, wrongful, or intentional conduct upon which an award of punitive damages would be based.

FOR A FIFTH DEFENSE

35. Plaintiff's false imprisonment cause of action should fail because the actions taken were authorized by law.

FOR A SIXTH DEFENSE

36. Plaintiff's claim for false imprisonment should be denied because at all times Crosby acted in good faith.

FOR A SEVENTH DEFENSE

37. Plaintiff's cause of action for assault should fail because any action taken was in self-defense and Plaintiff had no reasonable fear of bodily harm.

FOR AN EIGHTH DEFENSE

38. Plaintiff's cause of action for battery should fail because Plaintiff was never physically contacted, struck, or harmed in any way.

FOR A NINTH DEFENSE

39. Plaintiff's cause of action for intentional infliction of emotional distress should fail because at all times all actions by Crosby were taken in good faith and in a reasonable manner.

FOR A TENTH DEFENSE

40. Plaintiff's cause of action for slander should be denied because any statements made were true, there was no publication other than by the Plaintiff, and there are no damages.

COUNTERCLAIM and THIRD-PARTY COMPLAINT

Having fully answered the Plaintiff's Complaint by denying each and every allegation not expressly admitted, Defendant Crosby, together with Third-Party Plaintiff Samantha Albert, would allege and show as follows by way of Counterclaims and Third-Party Complaint:

- 41. Crosby is a citizen and resident of Dorchester County, South Carolina.
- 42. Plaintiff/Third-Party Defendant Eric Bernard Bowman ("Bowman") is a resident of Charleston County, South Carolina.
- 43. Samantha Albert ("Albert") is a citizen and resident of Charleston County, South Carolina.
- 44. This Court has jurisdiction over the parties and the subject matter of this action.
- 45. Venue is proper in the Court of Common Pleas for Charleston County pursuant to South Carolina Law.

FACTS

- 46. On October 5, 2018 Albert was a bartender at Dunleavy's Pub on Sullivan's Island, SC.
- 47. Crosby was a patron at Dunleavy's and standing outside the side entrance at or about the time of the occurrences referenced herein.

48. Bowman and his wife entered Dunleavy's and had already consumed a substantial amount of alcohol and were acting as such.

49. Despite alleging in the Complaint that he was a "regular" at Dunleavy's, and that he had no way of paying for the alcohol he had purchased and consumed while there, both Bowman and his wife consumed alcohol, all the while knowing they had no way to pay for the consumption, and never notifying their bartender or the restaurant of the same prior to exiting the bar and entering his vehicle with the intent to leave. As a 'regular' customer, he knew of the long-standing policy at Dunleavy's not to accept American Express.

50. After he and his wife consumed alcohol at Dunleavy's, Bowman and his wife attempted to flee Dunleavy's without paying the outstanding bar tab.

51. Crosby attempted to engage Bowman about paying his bill before leaving, for which Bowman responded by striking Crosby repeatedly with his golf cart, not once, but twice, severely injuring him.

52. Albert was in very close proximity when Crosby was violently and repeatedly struck by Bowman's golf cart and has been emotionally damaged as a result of witnessing her then boyfriend (now husband) be violently injured.

FOR A FIRST CAUSE OF ACTION
(Negligence, Negligence Per Se, and Gross Negligence)
(Crosby and Albert)

53. Defendant Crosby and Third-Party Plaintiff Albert repeat the previous paragraphs as if fully repeated herein.

54. Bowman owed a duty to operate himself and his golf cart in a reasonably safe and prudent manner.

55. Bowman violated that duty owed to Crosby and Albert and proximately caused them injuries.

56. The injuries and damages complained of herein were directly and proximately caused by the following negligent, careless, reckless, willful, and grossly negligent acts of Defendant all in violation of the statutes and common laws of the State of South Carolina:

- a. In operating his golf cart / vehicle in an aggressive and reckless manner;
- b. In using his golf cart / vehicle as a weapon;
- c. In failing to use the degree of care and caution that a reasonable and prudent person would have used under the circumstances; and
- d. In otherwise being negligent, reckless, and careless.

57. As a direct and proximate result of Bowman's reckless conduct Crosby and Albert have suffered and will continue to suffer from damages including, but not limited to:

- . Healthcare expenses;
- a. Physical pain and suffering;
- b. Mental and emotional distress;
- c. Loss of ability to work and be productive;
- d. Loss of enjoyment of life;
- e. Loss of earning capacity;
- f. Loss of consortium; and
- g. Permanent disability.

58. Crosby and Albert are entitled to and pray for an award against Bowman for actual, special, and consequential damages and in an amount deemed sufficient to compensate them fully for all losses and damages, past, present, and future, as well as punitive damages.

FOR A SECOND CAUSE OF ACTION

(Assault)
(Crosby and Albert)

59. Crosby and Albert repeat the previous paragraphs as if restated herein.

60. Bowman's conduct placed both Crosby and Albert in reasonable fear of bodily harm.

61. Bowman's acts and threats were reckless and were accompanied by his expression of intent to inflict injury.

62. Based on the assault, Crosby and Albert are entitled to and pray for an award of actual and punitive damages.

FOR A THIRD CAUSE OF ACTION
(Intentional infliction of emotional distress/outrage)
(Crosby and Albert)

63. Crosby and Albert repeat the previous paragraphs as if restated herein.

64. Bowman intentionally and recklessly inflicted severe emotional distress on these parties.

65. Bowman'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.

66. The actions of Bowman caused these parties severe and emotional distress.

67. The emotional distress suffered by these parties was so severe that no reasonable person could expect to endure it.

68. Based on the foregoing, Crosby and Albert are entitled to actual and punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Battery - Crosby)

69. Crosby and Albert repeat the previous paragraphs as if restated herein.

70. Bowman intentionally, recklessly, and violently struck Crosby by running him over with his golf cart.

71. This was an aggressive and intentional act. Bowman's obvious goal was to cause severe physical injury.

72. This direct physical contact was the proximate cause of Crosby's multiple injuries.

73. Based on the foregoing, Crosby is entitled to an award of actual and punitive damages.

FOR A FIFTH CAUSE OF ACTION
(Malicious Prosecution - Crosby)

74. Crosby and Albert repeat the previous paragraphs as if restated herein.
75. The filing of this above-entitled legal proceeding by Bowman was instituted with malice. Furthermore, Bowman had no probable cause to bring this action.
76. Upon information and belief, the purpose of filing this lawsuit was to engage in discovery to allow Bowman to uncover evidence to help him in defending himself in the pending criminal trial arising out of his conduct described herein.
77. Bowman was the aggressor in this incident and directly, intentionally, and foreseeably injured Crosby by his actions. Bowman suing Crosby is outrageous and should not be allowed.
78. Crosby has been injured by this malicious filing including, but not limited to, costs, attorney fees, public humiliation, and other similar damages.
79. Based on the foregoing, Crosby is entitled to actual and punitive damages.

FOR A SIXTH CAUSE OF ACTION
(Abuse of Process - Crosby)

80. Crosby and Albert repeat the previous paragraphs as if restated herein.
81. This action was brought for an ulterior purpose as described above.
82. The ulterior purpose is to gain information to help defend himself in the pending criminal charges based on Bowman's conduct in question. There is no reasonable basis for Bowman to bring this suit.
83. Bowman's willful misuse of the process by filing this action is inappropriate based on the facts and circumstances of this matter.
84. Based on the foregoing, Crosby is entitled to actual and punitive damages.

FOR A SEVENTH CAUSE OF ACTION
(Defamation and Defamation Per Se - Crosby)

85. Crosby and Albert repeat the previous paragraphs as if restated herein.

86. Bowman has falsely accused Crosby of criminal and unethical behavior.
87. On the evening in question, and thereafter in statements to the police and others, Bowman has published false and intentionally misleading information about the events in question.
88. Bowman has repeatedly defamed Crosby by telling the police and others that Crosby was the aggressor. Additionally, Bowman told police that Crosby had kidnapped his wife on the evening in question.
89. All of these statements are false and were made in an attempt to deflect his own violent and criminal activity – for which he is currently being prosecuted.
90. Bowman's defamatory statements have been published both orally and in writing.
91. Crosby has been damaged by this conduct. Additionally, based on the conduct and statements themselves, damages are legally presumed.
92. Bowman's conduct was both reckless and intentional.
93. Based on the foregoing, Crosby is entitled to actual and punitive damages.

WHEREFORE, having fully answered the Complaint, Crosby asks that it be dismissed, that he prevail on his affirmative defenses, that judgment be awarded in favor of Crosby on his counterclaims and Albert on her third-party claims, and that they be awarded and pray for a judgment against Bowman for actual and punitive damages and such other and further relief as this Court deems just and proper.

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**ATTORNEYS FOR THE DEFENDANT
AND THIRD-PARTY PLAINTIFF**

September 18, 2020
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2020-CP-10-3043
	)	
ERIC BERNARD BOWMAN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	PLAINTIFF/THIRD-PARTY
	)	DEFENDANT, ERIC BERNARD
	)	BOWMAN'S REPLY TO
WALLACE BLAIR CROSBY,	)	DEFENDANT WALLACE BLAIR
	)	CROSBY'S COUNTERCLAIM AND
Defendant.	)	PLAINTIFF/THIRD-PARTY
	)	DEFENDANT, ERIC BERNARD
	)	BOWMAN'S ANSWER TO THIRD-
	)	PARTY COMPLAINT OF
Samantha Albert,	)	SAMANTHA ALBERT
	)	(JURY TRIAL DEMANDED)
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
Eric Bernard Bowman,	)	
	)	
Third-Party Defendant.	)	
	)	

The plaintiff/third-party defendant, hereby replying to the defendant's Counterclaim and third-party plaintiff's Complaint herein, would respectfully alleges and show unto this Court as follows:

1. Each and every allegation not specifically admitted herein is denied. To the extent any allegation thereof is not expressly referred to and specifically it is hereby denied and legal proof thereof is demanded.
2. The plaintiff/third-party defendant admits the allegations contained in paragraphs 41 -46 of the Answer, Counterclaim and Third-Party Complaint.
3. The plaintiff/third-party defendant denies the allegations contained in paragraphs 47 - 93 of the Answer, Counterclaim and Third-Party Complaint, including any and all subparts contained

therein.

4. The plaintiff/third-party defendant denies the allegations contained in the paragraph that begins with “WHEREFORE” of the Answer, Counterclaim and Third-Party Complaint.

5. The plaintiff/third-party defendant hereby denies any and all Request for Admissions served on plaintiff/third-party defendant pursuant to Rule 36 of the South Carolina Rules of Civil Procedure which are inconsistent with plaintiff’s Complaint, Reply to Counterclaim and Answer to Third-Party Complaint.

FOR A SECOND DEFENSE

6. The plaintiff/third-party defendant realleges and reiterate each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

7. The plaintiff/third-party defendant alleges that the Counterclaim of the defendant’s and the third-party plaintiff’s Third-Party Complaint fails to state facts sufficient to constitute a cause of action against him and, therefore, the Counterclaim and Third-Party Complaint should be dismissed pursuant to Rule 12(b)(6) and Rule 14 of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

8. The plaintiff/third-party defendant realleges and reiterate each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

9. The plaintiff/third-party defendant alleges that even assuming that he was negligent, careless, grossly negligent, willful, wanton or reckless in any respect, and that any such conduct on his part operated as a proximate cause of the accident and the defendant’s and third-party plaintiff’s resulting injuries and damages, if any, all of which is expressly denied and admitted solely for the purpose of this defense and no other, that the defendant’s negligent, grossly negligent, reckless, willful

and wanton conduct contributed more than 50% to the cause of the accident and the defendant's and/or third-party plaintiff's resulting injuries and damages, if any. For that reason, the plaintiff/third-party defendant is not liable to defendant nor the third-party plaintiff in any sum whatsoever.

FOR A FOURTH DEFENSE

10. The plaintiff/third realleges and reiterate each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

11. The plaintiff/third-party defendant alleges that even if he was negligent, careless, grossly negligent, reckless, willful or wanton in any respect whatsoever, which is expressly denied and admitted solely for the purpose of this defense and no other, and if any such conduct on his part operated as a greater than 50% cause of the accident and the defendant's and/or third-party plaintiff's resulting injuries and damages, if any, which is also expressly denied and admitted solely for the purpose of this defense and no other, they are entitled to a determination as to the percentage which the plaintiff's negligent, grossly negligent, reckless, willful and wanton conduct contributed to the accident and to a reduction of any amount awarded to the defendant and/or third-party plaintiff in an amount equal to that percentage of the defendant's and/or third-party plaintiff's own negligent, grossly negligent, reckless, willful and wanton conduct.

FOR A FIFTH DEFENSE

12. The plaintiff/third-party defendant realleges and reiterate each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

13. The plaintiff/third-party defendant alleges that the defendant and third-party plaintiff have failed to mitigate their damages and, therefore, the defendant's Counterclaim and third-party plaintiff's Third-Party Complaint should be dismissed.

FOR A SIXTH DEFENSE

14. The plaintiff/third-party defendant realleges and reiterate each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

15. The plaintiff/third-party defendant specifically reserves any additional and/or affirmative defenses as may become available to him or revealed to him during the course of the investigation and/or discovery in this case.

FOR A SEVENTH DEFENSE

16. The plaintiff/third-party defendant realleges and reiterate each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

17. The plaintiff/third-party defendant would alleges that an award of punitive damages would constitute an impermissible and excessive fine under the Eighth Amendment of the Constitution of the United States, and such damages would further be a violation of the due process and equal protection causes of the Fifth and Fourteenth Amendments, respectively, of the United States Constitution, as well as the applicable corresponding section of the Constitution of the State of South Carolina, Article 1, Section 3.

18. The plaintiff/third-party defendant alleges that to the extent that the defendant and/or third-party plaintiff recovers punitive damages related to the loss complained of in the Answer and Counterclaim and/or Third-Party Complaint, such punitive damages must be reduced and/or limited to the amounts as specified and controlled by S.C. Code Ann. §15-32-530.

The defendant's and/or third-party plaintiff's claim for punitive damages violates the plaintiff/third-party defendant's right to access to the Courts guaranteed by the Seventh and

Fourteenth Amendments because the threat of an award of unlimited punitive damages chills the plaintiff exercise of that right.

The defendant's and/or third-party plaintiff's claims for punitive damages violates the due process and equal protection clauses of the Fourteenth Amendment for the following reasons;

- (a) The standard or test for determining the requisite mental state of the plaintiff for imposition of punitive damages is void for vagueness; and
- (B) Insofar as punitive damages are not measured against actual injury to the plaintiff's and are left wholly to the discretion of the jury, there is no objective standard that limits the amount of such damages that may be awarded, and the amount of punitive damages that may be awarded is indeterminate at the time of The plaintiff's alleged conduct.

FOR A SEVENTH DEFENSE

18. The plaintiff/third-party defendant realleges and reiterate each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

19. The defendant's Counterclaim and the third-party plaintiff's Third-Party Complaint should be barred based on Self-Defense.

WHEREFORE, having fully answered the Counterclaim of the defendant and Third-Party Complaint of the third-party plaintiff, the plaintiff/third-party defendant prays that the Counterclaim and Third-Party Complaint be dismissed, for the costs and disbursements of this action, and for any such other and further relief as this Court shall deem just and proper.

(Signature Page to Follow)

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s/Michael T. Coulter

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Attorneys for Plaintiff Eric Bernard Bowman

September 30, 2020

Greenville, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDUCIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2020-CP-10-3043
	)	
ERIC BERNARD BOWMAN,	)	
	)	
Plaintiff,	)	
	)	PLAINTIFF'S MOTION FOR
v.	)	JUDGMENT NOT WITHSTANDING
	)	THE VERDICT, NEW TRIAL
WALLACE BLAIR CROSBY,	)	ABSOLUTE, OR ALTERNATIVELY,
	)	NEW TRIAL NISI REMITTITUR
Defendant.	)	
	)	
_____	)	
Samatha Albert,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
Eric Bernard Bowman,	)	
	)	
Defendant.	)	
_____	)	

Pursuant to Rule 50(b), S.C.R.C.P., Plaintiff Eric Bernard Bowman, (hereinafter "Plaintiff"), hereby moves for judgment notwithstanding the verdict ("JNOV"), New Trial Absolute, or, in the alternative, New Trial Nisi Remittitur. The grounds for this *Motion* are made pursuant to the South Carolina Rules of Evidence, (SCRE), the South Carolina Code of Laws, (S.C. Code Ann.), and South Carolina case law. Plaintiff would respectfully show as follows:

FACTS

This lawsuit arises out of an incident which occurred outside of Dunleavy's Pub, ("Dunleavy's"), on Sullivan's Island, on or about October 5, 2018. Plaintiff and his wife were attempting to leave Dunleavy's without paying a bill, as Dunleavy's did not accept American Express credit cards. Plaintiff intended to return to Dunleavy's at a later date to pay this bill, as he

is familiar with the owner and much of the staff. However, Third-Party Plaintiff, who was a new bartender with Dunleavy's, was unfamiliar with Plaintiff and assumed he was attempting to avoid paying. Defendant, who was the then-boyfriend of Third-Party Plaintiff, and merely a patron of Dunleavy's, attempted to stop Plaintiff from driving away in a golf cart. Plaintiff ultimately left the parking lot of Dunleavy's, and Defendant alleged to have sustained injuries after being struck Plaintiff's golf cart. Police were called to the scene, ultimately resulting in Plaintiff's arrest several days later.

Plaintiff filed this action on July 21, 2020, alleging False Imprisonment, Assault, and Battery, among other claims. Defendant and Third-Party Plaintiff filed an Answer, Counter Claim, and Third-Party Complaint against Plaintiff in response, alleging Negligence, Assault, and Intentional Infliction of Emotional Distress, among other claims. A four-day trial was conducted from June 10, 2024, to June 13, 2024, resulting in judgment for Defendant. Even though Defendant introduced evidence that his actual damages were approximately \$358,000.00, the jury awarded Defendant Wallace Crosby \$1,865,483.20 in actual damages, and \$2,798,224.80 in punitive damages.

STANDARD OF REVIEW

I. JNOV

"A party making a motion for a directed verdict must state the specific grounds relied upon therefor, and the trial court may grant the motion when the case presents only issues of law. *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 732 S.E.2d 166 (2012) (citing Rule 50(a), SCRPC). If the motion is denied, the party may thereafter move for a JNOV in order to have the verdict and judgment set aside and a judgment entered in accordance with the party's directed verdict motion. *Id.* (citing Rule 50(b), SCRPC). A motion for a new trial may be joined with the

JNOV motion or prayed for in the alternative. *Id.* (citing Rule 50(b), SCRCP). “A motion for a JNOV is merely a renewal of the directed verdict motion.” *Wright v. Craft*, 372 S.C. 1, 20, 640 S.E.2d 486, 496 (Ct. App. 2006).

II. NEW TRIAL ABSOLUTE

“A trial court may grant a new trial absolute on the ground that the verdict is excessive or inadequate.” *Vinson v. Hartley*, 324 S.C. 389, 404, 477 S.E.2d 715, 723 (Ct. App. 1996) (citing *Rush v. Blanchard*, 310 S.C. 375, 426 S.E.2d 802 (1993)). The trial judge is required to grant a new trial absolute “if the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives.” *Id.*

“[T]he trial judge is the thirteenth juror, possessing the veto power to the Nth degree, and, it must be presumed, recognizes and appreciates his responsibility, and exercises the discretion vested in him with fairness and impartiality.” *Youmans ex rel. Elmore v. S.C. Dep’t of Transp.*, 380 S.C. 263, 271, 670 S.E.2d 1, 5 (Ct. App. 2008) (quoting *Worrell v. South Carolina Power Co.*, 186 S.C. 306, 195 S.E. 638 (1938)). “The trial judge, sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated on the basis of the facts in the case.” *Graham v. Whitaker*, 282 S.C. 393, 321 S.E.2d 40 (1984). “[T]he judge may grant a new trial if the verdict is inconsistent and reflects the jury's confusion. *Vinson*, 324 S.C. at 404, 477 S.E.2d at 723 (citing *Johnson v. Parker*, 279 S.C. 132, 303 S.E.2d 95 (1983)).

III. NEW TRIAL NISI REMITTITUR

“A motion for new trial nisi remittitur asks the trial court in its discretion to reduce the verdict because it is ‘merely excessive,’ although not motivated by considerations such as passion,

caprice or prejudice.” *Orangeburg Sausage Co. v. Cincinnati Ins. Co.*, 316 S.C. 331, 345-46, 450 S.E.2d 66, 74 (Ct. App. 1994) (quoting *O’Neal v. Bowles*, 314 S.C. 525, 431 S.E.2d 555 (1993)). “The trial court has wide discretionary power to reduce the amount of a verdict which in his or her judgment is excessive.” *Becker v. Wal-Mart Stores, Inc.*, 339 S.C. 629, 637, 529 S.E.2d 758, 762 (Ct. App. 2000) (internal citations omitted). “When the verdict indicates that the jury was unduly liberal or conservative in its view of the damages, the trial judge alone has the power to reduce the verdict by the granting of a new trial nisi.” *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 531, 431 S.E.2d 557, 558 (1993) (citing *O’Neal*, 314 S.C. at 527, 431 S.E.2d at 556).

“When a verdict is grossly excessive and the amount awarded is so shockingly disproportionate to the injuries as to indicate that the jury acted out of passion, caprice, prejudice, or other consideration not founded on the evidence, it becomes the duty of ... the trial court to set aside the verdict.” *Branham v. Ford Motor Co.*, 390 S.C. 203, 237, 701 S.E.2d 5, 23 (2010). “The trial judge alone has the power to grant a new trial nisi when he finds the amount of the verdict to be merely inadequate or excessive.” *Hartley*, 324 S.C. at 405, 477 S.E.2d at 723 (citing *McCourt by and Through McCourt v. Abernathy*, 318 S.C. 301, 457 S.E.2d 603 (1995)). “The consideration of a motion for a new trial nisi additur [or remittitur] requires the trial judge to consider the adequacy of the verdict in light of the evidence presented.” *Id.* (citing *Patterson v. Reid*, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995)).

ARGUMENT

A. JURY CHARGES AND DIRECTED VERDICT

“A trial court is required to charge the current and correct law in South Carolina.” *State v. Cottrell*, 421 S.C. 622, 643, 809 S.E.2d 423, 435 (2017). “The law to be charged must be determined from the evidence presented at trial.” *Barber v. State*, 393 S.C. 232, 236, 712 S.E.2d

436, 438 (2011). During the trial, Plaintiff presented evidence that he was the victim of an unlawful arrest. Further, evidence concerning Plaintiff's alleged failure to pay his bar tab at Delaney's was introduced. At the close of evidence, Plaintiff requested that the jury be charged with Unlawful Arrest, as well as receive an instruction classifying that the failure to pay a bar was simply a misdemeanor. However, neither of these proposed charges were submitted to the jury, which harmfully and materially impacted Plaintiff's case. "A request to charge a correct statement of the law on . . . the evidence presented at trial should not be refused." *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010). When a party is prejudiced by the refusal to submit a charge to the jury, the refusal will be considered erroneous. See *Daves v. Cleary*, 355 S.C. 216, 224, 584 S.E.2d 423, 427 (Ct.App.2003). By not instructing the jury on Unlawful Arrest, or the misdemeanor status of failing to pay a bar tab, Plaintiff was prejudiced, as he was portrayed as both the instigator of the events giving rise to this suit and a criminal. Because the jury was not instructed on charges of Unlawful Arrest, as well as the misdemeanor nature of failing to pay a bar tab, the jury's perception of Plaintiff was negatively influenced.

Further, Defendant's directed verdict on the claims of Assault and Battery should not have been granted, as these were determinations better left for the jury. When ruling on a directed verdict the trial court "must 'view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motion and [must] deny the motion when either the evidence yields more than one inference or its inference is in doubt.'" *Turner v. Med. Univ. of S.C.*, 430 S.C. 569, 582, 846 S.E.2d 1, 7 (Ct. App. 2020) (quoting *Estate of Carr ex rel. Bolton v. Circle S Enters., Inc.*, 379 S.C. 31, 38, 664 S.E.2d 83, 86 (Ct. App. 2008)). The evidence presented at trial created more than one inference concerning who was liable for Assault and Battery in this case, either Plaintiff or Defendant. "If more than one inference can be drawn from

the evidence, the grant of a JNOV is improper and the case must be left to the jury's determination.” *Burns v. Universal Health Servs., Inc.*, 361 S.C. 221, 232, 603 S.E.2d 605, 611 (Ct. App. 2004). Thus, because the jury was not able to consider decide the issue of Assault and Battery, a new trial in this matter is warranted.¹

B. ACTUAL DAMAGES

“Actual damages are properly called compensatory damages, meaning to compensate, to make the injured party whole, to put him in the same position he was in prior to the damages received insofar as this is monetarily possible.” *Austin v. Specialty Transp. Servs., Inc.*, 358 S.C. 298, 311, 594 S.E.2d 867, 874 (Ct. App. 2004). “The goal is to restore the injured party, as nearly as possible through the payment of money, to the same position he was in before the wrongful injury occurred.” *Id.* (citing *Clark v. Cantrell*, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000)).

“It is improper for counsel to make a ‘closing argument to the jury ... calculated to arouse passion or prejudice.’” *Branham*, 390 S.C. at 234, 701 S.E.2d at 21 (quoting *Gathers v. Harris Teeter Supermarket, Inc.*, 282 S.C. 220, 231, 317 S.E.2d 748, 755 (Ct. App. 1984). In *Branham*, the Supreme Court ruled that the prevailing party’s closing argument, which “relied heavily on inadmissible evidence . . . invited the jury to base its verdict on passion rather than reason.” *Id.* at 235, 22. The Supreme Court noted that “the prejudice resulting from the improper evidence was merged in closing argument with *Branham's* pursuit of punitive damages,” and “denied Ford a fair trial.” *Id.*

Defendant Crosby’s closing statement similarly referred to evidence which was not introduced at trial. Specifically, when giving his closing statement, counsel for Defendant Crosby mentioned that Plaintiff had previously sold his business for \$50 million. Importantly, this Court

¹ Eric Bowman plead guilty to misdemeanor 3rd Degree Assault which does not require an injury.

ruled that there could be no mention of any assets that were held in an Irrevocable Trust, of which Plaintiff is a beneficiary. The proceeds of the sale of Plaintiff's business were held in the aforementioned trust, and Defendant knowingly still referenced these assets. Defendant's counsel also mentioned that Plaintiff lived in a \$4 million house that rented for \$40,000.00 per month.² While not objected to at trial, our Supreme Court has held that a new trial can still be granted "despite the aggrieved party's failure to contemporaneously object to the argument if the prejudice caused by the argument is clear." *State v. Bennett*, 369 S.C. 219, 231, 632 S.E.2d 281, 288 (2006) (citing *Dial v. Niggel Assoc., Inc.*, 333 S.C. 253, 256, 509 S.E.2d 269, 271 (1998)). "This Court has held . . . that even in the absence of a contemporaneous objection, a new trial motion should be granted in flagrant cases where a vicious, inflammatory argument results in clear prejudice." *Varnadore v. Nationwide Mutual Ins. Co.*, 289 S.C. 155, 345 S.E.2d 711 (1986) (citing *South Carolina Highway Dept. v. Nasim*, 255 S.C. 406, 179 S.E.2d 211 (1977)). Despite this Court's Order, Defendant introduced the sale of Plaintiff's business and other assets during his closing argument and cross-examination of Plaintiff.

The jury's award of actual damages in this case far exceeds the damages alleged by Defendant at trial, and demonstrates the prejudicial effect that Defendant's comments had on Plaintiff. Specifically, Defendant introduced evidence of three surgeries which allegedly stem from the subject incident, claiming to have incurred approximately \$358,000.00 in medical costs after being struck by Plaintiff's golf cart. Nonetheless, Defendant was awarded \$1,865,483.20 in actual damages, almost six times the amount of damages he set forth. The jury's award of actual damages was clearly influenced by Defendant's counsel, who in his cross examination of Plaintiff, as well as in his closing argument, made inflammatory remarks regarding Plaintiff's \$4million-dollar

² The amount of the sale of the defendant's business was also not in evidence.

home and \$50million business sale, resulting in clear prejudice amongst the jury. Because the evidence presented at trial demonstrates that Defendant's damages were approximately \$358,000.00, the jury's award of \$1,865,483.20 in actual damages was excessive and a new trial should be ordered. Alternatively, the jury's award of actual damages for Defendant should at least be reduced.

C. PUNITIVE DAMAGES

"Reference to [the defendant's] assets ... ha[s] little to do with the actual harm sustained by the [plaintiff]. The wealth of a defendant cannot justify an otherwise unconstitutional punitive damages award." *Branham*, 390 S.C. at 240, 701 S.E.2d at 25 (quoting *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 427, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003)). "[F]ew awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." *Id.* at 425, 1513. "When the actual damages awarded are substantial, "a lesser ratio, perhaps only equal to compensatory damages, can reach the outer limits of the due process guarantee." *Kennedy v. Richland Cnty. Sch. Dist. Two*, 428 S.C. 98, 127, 833 S.E.2d 414, 429-30 (Ct. App. 2019) (quoting *Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 592, 686 S.E.2d 176, 187 (2009)). When a punitive damages award is "grossly excessive," it violates the due process clause of the Fourteenth Amendment. *O'Shields v. Columbia Auto., LLC*, 435 S.C. 319, 330, 867 S.E.2d 446, 452 (Ct. App. 2021), *aff'd*, No. 2021-001388, 2024 WL 2308466 (S.C. May 22, 2024) (quoting *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 568, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996)).

As noted above, the references to the sale of Plaintiff's business, as well as his home and other assets, directly impacted the amount of actual damages awarded to Defendant. These comments likewise inflated the amount of punitive damages that were awarded as well.

Defendant's comments during cross-examination and closing were clearly designed to create prejudice against Plaintiff, to convey to the jury that Plaintiff's had the ability to pay a substantial judgment. Like *Branham*, Defendant's reference to inadmissible evidence denied Plaintiff of a fair trial, and further manipulated the jury to assume that Plaintiff could pay a multimillion verdict. While a party's net worth is a factor when considering an award of punitive damages, the jury only considered Plaintiff's net worth because Defendant mentioned assets that this Court had previously stated could not be mentioned. A trial court has a duty to reduce a grossly excessive verdict when "the amount awarded is so shockingly disproportionate to the injuries as to indicate that the jury acted out of passion, caprice, prejudice, or other consideration not founded on the evidence." *Branham*, 390 S.C. at 237, 701 S.E.2d at 23. The jury's award of punitive damages, which amounts to \$2,798,224.80, is unsupported by the record and violates Plaintiff's rights pursuant to the Due Process Clause of the Fourteenth Amendment. See *Campbell*, 538 U.S. 408, 427, 123 S.Ct. 1513. Had Defendant's counsel not mentioned the sale of Plaintiff's business, the value of his home, or other assets of Plaintiff, the jury's verdict would have undoubtedly, more accurately reflected Defendant's alleged damages. Because the jury's excessive punitive damages award was based on prejudice towards Plaintiff, a new trial should be ordered, or alternatively, reduced.

CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that the verdict entered against him be set aside, and that a judgment be entered in his favor. Alternatively, Plaintiff requests that a new trial be granted in this matter, or that the judgment entered against him be reduced to accurately reflect the damages Defendant sustained.

[Signature Page to Follow]

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June 21, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDUCIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2020-CP-10-3043
	)	
ERIC BERNARD BOWMAN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
WALLACE BLAIR CROSBY,	)	
	)	
Defendant.	)	
		PLAINTIFF MOTION FOR JUDICIAL
	)	REVIEW OF PUNITIVE DAMAGES
Samantha Albert,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Eric Bernard Bowman,	)	
	)	
Defendant.	)	

Plaintiff/Counterclaim Defendant Eric Bowman, moves this Court for Judicial Review of punitive damages award in the trial of this case for the term of June 10, 2024 pursuant to S.C. Codes Ann. § 15-32-520 and § 15-32-53.

CLARKSON, WALSH & COULTER, P.A.

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June 21, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDUCIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2020-CP-10-3043
	)	
ERIC BERNARD BOWMAN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
WALLACE BLAIR CROSBY,	)	
	)	
Defendant.	)	
	)	PLAINTIFF AND THIRD PARTY
	)	DEFENDANT’S MOTION IN LIMINE
Samantha Albert,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Eric Bernard Bowman,	)	
	)	
Defendant.	)	
	)	

The Plaintiff and Third-Party Defendant, Eric Bernard Bowman, hereby submits this *Motion in Limine* seeking an Order to prevent the plaintiff, the plaintiff’s counsel, or any other party or its representatives from mentioning, referencing, introducing, offering, or eliciting any information, evidence, or testimony concerning any assets that are not in the plaintiff’s name, including, but not limited to, any irrevocable trusts, as these assets are irrelevant. In support of this motion, Plaintiff and Third-Party Defendant would show the following:

Any assets contained in an irrevocable trust do not belong to a beneficiary, but rather belong to the trust. See *Protestant Episcopal Church in Diocese of S.C. v. Episcopal Church*, 439 S.C. 284, 887 S.E.2d 508 (2022), reh’g denied (May 24, 2023). Additionally, “[a] term of a trust providing that the interest of a beneficiary is held subject to a ‘spendthrift trust’, or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary’s

interest.” S.C. Code Ann. § 62-7-502(b). “[A] a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.” S.C. Code Ann. § 62-7-502(c).

Plaintiff is a beneficiary to an irrevocable trust. The assets contained in the trust belong to the trust, not Plaintiff. This trust contains a spendthrift provision, which states,

Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of the Trustee, be liable for, or subject to, the debts, contracts, obligations, liabilities or torts of any beneficiary.

As such, any assets contained in the irrevocable trust may not be accessed by any creditors, including for actions allegedly arising out of torts. Thus, the Defendant and Third-Party Plaintiff cannot access the funds in the Trust, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary. Further, the assets contained in the trust do not belong to the plaintiff, and are rather the property of the trust. As such, the irrevocable trust is irrelevant to the action at hand.

Accordingly, Plaintiff and Third-Party Defendant prays that Defendant and Third-Party Plaintiff be barred from mentioning, referencing, introducing, offering, or eliciting any information, evidence, or testimony concerning any assets that are not in the plaintiff’s name, including, but not limited to, any irrevocable trusts.

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June 7, 2024

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
SOUTH CAROLINA CIRCUIT COURT 9
DOCKET NO. 2020-CP-10-3043

ERIC BERNARD BOWMAN, ET AL.,)
 Plaintiff,)
versus)
)
WALLACE BLAIR CROSBY, ET AL.,)
 Defendant.)

H E A R I N G
BEFORE THE HONORABLE JENNIFER B. MCCOY

DATE: June 10-13, 2024
TIME: 11:40 a.m.
LOCATION: South Carolina Circuit Court 9

TRANSCRIBED BY: Natasha Barrientos

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25

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1 to (inaudible).

2 THE COURT: Okay.

3 MR. SLOTCHIVER: Thank you, Your Honor. The matter
4 before the Court deals with what we consider to be collateral
5 estoppel and the law is quite clear, there are several cases
6 we have cited in our motion. I've got copies of them if
7 you'd like. One is --

8 THE COURT: I have it right here on my screen, so I'll
9 follow along.

10 MR. SLOTCHIVER: Okay. So one is the Zurcher --
11 Zurcher versus Bilton case. One is the Quinn versus The
12 Sharon Corporation, and the third is the Kovach case.

13 THE COURT: Okay. If you have the cases, you can pass
14 off -- take the print off.

15 MR. SLOTCHIVER: Happy to. And the Kovach case, I'm
16 giving you a copy of the underlying order that a direct --
17 that ultimately was withheld.

18 THE COURT: Okay.

19 MR. SLOTCHIVER: Or, you know, stood -- stood the test
20 with the Supreme Court.

21 THE COURT: All right.

22 MR. COOK: Actually, it was reversed by the Supreme
23 Court.

24 MR. TURNER: Your Honor, it's our position that case
25 has been reversed by the Supreme Court.

1 THE COURT: Okay.

2 MR. SLOTCHIVER: Not on this particular portion of it.

3 THE COURT: We'll -- we'll take all that one thing at a
4 time. But, okay. All right. Go ahead.

5 MR. SLOTCHIVER: So all of the cases stand for the same
6 propositions, which is that if you adjudicate the case or a
7 set of facts in one court, such as by a criminal plea, you
8 cannot take an inconsistent position in a different court
9 such as a civil proceeding.

10 And in this case, Your Honor, as -- as you are aware,
11 there was a criminal plea on these facts, and we have
12 submitted and filed with the Court. I'm happy to provide you
13 with a copy if you'd like for your review of the transcript
14 of the criminal plea of Mr. Bowman.

15 And in the transcript, not only did he plead guilty to
16 the charge, but before he pled guilty to the charge of the
17 assault, the prosecutor, the solicitor, Haliena Hyman, went
18 through extensive detail on the facts of the case. And in
19 her facts, she spoke about the fact that he intentionally ran
20 into Mr. Crosby with the golf cart and the fact that he had
21 not paid his bill.

22 And in fact, I'll line them up, Your Honor, maybe it's
23 the easiest to do it with -- with the complaint that he
24 alleged because in his complaint, he's asserted false
25 imprisonment that he was blocked from leaving. And that's

1 not what he stated when he pled guilty to the charge. And
2 it's in the transcript. In the complaint, he says he was
3 assaulted by Mr. Crosby, but instead he testified to the fact
4 that he himself assaulted Mr. Crosby. He stated in his
5 complaint that -- that Mr. Crosby had performed malicious
6 damage to his property by hitting and kicking it.

7 But in his complaint or in -- in the plea, he admitted
8 that the damages to the golf cart weren't from Mr. Crosby
9 hitting and kicking it, but the damages to the golf cart were
10 from him hitting Mr. Crosby. Not once, but two separate
11 times. The same thing with the battery. The battery was
12 done by Mr. Bowman.

13 And as, Your Honor, is aware, with -- with a criminal
14 plea, if you're going to plead guilty to a charge, you're
15 saying that I don't have any defenses. I intentionally did
16 this. So you can't come into court after you intentionally
17 admit what you've done and then say, "I had a lawful basis to
18 do what I did. I was justified to do what I did."

19 Because it is absolutely inconsistent. And the courts,
20 in the cases in front of you, the courts address the fact
21 that a criminal plea is the same thing as a full adjudication
22 and a trial. And in fact, they go further to state that
23 because it's a criminal case, it's even a higher burden to
24 convince (inaudible) the criminal case than the civil case.

25 So for each of the causes of action, including the

1 intentional infliction of emotional distress, they all really
2 fail. We're not moving for summary judgment at this time.
3 But they all really failed because he's admitted that that's
4 not what happened. It's not what occurred.

5 And he admitted that in his testimony by -- by
6 acknowledging when you asked him, Your Honor, "Do you admit
7 the facts that you stated?" And his response was, "Yes." So
8 to come into court now and to take a position contrary to
9 what he's already admitted to, and he's already testified to
10 and has already been before the Court, we believe the case is
11 very clear. The case was very clear. Clear that he's
12 collaterally estopped from taking those positions.

13 THE COURT: Okay. Transcript copy would be good,
14 because I don't have that, I don't think that was emailed to
15 me. Was it emailed to me?

16 MR. MCCULLOUGH: Your Honor --

17 THE COURT: I don't have it.

18 MR. MCCULLOUGH: -- it was attached to the summary, but
19 I've got a copy of it.

20 THE COURT: The transcript. Is it attached to your pre
21 (inaudible)?

22 MR. MCCULLOUGH: (Inaudible).

23 THE COURT: Oh, Okay. Well, all right. So now, thank
24 you for giving me a paper file. Okay. I'm happy to hear
25 from (inaudible) this issue.

1 MR. TURNER: Thank you, Your Honor. Your Honor, we
2 disagree with that position that -- that this matter has been
3 adjudicated. There's -- we're not taking a different
4 position at this point than -- than Eric's plea. There's
5 also still the question of Mr. Crosby's own actions in this
6 matter that I think need to be adjudicated. I'll just -- one
7 -- obviously, comparative negligence as well on his own part.
8 We don't think that these matters -- the -- the facts have
9 been determined in this case, and especially from the
10 Defendant's own actions in this matter, Your Honor.

11 We don't think, (inaudible) applies for anything
12 involving him. Mr. Bowman will not be taking a different
13 position in -- in this trial than he has already pled, you
14 know, he'd still admit that he's struggling with the golf
15 cart. But here, there are some things that we've pled false
16 imprisonment, and -- and things like that, that I think
17 Mr. Crosby acted on both that were allegations that he acted
18 to - to bring these causes of action, so.

19 MR. COOK: Could -- could I add to that --

20 THE COURT: Of course.

21 MR. COOK: -- briefly? I agree with Mr. Turner that
22 Mr. Bowman is not in any way, shape, or form going to disavow
23 anything that he admitted to. He pleaded guilty to assault
24 and battery third degree, which is the lowest or -- Your
25 Honor, he took the plea. This is not res judicata, which

1 would be claim preclusion.

2 It's collateral estoppel, which is fact preclusion.

3 And so he is bound by everything he admitted that he did.

4 But that doesn't bar his claims. He's got -- he's got a
5 claim for assault and battery.

6 Crosby was not charged with anything. Whether he
7 committed an assault or battery was not relevant to the guilt
8 or innocence. I might add, as a matter of fact that the --
9 the -- the Defendant in their counterclaim actually alleges
10 two assaults and batteries. He hit him once with a golf
11 cart, hit him the second time with a golf cart, he pleaded
12 guilty to one count.

13 So the jury we believe is entitled to hear the
14 applicable law and all of the facts concerning this
15 confrontation. In fact, one of our claims is for false
16 imprisonment or false arrest. And we probably are entitled
17 to a directed verdict on that, because under the Law of South
18 Carolina, you can perform a citizen's arrest if you witness a
19 felony.

20 You cannot do it when there's a misdemeanor. And the
21 law is -- even if you had walked out and were stealing from
22 the restaurant, it was under \$2,000, and that makes it a
23 misdemeanor.

24 And so he could not be arrested by a citizen for doing
25 that. So that's absolutely a false arrest. The testimony

1 will be that he did strike Mr. Crosby, struck with his fist,
2 and the evidence supports that, the windshield of the golf
3 cart. And that was not an element of what Mr. Bowman pleaded
4 guilty to. So we've also got a claim for defamation because
5 Mr. Crosby accused him loudly in front of -- out -- up in --
6 in the road next to Dunleavy's of stealing from -- from
7 Dunleavy's, which he didn't do. There's a claim for
8 intentional infliction of emotional distress, which is not an
9 element of the claims that Mr. Bowman pled guilty to.

10 THE COURT: Okay.

11 MR. SLOTCHIVER: May I briefly, Your Honor?

12 THE COURT: Sure.

13 MR. SLOTCHIVER: And it might help when you go back, if
14 I -- this is very brief. I can read this short portion of
15 the transcript that's relevant to it.

16 THE COURT: Yeah. What page are you on?

17 MR. SLOTCHIVER: It's on page seven.

18 THE COURT: Okay.

19 MR. SLOTCHIVER: "In the -- in the late-night hours of
20 October 5, 2018, Samantha Albert was working as a bartender
21 at Dunleavy's Pub on Sullivan's Island in Charleston County.
22 Dunleavy's had been exceptionally busy that night and had not
23 been sufficiently staffed for the number of customers
24 visiting the establishment. Albert's boyfriend, victim
25 Wallace Crosby came to Dunleavy's to assist her in performing

1 some barback duties before deciding to wait at the bar for
2 her shift to end.

3 Around that same time, this Defendant arrived at
4 Dunleavy's with his wife and friends. The Defendant opened a
5 tab with Albert at the bar, ordering several drinks and
6 shots. After midnight, both Albert and the victim were
7 outside the bar. When Albert observed the Defendant and his
8 wife attempting to leave the premises on a golf cart without
9 paying the tab. Albert told the Defendant that he needed to
10 pay his tab before exiting, but the Defendant refused to
11 comply."

12 I'll stop there for a moment. This addresses the tab
13 that wasn't paid. This is going to be a Mission-Mason. "The
14 victim who was several feet away at the time from the
15 stationary golf cart, spoke up at the time and reiterated
16 that the Defendant needed to go back and pay his tab before
17 leaving. In response, the Defendant hit the gas and
18 intentionally ran his vehicle into the victim."

19 Your Honor, that's the first strike. Mr. -- that cause
20 was set about a moment ago. "The Defendant's wife extracted
21 herself from the situation and exited the golf cart walking
22 back into the bar at this time, then, as the victim was
23 attempting to regain his footing, the Defendant again, to
24 strike the second time, intentionally swiped his vehicle into
25 the victim, hitting him to the point where the windshield

1 shattered and the victim hit the ground."

2 So, despite Mr. Cook's comment about the bat -- his
3 fist hit it. That's not what he admitted to. And it's not
4 what the evidence shows, but it's not what he admitted to.
5 Most importantly, at the time. "The Defendant then sped away
6 on his golf cart, at least one witness attempted to chase
7 after the golf cart to stop the Defendant from fleeing, but
8 was unsuccessful.

9 Law enforcement and EMS responded to the scene.
10 Multiple witnesses were interviewed, and all those witnesses
11 aside from the Defendant's wife who was not there for the
12 entire incident, had consistent statements of what had
13 occurred.

14 And everybody said the victim had intentionally been
15 hit twice by the golf cart. The victim had windshield glass
16 lodged in the palms of his hands, abrasions and high blood
17 pressure. So he went to the hospital for treatment.
18 However, over the course of the next several months, he had
19 several" -- and it goes into his injuries. It would go to
20 the next page. Your Honor, you had asked him.

21 She -- she -- she stated on page nine there was a
22 related civil trial that is still pending. So even she saw
23 this as a related civil trial. This is that trial today.
24 But then, Your Honor, you asked him about prior arrests, and
25 then you responded really quickly. You asked if he agreed to

1 it. Let me find that section.

2 THE COURT: That would be page 15, lines 21 through 23.

3 MR. SLOTCHIVER: Yes, Your Honor. So the facts are
4 exactly the issues before the Court today. I don't know how
5 they can't do the same things. It's the same assault, the
6 same hit, the same intention. There's no defense. The same
7 injuries to his palms, not to his wrist. All of the things
8 that -- that have been admitted to.

9 And that takes us back to the Kovach's case where the
10 Court said, "You" -- and -- and the other case on collateral
11 estoppel. The Court said, "You cannot do this." And the
12 Court said, "You are collaterally estopped from taking one
13 position in one Court and coming into another one and trying
14 to distinguish them and take another position."

15 THE COURT: But they're saying he's not taking a
16 different position as to his actions, which is what he pled
17 to. I think the discrepancy here arises from the fact that
18 police officers press charges. Right?

19 MR. SLOTCHIVER: Yes.

20 THE COURT: Okay. They press charges against Mr.
21 Bowman that night. Ms. Wilson's office ultimately
22 adjudicated those. We have that plea here in court. That
23 all had to do with Mr. Bowman's conduct. None of that had to
24 do with your client's conduct however. And I don't know that
25 the absence negates the fact that your client didn't do

1 anything.

2 MR. SLOTCHIVER: I -- I -- I --

3 THE COURT: So I'm not sure. I think that's where the
4 discretion --

5 MR. SLOTCHIVER: With all due respect, I don't know
6 how, on the one hand you could admit that you didn't pay your
7 bill. And then on the other hand, say, you slander me by
8 saying that I didn't pay my bill.

9 THE COURT: Right.

10 MR. SLOTCHIVER: So truth is the one -- is the number
11 one defense for slander.

12 THE COURT: Right.

13 MR. SLOTCHIVER: I don't know how you can say, "You
14 attacked my golf cart with your fists." When you've admitted
15 that the windshield broke when you ran into my client, not
16 one, but a second time. And that's what caused the
17 windshield to break. So, although I understand what you're
18 saying, Your Honor, about the fact that --

19 THE COURT: Yeah. And I think that there are some
20 maybe specifics that I agree with you on. I'm just trying to
21 say as a whole, we've got the -- in police charges, and then
22 you got civil charges.

23 MR. SLOTCHIVER: I -- I -- I agree.

24 THE COURT: Right.

25 MR. SLOTCHIVER: And I think that in this very unique

1 set of circumstances, that the specifics of what he testified
2 to pertain directly to every one of his causes of action.
3 And in order to testify about the specifics of what he's
4 alleged in his complaint, he would have to take an
5 inconsistent position to what he said.

6 THE COURT: Okay.

7 MR. SLOTCHIVER: And -- and that's what we've been
8 dealing with throughout the case. But -- we'll -- there's
9 plenty of other places where that applies. But with regard
10 to this motion, I would ask, Your Honor, to take a look at
11 the pleadings and the complaint and the basis for what he has
12 asserted versus what he has pled guilty to. Because I
13 believe it resolves all of those issues. And to go forward
14 with an inconsistent position would be violative of the
15 collateral estoppel on law.

16 THE COURT: Okay.

17 MR. SLOTCHIVER: Thank you.

18 THE COURT: Sure. Anything else on that particular
19 issue?

20 MR. COOK: No. I -- I think, Your Honor, raised the
21 points that we made.

22 THE COURT: Okay. Well, I'll have to go back,
23 obviously, and reference the pleadings as well with an eye
24 toward the statements contained in the plea colloquy from the
25 plea objection, November 30th last year, 2023.

1 Okay. Well, let's move on to the next motion in
2 limine. Let's see. Let's talk about -- there were several.

3 MR. TURNER: I believe we filed --

4 THE COURT: (Inaudible) filed, do you want to stick
5 with them or?

6 MR. TURNER: We filed two, Your Honor.

7 THE COURT: You did?

8 MR. TURNER: I can address them briefly.

9 THE COURT: Okay.

10 MR. TURNER: The first, Your Honor, was our motion in
11 limine to exclude exhibit -- the Plaintiff's -- well, a
12 couple of them they would like to enter. But mainly what we
13 believe is a video from 2015 before this incident allegedly
14 of -- of Mr. Bowman in -- in -- in a bar, what appears to be
15 striking someone, we believe is overly prejudicial, has
16 nothing to do with this particular matter. This is a
17 completely different matter with somebody allegedly coming
18 outside and trying to stop him.

19 And we just figure -- we just believe that -- that
20 video. And also, any incident reports or other -- other
21 reports of such nature with Mr. Bowman I -- I noticed they
22 even had a -- an incident report that happened after this as
23 a potential exhibit with -- involving Mr. Bowman's spouse
24 from, I believe, 2023 that certainly has nothing to do with -
25 - with this matter in hand.

1 And we would just ask that that video or any incidents
2 reports involving Mr. Bowman of -- of prior conduct be overly
3 prejudicial and irrelevant and should be excluded, Your
4 Honor.

5 THE COURT: Okay. Was this video supposed to show
6 that?

7 MR. TURNER: Thank you, Your Honor.

8 THE COURT: How will it a -- the jury and the decision
9 on these matters?

10 MR. SLOTCHIVER: So we would not be introducing the
11 video to show what happened. But in this case -- and let me
12 give you some background about the video. This took place at
13 a bar but it was the Midtown Bar in downtown Charleston. And
14 it shows Mr. Bowman talking what I -- what my observation is.
15 He's talking to a gentleman, smaller gentleman than him. And
16 all of a sudden out of nowhere, he snaps and starts tumbling
17 the guy.

18 And it shows not only a pattern of conduct, Your Honor,
19 but also it goes to his credibility because he denied it when
20 we asked questions about it. He said, "I can't tell who it
21 is because it's extremely grainy in the video. I don't
22 remember this at all, but I can't tell who the picture is."
23 I said, "Mr. Bowman, it's not grainy at all, I'm going to
24 freeze it right now in this particular spot."

25 And at some point, in the future, the jury will be able

1 to see the video and be able to determine if it is in fact a
2 grainy video. Because it's just not. But the problem, Your
3 Honor, is that, you know, we all know that in taking
4 depositions, you, you ask questions and we always tell our
5 clients, make sure you tell the truth. Because if -- if you
6 don't, it can come in from a credibility standpoint.

7 He's got a pattern of conduct of getting in unprovoked
8 fights and making threats. Which leads us to the next
9 comment they made, which was an arrest report or an incident
10 report that took place with his wife, Melissa. And with his
11 wife Melissa, in the report, he actually threatened to run
12 her over with the vehicle when he was upset, and she caught
13 him trying to break into her business account and put half of
14 her business into his name.

15 That's also in the report. He's got a violent, angry
16 history and a pattern of conduct. And it plays many roles.
17 Your Honor, not only does it apply to -- to us being able to
18 address it with him from a credibility standpoint and a
19 pattern of conduct, but also it applies to the fact that he
20 plans to call his wife is a catastrophe. His wife, who is
21 now separated from him and his wife, who is under pressures.

22 Because we believe that -- that with -- when someone's
23 violently threatening to run you over when they're breaking
24 into your business accounts, it's an odd person to put up
25 there and to say, "You can believe everything she says,

1 because I'm not coercing her or forcing her." And I think it
2 all becomes relevant. These are all actions of his own as to
3 say the old statement about you're the author of your own
4 dilemma.

5 He's created all of these. If he had testified to it,
6 honestly, the videotape, then I think he might have a
7 different argument, but it's not what he's saying. He's
8 decided to give a completely different story of, I don't
9 know, and I don't know, and you can't see it. And I'm not
10 admitting anything. And we believe for those reasons, we
11 should be able to go and do it.

12 MR. TURNER: I think as counsel said exactly what I was
13 meaning when he said, "unprovoked" incidents. This is
14 clearly an issue. We're -- we're, you know, going to be --
15 we believe the allegations of false imprisonment are totally
16 different than those other areas. Certainly, the incident
17 with his wife wasn't that relevant. I -- I still don't
18 believe that's relevant whatsoever. After all this
19 particular incident, has nothing to do with this whatsoever.
20 So we would just ask those (inaudible), Your Honor.

21 THE COURT: Okay. Well, I appreciate you bringing it
22 to my attention. I'll have to make a decision if and when it
23 is sought to be admitted during the course of trial. I don't
24 know right now, that's mighty prejudicial. It's a big
25 (inaudible), but we'll see how things shake out. Okay? All

1 right. And what next, Mr. Turner?

2 MR. TURNER: We have one more, Your Honor. And it was
3 regarding mentions or eliciting any information, evidence or
4 testimony regarding a trust --

5 THE COURT: Right. Being an irrevocable trust?

6 MR. TURNER: Yeah. Yes, Your Honor. We don't believe
7 that's an asset that -- that a trust like this, you probably
8 know it's not an asset under South Carolina Law. So we also
9 believe that it's completely irrelevant and don't believe it
10 should be allowed. It would be no more prejudicial against
11 our client to even mention that as even alluding to it, it
12 being a potential asset will be just overly prejudicial to
13 him, Your Honor.

14 THE COURT: Okay. You intend on -- intend to -- claim
15 to do that?

16 MR. SLOTCHIVER: Your Honor, we believe that -- that
17 they can take the position that we're not allowed to go into
18 it. But again, we believe this is an illusory trust and it
19 was created by a lawyer. But what's -- what our testimony
20 shows so far, is that he broke the terms of the trust in his
21 actions, not only with the house, but with the vehicles and
22 his family.

23 And we believe we should go into it for that very
24 reason. So if you have an illusory trust, then the trust is
25 void. And that's the testimony we plan to go into.

1 THE COURT: Okay. I'm not sure that I'm prepared to
2 make that decision. I think that's probably inappropriate
3 in probate court before. I'm --

4 MR. SLOTCHIVER: We're not trying to try the case on
5 the --

6 THE COURT: No -- no. I understand that.

7 MR. SLOTCHIVER: But -- but --

8 THE COURT: I appreciate that. I'm just telling you
9 for right now, my -- you know, I'm not sure that I'm really
10 willing to -- to make that leap at this point in time. But
11 again, something to be brought to my attention, which I
12 appreciate you all doing it, and we'll make a final
13 determination when it -- until we get to that point in trial.
14 Okay?

15 MR. SLOTCHIVER: Thank you, Judge.

16 THE COURT: Sure. All right. What else from --

17 MR. SLOTCHIVER: We got -- we got a couple more.

18 THE COURT: The one side of the table. We'll switch
19 back over to you all. All right. Go ahead.

20 MR. SLOTCHIVER: Okay. We talked about the collateral
21 estoppel. The other ones are short, Your Honor.

22 THE COURT: Okay.

23 MR. SLOTCHIVER: We would like an instruction from the
24 Court as to how we proceed with the closing arguments. Do we
25 get a second closing? We've got a -- we've got a third party

1 Plaintiff in the case. We've also got a client who has
2 counterclaimed against the Plaintiff in this case.

3 And we believe that it's -- it's a farce the way this
4 has taken place, and maybe Your Honor wants to wait and let
5 the case develop itself too, but we certainly don't want to
6 lose our opportunity to have a second closing.

7 THE COURT: Right. No. I think in so much as the
8 various positions need to be, you know, presented and closed
9 to the jury, you know, you have to speak about the verdict
10 form. Okay? And I always tell lawyers, start with the
11 verdict form, what's that going to look like? And then sort
12 of work your way backwards. Okay? So, you know, there's a
13 separate line on that for the jury to consider a separate
14 party's recovery, then I think that's appropriate to consider
15 for a separate closing remark.

16 In terms of the order of what that's going to look like
17 with everybody here, you'll have to forgive me and I'll have
18 to kind of think about that for a minute. But I mean, I
19 think that we'll get there. I feel confident that we'll get
20 to a place where we can all agree in appropriate order of
21 things to go to closing.

22 But in terms of, you know, a lot of this material, you
23 know, I would -- I would encourage somebody to come up with a
24 verdict form tonight and start trading that around because,
25 and typically, like I said, that will kind of guide the rest

1 of the trial backwards. Okay? And I know some of these
2 can't be, I know you've asked me to make some decisions that
3 will affect the verdict form, and I haven't given you my
4 decision.

5 I realize that, but, you know, things will change
6 between now and then end. But I -- I -- I think come up with
7 a form with the parties as pled and you know, we'll -- we'll
8 work our way backwards from that.

9 MR. SLOTCHIVER: Okay.

10 THE COURT: But I'm -- I'm confident we'll make sure
11 everybody's interests are adequately communicated to the
12 jury.

13 MR. SLOTCHIVER: Thank you, Judge. Just a little
14 unique circumstance, so I wanted to bring it up to you.

15 THE COURT: Yep. Yeah.

16 MR. SLOTCHIVER: A few more brief ones, Your Honor.
17 One is -- and -- and I'm looking for some kind of outbursts
18 restrictions. For example, we wanted to restrict the
19 Plaintiff from making commentary to the fact that on
20 subsequent occasions he's seen my client and he appears to be
21 on drugs. We had an event at a deposition where there was a
22 break, and when he came back, Mr. Bowman commented on the
23 fact that our client looks like he's been on drugs or
24 something. And we wanted to make sure that those types of
25 offers do not take place in the trial.

1 THE COURT: Surely, will not. We'll run a orderly
2 courtroom in here, so. All right. Go ahead.

3 MR. SLOTCHIVER: And the second one, Your Honor, was we
4 wanted to make sure there's no disparaging comments towards
5 counsel during the course of the trial. For example, I -- I
6 think I --

7 THE COURT: That wouldn't take place. If anybody did
8 that they'd have to deal with me. And they don't want do
9 that. So go ahead.

10 MR. SLOTCHIVER: You've seen -- you've seen what I've
11 written in on --

12 THE COURT: I take these -- I take our -- all of our
13 jobs very seriously and then all of you who have appeared in
14 front of me know that. First and foremost, I care about the
15 integrity of our judicial system. So hopefully none of these
16 will become an issue, but if it's a reminder as needed, then
17 I will do -- do that.

18 MR. SLOTCHIVER: And that takes care of the issues that
19 I've raised for -- for my comment also for Mr. McCullough.

20 THE COURT: Yeah.

21 MR. SLOTCHIVER: I'm sure you've seen the --

22 THE COURT: Works both ways and it applies equally to
23 all, so.

24 MR. SLOTCHIVER: That's all we want, Your Honor. Thank
25 you.

1 THE COURT: All right.

2 MR. SLOTCHIVER: Anything else?

3 MR. MCCULLOUGH: So I can't trash dogs, is what you're
4 telling me. Really quickly, and again, this is more just so
5 we're understanding, I don't want to run afoul of anything on
6 any cross-examination. And you -- if you could let us know,
7 obviously, the outcome of -- of what you're deciding on the
8 collateral estoppel. I guess the other two things we've pled
9 punitives. And so I don't know in -- in prior cases you
10 bifurcated.

11 THE COURT: Yeah.

12 MR. MCCULLOUGH: But that obviously goes into financial
13 and also some of the other incidents. And so I just wanted
14 some clarity on what we should expect.

15 THE COURT: I have not been asked as of yet to
16 bifurcate punitives, so.

17 MR. MCCULLOUGH: So that would -- that brings up the
18 trust issue then, Your Honor, because lots of questions that
19 we plan on asking are (inaudible) Sullivan's and all these
20 kinds of things, but it's in the trust and so those issues
21 are going to come up and some questioning that we have to get
22 through. So I'm just telling you that for that -- for the
23 reasoning behind that.

24 THE COURT: Okay.

25 MR. MCCULLOUGH: Seeing, frankly, with some of these

1 other incidents, you know, we've got a series of incidents
2 that we think is relevant to that. So (inaudible) case we
3 feel like that should be coming in. And then --

4 THE COURT: Well, I -- I'd stay away from it and note
5 it at this point, while you're planning your openings, I
6 certainly wouldn't -- I wouldn't go ahead, and plan not to go
7 into any of those issues.

8 MR. MCCULLOUGH: Certainly. And then there are two
9 other items that I would love some clarity on: The
10 admissibility of number one, the actual guilty plea, and the
11 admissibility of his prior sworn testimony that Dan read part
12 of as to whether or not we filed that with the Court. And we
13 would like to use both of those. And so I just would like
14 some guidance from the Court, and the Court's position on the
15 ability of our use to raise (inaudible).

16 THE COURT: Okay. You want to talk about that soe
17 more?

18 MR. COOK: I -- I stand to be overruled. There's
19 actually a footnote in one of the cases, the -- the first one
20 they cited that noted that guilty plea because it was to a
21 misdemeanor and was actually hearsay and not admissible. I
22 don't think that's really going to keep it out in this case.
23 Mr. Bowman's going to testify and I think they're allowed to
24 cross-examine him based on his prior state of his guilty
25 plea.

1 THE COURT: All right. When you say admissibility, are
2 you trying to get the transcript done? I mean, talk to me a
3 little bit more about what it is you're trying to admit
4 exactly.

5 MR. MCCULLOUGH: I would -- you've admitted that you
6 unlawfully and intentionally ran into my client not once, but
7 twice.

8 THE COURT: Questioning through the court of testimony,
9 in other words. Okay. All right. I just thought -- I
10 didn't know if you were trying to like, actually go through
11 this whole policy with him or -- or what?

12 MR. MCCULLOUGH: No. I don't -- we don't intend to
13 like, as an exhibit include the transcript, but I -- I also
14 don't want to run afoul. I just want to be clear ahead of
15 time what we're entitled to get into with regards to --

16 THE COURT: Yeah, I think you can ask him about it.

17 MR. MCCULLOUGH: Okay.

18 THE COURT: I mean, I don't know why he couldn't
19 offhand. Again, we will reserve any final rulings until --
20 if and until we get to that point, but. All right. And that
21 deals with the plea. The other thing was what? His
22 deposition testimony where he -- talking about this other bar
23 fight or something? What was the other one?

24 MR. MCCULLOUGH: Well, that was -- he just said, no,
25 that's not me. I can't tell if that's me. That didn't

1 happen basically. So we think it goes to his credibility.
2 Dan questioned him, at length about the video and he acted
3 like, what him, it never happened. There's a lawsuit
4 involved. I mean, it's --

5 THE COURT: Not if you can talk about his prior
6 deposition all you want, I don't know.

7 MR. MCCULLOUGH: Okay.

8 THE COURT: Does that answer your question?

9 MR. MCCULLOUGH: Well, if we --

10 THE COURT: We haven't ruled it on the video I guess
11 yet itself, I guess.

12 MR. MCCULLOUGH: Right. Well, I mean, and -- and I
13 guess it would be if -- if we're getting into
14 cross-examination on credibility on the fact he refused to
15 admit that even in the bar fight and looked down on this
16 video, showed all of that, I don't know how you do that
17 without showing the video.

18 THE COURT: Right. Okay. All right. We'll keep the
19 -- I'll keep an eye out for that.

20 MR. MCCULLOUGH: (Inaudible), so.

21 THE COURT: Okay. What else? What work tonight for
22 me? Let's -- you know, I -- gosh, I got such good attorneys
23 so I'd love for you all to do the verdict form. Go ahead and
24 start. I know we've gotten some proposed charges, but go
25 ahead and I'm going to let you all lay out the roadmap for

1 this trial and give me what you -- how you foresee it going.
2 Okay? In terms of all these things.

3 MR. MCCULLOUGH: Thank you. A roadmap will go in
4 opposite directions.

5 THE COURT: Brain trust I have right in front of me.
6 Hopefully you all can put it together. You -- and build me
7 in that and we'll -- we'll get through it together.
8 Understanding that some of these issues, again, I've got a
9 roll on before we have final answers, but I'm sure -- I'm
10 sure you've all been thinking about it anyway. All right.
11 What else can I do for you today?

12 MR. TURNER: Your Honor, the only other thing we
13 mentioned in chambers is about our issue with our client or
14 our client. Our witness needing a team virtually.

15 THE COURT: Yeah.

16 MR. TURNER: And we would need a link for him to be
17 able to --

18 THE COURT: So at that point, we would just -- if he --
19 if he can't come, I mean obviously it's always preferable if
20 he can come. Okay? And I'd be happy to have him go first in
21 the morning and shoot him on back over to (inaudible). If he
22 cannot then he would just click just like you all join Webex
23 --

24 MR. TURNER: The regular --

25 THE COURT: The same thing. (Inaudible) clerk.

1 MR. TURNER: Okay.

2 THE COURT: Calendar, monthly view, (inaudible), click
3 on the virtual courtroom link.

4 MR. TURNER: Okay.

5 THE COURT: My law clerk will have had it opened.

6 MR. TURNER: Okay.

7 THE COURT: And then we'll just proceed that way.
8 We'll probably flip our laptop around. You all can come up
9 one at a time as you're, you know, examining cross-examining
10 the witness.

11 MR. TURNER: Okay.

12 THE COURT: The whole deal. And then as long as the
13 court reporter can hear it I think that'll suffice. We might
14 come up with a way to put them on the big screen. We'll be
15 thinking about that.

16 MR. TURNER: Okay.

17 THE COURT: We'll just do -- we'll do our best. Okay?

18 MR. TURNER: So it'll be a regular -- regular not seal?
19 Okay.

20 THE COURT: Webex link? The same one you all use to go
21 to motions (inaudible) --

22 MR. TURNER: Thank, Your Honor.

23 THE COURT: -- will be what he uses. Yep. In my
24 virtual courtroom. Any other questions, comments?

25 MR. TURNER: Not at this time.

1 MR. MCCULLOUGH: Nothing.

2 MR. COOK: Thank you.

3 MR. SLOTCHIVER: Thank you, Your Honor.

4 THE COURT: Great. Well, please continue your
5 settlement discussions. I highly encourage it. And we'll
6 wait to hear from you all. As soon as I have -- if I need
7 anything, if I have any questions, I'll obviously reach out
8 to your office. I'll let you know if I need anything. And
9 we'll go from there. Okay. I'll see you all in the morning,
10 9:30.

11 MR. COOK: All right.

12 MR. SLOTCHIVER: Thank you, Judge.

13 THE COURT: Okay?

14 MR. COOK: You want us to get here early in case you
15 need us for anything or --

16 THE COURT: If you want to get here about 9:15 or so,
17 that might be fine. They usually open the doors up about 15
18 minutes before we start court, so we'll come in and I'll have
19 some decisions for you. Okay?

20 MR. MCCULLOUGH: Thank you.

21 MR. COOK: Thank you.

22 THE COURT: Sure. If you all need to check any
23 technology, I think this would be a good opportunity to do
24 that as well so that we're not doing all that in the morning,
25 you all --

1 UNIDENTIFIED SPEAKER: Okay.

2 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT

3 1:00 P.M.)

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CERTIFICATE OF TRANSCRIBER

I, NATASHA BARRIENTOS, a Court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 9 of Charleston County, South Carolina, on the 10th Day of June, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 23, 2024


Natasha Barrientos

Transcriber

1 CONTINUATION OF PROCEEDINGS - JUNE 11, 2024

2 THE CLERK: Tuesday, June 11, 2024. Charleston
3 County Circuit Court, Judge McCoy.

4 THE COURT: That's yesterday afternoon pretrial. So we
5 can talk a little bit more about that at this time.

6 MR. MCCULLOUGH: Okay.

7 THE COURT: All right -- all right. So the Crosby's
8 moved in limine to preclude -- sorry. Let's back up.
9 Preclude any contrary position being taken by first party
10 claimant, Bowman, obviously as a result of his guilty plea in
11 front of me last fall. And I was handed up several cases to
12 review in support of their position. Of course, the one
13 that's most directly on point is the Zurcher versus Bilton
14 case, 2008. That involved an offered plea, not even a guilty
15 plea, but an offered plea.

16 And I think the Court's discussion of that is certainly
17 very applicable to the case at bar. That case and the Quinn
18 case, of course, both arose from decisions the Circuit Court
19 made on summary judgment, not in a motion in limine, which is
20 a little bit -- puts me in a little bit of an odd position
21 today. I'm not sure why we didn't file a motion for summary
22 judgment the day after he pled guilty, but nonetheless, here
23 we are at trial. Let me talk -- you want to talk about that?

24 MR. MCCULLOUGH: Well, they'd appeal it.

25 THE COURT: Okay.

1 MR. MCCULLOUGH: And so, we didn't want to wait another
2 two years, so here we are.

3 THE COURT: Maybe. I don't know. Don't have a crystal
4 ball, but anyway. Okay. So -- I understand. Nonetheless, I
5 guess it's a emotion in limine at this stage that -- that I'm
6 stuck with to sort of preclude them from asserting a position
7 that would be assuming the position of taking it as a guilty
8 plea. I do find the Zurcher case is applicable obviously so
9 far.

10 I don't -- as Mr. Cook said yesterday, they don't
11 intend to take a different position. I'm not sure how it's
12 going to work out with the claims that they've asserted.
13 We'll have to just see how that bullet attempts to be dodged
14 as we proceed to trial. But in terms of your motion, yeah, I
15 agree. I don't think that can be done, but I'm sort of
16 without recourse at this point in time at this stage other
17 than don't do it. So --

18 MR. MCCULLOUGH: And that --

19 THE COURT: -- okay.

20 MR. MCCULLOUGH: -- that's what we're asking for.
21 (Inaudible) stop from taking a different position.

22 THE COURT: All right. You said they weren't going to
23 do it, so I don't, you know, I -- the more I thought about
24 it, the more I was like, I -- you know, I don't know that
25 they're really asserting that they can't. So, anyway. And

1 then on the video I believe this was -- gets us back to
2 Mr. Bowman's motion to suppress that video which I think was
3 Crosby's reported Exhibit 18 yesterday. I did review the
4 video. Thank you for sending the link. Of course, I have to
5 review it to make any rulings.

6 I will reserve final judgment until -- if and until it
7 is attempted to be, you know, admitted at trial. However, I
8 -- I -- I do not see that coming in. Okay. I think as I --
9 and sort of indicated yesterday, that is -- while all
10 evidence is prejudicial in nature, that is highly, highly
11 prejudicial.

12 And I do not think that under 404(b) it is close enough
13 in time, proximity, or even in sort of mode or method to --
14 to overcome the prejudicial nature of -- of that video. So
15 for that reason, I -- I do not believe it would be
16 admissible. But again, reserving final ruling if and until
17 we get to that point. But that's how the Court would lean
18 for motion limiting purposes. Okay. What else do we need to
19 take up?

20 MR. MCCULLOUGH: One more item, Your Honor.

21 THE COURT: Yes.

22 MR. MCCULLOUGH: In line with that it's our
23 understanding that the first witness will be Ms. Britton.

24 THE COURT: Who is she? I don't --

25 MR. MCCULLOUGH: She -- she is his -- his wife.

1 THE WITNESS: Eric --

2 THE COURT: All right. That does work.

3 THE WITNESS: Eric Bernard Bowman. Last name is
4 spelled Bowman, B-O-W-M-A-N.

5 MR. COOK: For whatever reason, you don't need to be
6 quite as close --

7 THE WITNESS: Okay. Got it.

8 DIRECT EXAMINATION

9 BY MR. COOK:

10 Q. All right. How old are you?

11 A. I'm 44 years old.

12 Q. Without belaboring the point, can you just tell
13 the jury a little bit about where you grew up and who you
14 are?

15 A. Yes. Born in Michigan. Grew up mostly in Texas.
16 I've been in Charleston for 20 years. I'm a software
17 engineer by trade and I've lived on Sullivan's Island for 10
18 years.

19 Q. And what brought you to Charleston?

20 A. My first job out of college was programming for
21 the -- software for the Department of Defense. So I was
22 responsible for the flight trainers and the maintenance
23 trainers on the Air Force base here. And so, I would code on
24 base every day doing that stuff.

25 Q. What -- what do you do now?

1 A. Now, I am doing mostly cybersecurity and -- and
2 software development for government agencies. I do a lot
3 with the Department of Veterans Affairs and I have a
4 service-disabled veteran owned small business.

5 Q. And where do you live on Sullivan's Island?

6 A. I live at 3024 Marshall Boulevard.

7 Q. About how far is that from Dunleavy's Pub?

8 A. It's about a mile, mile plus maybe.

9 Q. Did you live there on October 5, 2018?

10 A. Yes, sir.

11 Q. October 4th. I think that the 4th was a Thursday
12 and the next morning would've been the morning of the 5th.

13 A. Okay.

14 Q. Best to your recollection?

15 A. I would have to look at the calendar.

16 Q. Could you tell the jury what -- what you did that
17 evening?

18 A. Yes. I ended up going -- my wife wanted to meet
19 one of her friends at Mex 1, and so she was -- asked me to go
20 out with them, and we ended up going to Mex 1. She had a
21 business meeting. Her friend worked for her and they do
22 defense contracting stuff as well. And I was kind of just
23 tagging along being the third wheel for the evening. And
24 just hanging out with her and her -- her friend.

25 Q. Do you remember specifically where you went?

1 A. Yeah, they initially went to Mex 1 and then they
2 went to Home Team. And then as we were leaving, we went to
3 Dunleavy's.

4 Q. How did you get there?

5 A. Drove a golf cart to downtown and downtown
6 Sullivan's Island and drove -- drove it home.

7 Q. Where did you park when you went to Dunleavy's?

8 A. Towards the end of the night, I don't know where I
9 necessarily parked at the beginning or -- it's been six
10 years. But I know at the end of the night we were parked
11 diagonally next to Dunleavy's down the One-Way Street.

12 Q. That pretty much (inaudible) described?

13 A. Yes, it is.

14 Q. (Inaudible).

15 A. Yes.

16 Q. And that would be -- that would be the street
17 right next to Dunleavy's?

18 A. Yes, sir.

19 Q. And it's -- would (inaudible) to the main street
20 that lines up that down -- downtown area?

21 A. Yes, sir.

22 Q. About what time do you think you got there?

23 A. I -- Melissa said ten o'clock, so maybe somewhere
24 around there. I know I believe the incident happened at
25 around 11:30 if I'm not mistaken. And she was probably gone

1 for an hour plus. And I was kind of just sitting waiting
2 around for her to get back.

3 Q. We -- we're not going to hold you to the exact
4 time, but this --

5 A. Okay.

6 Q. (Inaudible). Now, Melissa described being there
7 for a while, then leaving, and then you kind of pick her up.
8 Do you remember that?

9 A. Yeah. Melissa walked to her friend's house. Her
10 friend was in a really bad divorce and started crying at the
11 bar. And so, she and her friend walked him back, I don't
12 know how many girls it was and was just trying to -- just a
13 good -- be a good friend.

14 And so, I was kind of just sitting there talking to a
15 couple other friends and hanging out and discussing. I think
16 there was a birthday party for -- there was a lot of movie
17 people or TV people in the bar and just chatting about some
18 of that stuff.

19 Q. How much did you have to drink?

20 A. I didn't have anything at Mex 1. I know that
21 because I was mostly annoyed. I was there and I was just
22 waiting outside most of the time. Home Team probably had one
23 or two drinks and then maybe one or two at Dunleavy's as
24 well.

25 Q. Now, we saw that the bar tab in question was \$124.

1 Do you remember who put appearance on that tab?

2 A. I don't, I never had -- I had zero credit card
3 transactions at Mex 1, zero at Home Team, and I didn't even
4 know I had a tab. If I did, that's fine, at Dunleavy's.

5 Q. Was everybody kind of ordering drinks on the same
6 tab?

7 A. Yeah. I -- I was -- I was kind of just along for
8 the ride, so that evening I wasn't -- I hadn't paid for
9 anything at any bar. I know they went through my credit
10 cards pretty hardcore that -- those days. And I -- I
11 believe, I don't know if it was Carrie or -- or Melissa or
12 whomever that was -- that was paying or buying.

13 Q. Were you intoxicated when you left?

14 A. I was not.

15 Q. Did you take any drugs that evening?

16 A. I did not.

17 Q. So, tell the jury what happened as you left that
18 evening.

19 A. So as we were walking out, our cart was parked
20 diagonally and our friend's cart was parked diagonally and as
21 they backed out, they stopped and we talked for maybe five or
22 10 minutes about various things that were going on. There
23 were some other patrons that were hanging out out there that
24 were -- were just messing around and we're kind of just
25 waiting for them to -- to leave. And so, our friends,

1 finally, we said bye.

2 And so, they -- they pulled out and we backed out and
3 we were going forward. It was like diagonal back out and
4 then you go forward and the -- some guy I had never seen
5 before jumped out and just started screaming at us. I didn't
6 -- I wasn't necessarily worried at that point, but, you know,
7 he is screaming, swearing.

8 My wife was a little startled and it started escalating
9 pretty quickly. I told him, "Get out of the way. You have
10 no right to detain us, you know, please move." Turned into
11 me swearing at him, telling him to move. And then I noticed
12 there was two people behind the golf cart as well. Because I
13 went to back up and that's when I told my wife to go inside.

14 Q. And you later learned that the person in front was
15 Mr. Crosby up here?

16 A. Yes, I was.

17 Q. Do you know him?

18 A. I don't.

19 Q. Did you -- did you ever see him before?

20 A. No.

21 Q. Did you know that he was Samantha's then
22 boyfriend?

23 A. I did not.

24 Q. Did you know that you had left without paying a
25 tab?

1 A. I did not.

2 Q. Would you ever intentionally -- what do you call
3 that? Dine and dash? Or something or other and run out on
4 -- on your tab?

5 A. No, not on Sullivan's. Mr. Dunleavy's a good --
6 good friend and he's taken care of all of our kids for a lot
7 of years.

8 Q. Is your son's picture on the wall?

9 A. It is.

10 Q. Is he taken in the free pops and the drinks after
11 school?

12 A. Yeah, at one point we had five kids all at the
13 same time on Sullivan's Island. So they all took advantage
14 of that.

15 Q. And you mentioned one other thing, when you left,
16 you didn't jump into your golf cart and leave immediately.
17 You said you stopped and talked to friends for a few minutes?

18 A. Yeah, we were outside for probably five or 10
19 minutes, maybe 15.

20 Q. Getting back, you were telling us about it a few
21 minutes ago. You told Melissa go back into the -- into the
22 Dunleavy's?

23 A. Yeah. I -- I can handle myself, but my biggest
24 fear was her being in the middle of something. And so, as a
25 protector, I'm like, get her out of the situation as fast as

1 possible. I wasn't trying to engage at all. So I didn't
2 necessarily want to get out of the golf cart -- she went
3 inside. I didn't necessarily want to get out of the golf
4 cart and have a fight with three guys. I didn't know who
5 they were.

6 I didn't know what they were -- their issues were. I
7 didn't know if they were drunk or on drugs or whatever. And
8 so, all I knew was that somebody was screaming at me and so I
9 told them to get out of the way or I'm going to go edge
10 forward a little bit and stopped. He got upset at that point
11 and started punching the golf cart and actually jumped on top
12 of it.

13 When he was on top of it, he was holding onto the sides
14 and started kicking down on the hood and actually broke some
15 of the hood off. It was at that point I floored the golf
16 cart for about 3 feet and I -- I slammed on the brakes, he
17 flew off the front of it and fell backwards. I then went
18 around him and as I was going around him, he took a swing at
19 the golf cart. As -- do you want me to keep going?

20 Q. (Inaudible) pictures up here. Now, here's a --
21 here's a collection of pictures. It's been marked and put
22 into evidence, I think already as Plaintiff's Exhibit 5
23 (inaudible). Is this --

24 THE COURT: Well, we can do that at this time. Just is
25 this -- is that correct, Mr. --

1 MR. MCCULLOUGH: Yes. The majority of the exhibits
2 have been stipulation entered into evidence with (inaudible).

3 THE COURT: Okay. So they'll be admitted as such. And
4 this is -- one more time remind me ---

5 MR. COOK: Plaintiff's Exhibit 5. This is (inaudible).

6 THE COURT: Thank you so much. All right.

7 (Plaintiff's Exhibit 5 admitted into evidence.)

8 BY MR. COOK:

9 Q. So let me ask you to take a look at that and look
10 through those pictures (inaudible) represent (inaudible)
11 looked like after the encounter?

12 A. Yes, sir.

13 MR. COOK: May I publish this for the jury?

14 THE COURT: You may. And (inaudible) if you need it or

15 --

16 MR. COOK: (Inaudible) copy.

17 THE COURT: Okay.

18 BY MR. COOK:

19 Q. Thank you. So I noticed that there seem to be two
20 big cracks -- some cracks that were on front of the
21 windshield. Did those exist prior to that day?

22 A. No, it didn't.

23 Q. What caused those?

24 A. So the -- the one big one, as I was speeding away,
25 there was a -- you come to the next stop sign. I went

1 through that stop sign and went to the next stop sign because
2 a guy that was on the back of the golf cart started -- jumped
3 on the back as I started going, climbed over the back seat
4 and started kicking me with his leg over the front seat in
5 the back of the head.

6 Q. That was not Mr. Crosby?

7 A. That was not Mr. Crosby. And as that guy was
8 kicking me, I got to the next stop sign, I slammed on the
9 brakes and he kicked me as I slammed on the brakes and my
10 head went through the inside of the -- the golf cart.

11 Q. You notice there's another crack. You know what
12 caused that crack?

13 A. I -- I don't -- I don't know if he was kicking the
14 windshield or if that was when he punched it.

15 Q. So you've already kind of gotten ahead to the rest
16 of the story. After you -- your golf cart contacted
17 Mr. Crosby, what happened next?

18 A. So once it -- well, he was on top of the golf
19 cart, so I went forward and slammed on the brakes to get him
20 off of it, and he fell backwards and then I sped around him
21 after the fact. And somebody was climbing on the back of the
22 golf cart, kicking me, punching me in the back of the head.
23 When I slammed on the -- the brakes, I went flying into the
24 golf cart, he went flying into the -- the front seat at the
25 second stop sign on that road.

1 And I -- he had long curly hair and I just took him by
2 the hair and threw him out of the golf cart. And as soon as
3 I did that, I made a left-hand turn -- well, there was
4 another guy chasing the golf cart as well. I looked at him
5 and I said, "Are you going to do anything?" And he said,
6 "No, I'm out." And so, I got in the golf cart, took a left
7 turn and dialed 911 immediately.

8 Q. And what was your report to 911?

9 A. I basically just said, "I don't know who these
10 people are, but somebody basically just tried to like kidnap
11 detain my wife." I'm sure the 911 call is being transcribed,
12 but something of that nature.

13 Q. It's been -- been suggested, an argument here that
14 you could have very easily gone back into Dunleavy's with
15 your wife and settled your tab (inaudible). Why didn't you
16 do that? Why did you go home?

17 A. Because I didn't know who these people were. I
18 don't -- they were not being coherent. They were not acting
19 in a normal manner. They came out yelling at us that we're
20 rich. I mean, MF's and they were just being completely not
21 normal.

22 And so, as soon as multiple people were out there, my
23 goal was not to engage. I was trying to get out of the
24 situation without getting in a fist fight or something of
25 that nature, because if I got out of the -- the vehicle, I

1 didn't know what would happen.

2 Q. And it's mentioned that when you got home, you --
3 you covered the golf cart up --

4 A. I -- I don't think I covered the golf cart up. I
5 -- I covered it up eventually because the kids will ride the
6 golf cart and so I would cover it up just because I knew
7 like, "Hey, like kids couldn't touch it. I'm sure the guy's
8 fingerprints are on it. There's DNA on it." All those
9 different things.

10 So I was just trying to be -- and we had two golf carts
11 at the time. So we had a -- this was a six person golf cart
12 and we had a four person as well. And so, just put it in the
13 back of the garage and cover it up until -- until we're able
14 to figure out what happened.

15 Q. Were you trying to hide from the police?

16 A. I was not trying to hide from the police. The
17 police know exactly who we are. They stop by, they'll play
18 basketball with our kids in the front yard. The chief of
19 police or former chief of police knew exactly who I was
20 because I was a big fan. His girlfriend is Sidney. They
21 lived together. She was the prosecuting police officer.

22 Q. (Inaudible).

23 A. Like they all know who I am, very -- very well.
24 And they know all of our kids. They're at our schools, our
25 kids' school, they're at events. You know, we've probably

1 been at a hundred events with half the -- half the kids
2 through the elementary school over the years.

3 Q. Was it your intention to abandon Melissa there
4 that evening?

5 A. No, I wasn't.

6 Q. Did you have any communication with her?

7 A. Yeah. As soon as I -- as soon as I got off the
8 phone with the -- the 911 or whoever they routed me to, I had
9 a text that said, "I don't know what's going on. This is
10 really weird. Don't come back."

11 Q. Okay. And that was Melissa saying that?

12 A. Yes.

13 Q. Now, we -- we've heard that you subsequently
14 pleaded guilty to assault and battery in the third degree.
15 Is that correct?

16 A. Correct.

17 Q. And during that plea, the prosecutor read out a
18 statement of what happened that evening, is that correct?

19 A. They read their version of what they believed
20 happened that evening.

21 Q. You -- you agreed that you were guilty of the
22 offense of assault and battery third degree?

23 A. Yes. I -- It was explained to me that if you go
24 up to a bar -- go up to somebody at a bar and just push them,
25 that's the equivalent of a third-degree misdemeanor. And

1 that's -- and so I accepted that.

2 Q. Have you ever at all ever denied that you struck
3 Mr. Crosby with your golf cart?

4 A. No, I haven't.

5 Q. Did you press charges against Mr. Crosby?

6 A. I did not. Criminally.

7 Q. Do you remember anything else about that evening
8 that -- that you'd like to question about what happened? You
9 were outside the front of Dunleavy's that night.

10 A. No, just that it was absolutely insane and we
11 couldn't believe it happened.

12 Q. Did you ever experience anything like that at
13 Dunleavy's or anywhere on Sullivan's Island?

14 A. Nowhere -- nowhere in Sullivan's ever. That's not
15 something that normally happens there.

16 Q. And you said that you had never seen Mr. Crosby
17 before. How about the other guy who climbed on you. Ever
18 seen him before?

19 A. No. I -- I don't know if it was -- it was, I -- I
20 didn't and the only reason I -- I don't know if it was his
21 brother or his other friend or -- or whoever it was, but no,
22 I had never seen any of them, any of the three guys that were
23 there that night.

24 Q. When you -- when you -- when you saw Mr. Crosby in
25 front, were you seeking to start the controversy with him?

1 A. I was doing everything I could to get out of the
2 situation without having an altercation.

3 Q. Could you have backed up and gone out the other
4 way?

5 A. Not with people -- not with the guys that were
6 behind the golf cart. Even if it was a one-way street,
7 that's how -- when I saw people behind the golf cart, that
8 was when I was worried that it was going to escalate.

9 Q. You showed -- showed some damages to your golf
10 cart. Did you have to get it repaired?

11 A. I ended up just selling it and having somebody
12 else repair it. It was going to be like \$3,000, \$4,000 to
13 repair it. So it sat there for four years, I believe,
14 because I didn't want to drive it because of this court case.
15 But after four years the tires were rotted and it was just
16 sitting there and I just sold it.

17 Q. (Inaudible) that -- what -- what -- what would be
18 your estimate of the cost to repair the damage?

19 A. I don't know. Three or four grand, something of
20 that nature. Two grand.

21 MR. COOK: Thank you.

22 CROSS-EXAMINATION

23 BY MR. MCCULLOUGH:

24 Q. Your wife was on the golf cart with you when this
25 incident began -- began to occur? Is that correct?

1 A. Yes.

2 Q. And she got out of the golf cart and walked into
3 Dunleavy's Pub, correct?

4 A. Yes. She probably more ran, but yes.

5 Q. And nobody stopped her, correct?

6 A. Correct.

7 Q. Nobody impeded her ability to walk into
8 Dunleavy's. Correct?

9 A. They were solely focused on me.

10 Q. Okay. And as you testified, you can handle it
11 yourself?

12 A. Yes, sir.

13 Q. All right. Sir, side interest, Dunleavy's is
14 right here. Ms. Britton goes through inside to Dunleavy's.
15 Why don't you just slide over and walked into Dunleavy's
16 yourself?

17 A. Because there were three individuals who I did not
18 know and I was taught, and I've learned over the years, the
19 hard way, the best way to engage with people who are not of
20 sound nature is to not engage at all and to get out of the
21 situation as fast as possible and not be confrontational.

22 Q. So you --

23 A. And I teach my kids the same thing. I'm sorry?

24 Q. You may have been asked to get out of the golf
25 cart and walk into Dunleavy's?

1 A. I was being detained by somebody who I'd never
2 seen before. And so, getting out of the golf cart and
3 putting myself in harm's way or somebody else in harm's way
4 is not something I would -- was trying to do.

5 Q. All right. So the two guys behind the golf cart
6 chased you with long hair, punching and caused you to slam
7 over the golf cart. They're not here, they're not -- they're
8 not any part of this lawsuit, right?

9 A. I don't -- I don't know who they are.

10 Q. You see them? We got a bunch of people. Take
11 your time. You see them back here?

12 A. No. I -- I don't know who they are, but no, the
13 long-haired guy I would probably recognize, but the other
14 person I did -- I would never --

15 Q. Okay. Did you --

16 A. -- recognize again.

17 Q. Did you -- did you sue anybody else?

18 A. No, I did not. The -- the other people were not
19 trying to threaten me. So one of the things that was
20 happening if I should keep talking, was his friends were
21 actually trying to file lawsuits against us. And so, we got
22 -- a we got messages from people we knew that were saying,
23 "Hey, if you just pay him a hundred" --

24 MR. MCCULLOUGH: Stop. May we approach?

25 THE COURT: Yeah. I mean, sure.

1 (Bench conference.)

2 THE COURT: Okay. All right. Ladies and gentlemen, I
3 know you can strike the last comment from the witness. It
4 wasn't responsive to the question, but he'll continue on with
5 his questions. So just try to keep your answers to the
6 questions he asked. Okay?

7 THE WITNESS: Yes, ma'am.

8 THE COURT: Thank you, sir.

9 BY MR. MCCULLOUGH:

10 Q. When you were in the golf cart, you threatened to
11 call the police, correct?

12 A. Which I did.

13 Q. Okay. You called the police after you (inaudible)
14 the scene, not while you were sitting in the golf cart at
15 Dunleavy's?

16 A. Correct.

17 Q. So you threatened to call the police, but you
18 didn't do it?

19 A. I got out of the situation, which I determined to
20 be extremely dangerous, surrounded by three people that were
21 not acting like somebody would normally act.

22 Q. Three people?

23 A. Yes.

24 Q. You had been out drinking from 7:00 to midnight,
25 correct?

1 A. Maybe -- no, it was at least eight o'clock when we
2 went out, but --

3 Q. Okay. So you don't (inaudible) 8:00?

4 A. 8:00 to -- I believe, the incident happened at
5 11:30 and I may have had one drink, maybe two at Dunleavy's.

6 Q. Okay. Well, Exhibit Number 1, \$124 tab. It's
7 been entered into evidence and so what was it. Did you get
8 like an expensive bottle of champagne?

9 A. I never actually had a tab but I thought my one
10 friend paid \$118 tab and I only know it was \$118 because
11 that's what was reported. And I had friends from all over
12 the country mailing me \$118 in cash because they thought it
13 was a joke.

14 So 124, 118, I never saw the tab. I never knew what it
15 was. And I never knew it existed. But would I do something
16 over \$118 on Sullivan's Island. Absolutely not. Mr.
17 Dunleavy pays for my kids to have popcorn almost every day
18 after school for years.

19 Q. You pled guilty to assault and battery in the
20 third degree. Correct?

21 A. Correct.

22 Q. And that is the unlawful injury to another person,
23 correct?

24 A. I don't know the actual legal thing.

25 Q. All right. When you get (inaudible) put your hand

1 in your defense (inaudible), correct?

2 A. Correct.

3 Q. And you had pled a guilty plea in front of Judge
4 McCoy and admitted to everything that solicitor had said
5 occurred that night and the transcript is included right here
6 as an exhibit, Exhibit Number 3, correct?

7 A. I admitted to the misdemeanor number three that I
8 did strike him with a golf cart.

9 Q. Well --

10 A. All the -- whatever facts were read in whatever
11 dissertation was said from the charges wasn't actually what
12 happened. But did I actually hit them? Absolutely.

13 Q. And you admitted in this courtroom in your
14 criminal proceeding that while (inaudible) vehicle, you hit
15 the back and intentionally ran your vehicle into the victim,
16 BJ Crosby. You admitted that, correct?

17 A. I did not.

18 Q. You did not admit that?

19 A. Nope.

20 MR. MCCULLOUGH: Your Honor, (inaudible) our motion.

21 THE COURT: Yes, (inaudible). I'll excuse you for a
22 few minutes and then we'll come back and remind you of the
23 time and probably you're hungry for lunch soon. So we will
24 deal with that shortly, but I'll excuse you. Once again,
25 please do not discuss the case. And see you back here a few

1 minutes.

2 (Jury exits courtroom.)

3 THE WITNESS: Can I get down or do I stay here.

4 THE COURT: Right where you are.

5 THE WITNESS: All right. Thank you.

6 THE COURT: Yeah. Did you see (inaudible). All right.
7 Mr. McCullough, I can hear from you.

8 MR. MCCULLOUGH: Yes. I was to argue (inaudible) they
9 stopped from taking a position adverse to a sworn testimony
10 previously. And so -- and he's clearly not. That -- that's
11 our notion. That's our issue.

12 THE COURT: Okay.

13 MR. COOK: I -- I think the appropriate procedure, but
14 we've got a transcript of the -- of his testimony and he can
15 be impeached with it, just like a deposition that's not
16 (inaudible) because he actually can't -- I just asked him, I
17 read from the transcript and he said, "No." He -- he pleaded
18 guilty to the elements of the charge, which was an unlawful,
19 he admitted everything that had been read, Judge.

20 THE COURT: He had just admitted with you that he hit
21 him from 3 feet away or so and then slammed on the brake, so
22 just going to shake him off of the vehicle.

23 MR. COOK: Right.

24 THE COURT: So I -- I too am unclear as to why he
25 disagreed with that statement. I understand there's some

1 discrepancies, but I'm not going to let him take some
2 opposite position from what's been said over and over and
3 over again through plea and to his direct testimony. So I'll
4 instruct you Mr. Bowman, just answer the questions honestly
5 and truthfully that counsel asks you.

6 If you want to qualify your answers or you think
7 something needs to be cleared up, I'm confident your
8 attorneys will try to clear that up when they redirect you.
9 Okay? But you need to do take positions. You are not
10 allowed to do that. They're opposite of anything else you
11 have already admitted to in court. Okay? And you just said
12 on direct (inaudible) with (inaudible). So I'm not sure --

13 THE WITNESS: Ma'am --

14 THE COURT: I don't really want get into it right now
15 with these -- this is me (inaudible), but I'm instructing the
16 witness to -- to -- that he is collaterally estopped from
17 taking a different position than what he's already taken. I
18 don't know if you have something else you want to add?

19 MR. COOK: But actually, could we approach, I don't
20 want to coach him that's why.

21 THE COURT: Of course. Yeah, please.

22 (Bench conference.)

23 THE COURT: Okay. All right. You can bring the jury
24 back in then. And just for planning purposes, my intent, of
25 course, alluded to the jury would be to take a lunch break

1 after this witness. Just part of plan purposes.

2 UNIDENTIFIED MALE SPEAKER: We're going to put
3 (inaudible).

4 (Jury enters courtroom.)

5 THE COURT: Okay. Thank you so much. Everybody please
6 be seated.

7 Mr. McCullough, please proceed.

8 BY MR. MCCULLOUGH:

9 Q. Okay. Let's try this again. You made a guilty
10 plea. You admitted or agreed with the fact that you hit the
11 gas of your (inaudible) or your gas -- golf cart and
12 potentially ran your vehicle into BJ Crosby. Correct?

13 A. It was my understanding in my guilty plea that I
14 did not -- I did not say anything except that I had -- I was
15 guilty of the charge. The -- it was my understanding that
16 they read the police report and -- or the police
17 investigation. And that police investigation had a litany of
18 things associated with it. And I had to agree to what was in
19 there, or I had to agree to saying that I was guilty of that
20 third degree misdemeanor. That was my understanding from my
21 lawyer that said -- can you repeat the question again?

22 Q. You had two lawyers there with you, correct?

23 A. I know Mr. Theos was there. I don't know who the
24 other, if -- if I had another lawyer there.

25 Q. And you didn't have to do anything, but you chose

1 to plead guilty to assault and battery third degree.

2 A. I don't -- is that a question?

3 Q. It's a question.

4 A. I'm sorry. What -- what's the question?

5 Q. You didn't have to plead guilty. You chose to
6 plead guilty.

7 A. From my understanding because I did not press
8 charges against Mr. Crosby. That -- with what I did that met
9 the criteria of a third degree misdemeanor.

10 Q. You chose not to go to trial and you chose to
11 plead guilty.

12 A. I did. I did choose to -- to do that.

13 Q. And in that guilty plea here in this courtroom in
14 front of this (inaudible) this court, you listened and read
15 what happened and the judge asked you specifically, "Do you
16 agree with the facts determined in this (inaudible)." You
17 said, "Yes, I do."

18 A. I agreed with the fact that I hit him with a golf
19 cart and that I was guilty of a third degree misdemeanor.

20 Q. Okay.

21 A. I believe -- I believe my exact words were, "I --
22 I am accountable for the charges as presented." Or something
23 of that nature.

24 Q. And it was unlawful?

25 A. Yes.

1 Q. And you also admitted that after you hit BJ the
2 first time as he was attempting to regain his footing, the
3 Defendant, you, again, intentionally swiped your vehicle into
4 the victim, hitting him to the point where the windshield
5 shattered and the victim hit the ground. That's what you
6 agreed to.

7 A. I agreed to the charge that was said, and what was
8 written I had never seen before. And so, when I was saying
9 yes, I was agreeing to the charge and that's what my lawyer
10 told me to do.

11 Q. So when you sat right there --

12 A. But did -- did I -- did I try to get him off my
13 cart -- golf cart and did I try to get out the situation and
14 was he on the golf cart and was I -- was it possible he was
15 going to get injured when he was on top of it? And I sped up
16 really quick and I slammed on the brakes so he'd go flying?
17 Absolutely.

18 Q. Hold on. And then now that he's (inaudible) the
19 front, you got him again and smashed into him a second time,
20 shattered the windshield.

21 A. I don't -- I don't believe the windshield was
22 shattered at that time unless it was from him punching the
23 golf cart as I drove by.

24 Q. So you lied to Judge McCoy?

25 A. I -- I am not -- this is my testimony, this is the

1 truth.

2 Q. What was your testimony when you agreed with
3 everything in your guilty plea hearing that you hit him once,
4 you waited and you've done it and hit him a second time to
5 the point where it got violent, he smashes the windshield?
6 That's what you agreed to when you agreed that you had
7 unlawfully intentionally struck him with your golf cart
8 twice.

9 A. It was not my understanding that was a testimony
10 at all.

11 Q. All right. You also admitted that you left the
12 scene but never returned?

13 A. That's -- that's accurate.

14 Q. Can you hand me the text messages between you and
15 your wife? Can you provide those to the jury?

16 A. I --

17 Q. Where she said, "Don't come back."

18 A. I don't necessarily have those. From six years
19 ago? No.

20 Q. And you knew this was a big deal, right? You
21 called 911, you had photographs, (inaudible) golf cart with
22 posterity. Why -- why don't you have the text messages?

23 A. I don't know the answer to that.

24 Q. Okay. Well, how many of --- or how many of these
25 folks were the eyewitnesses that were there that are going to

1 come up right after this -- after trial?

2 A. I don't know the answer to that.

3 Q. When you testified to four or five people that
4 were there, how many of them are coming to testify at the
5 trial?

6 A. I don't understand the question.

7 Q. What part of that do you not understand?

8 A. What -- what is the specific question?

9 Q. You testified about all the people you were
10 hanging out with that night --

11 A. Right.

12 Q. -- were coming to testify on your behalf?

13 A. No, I would never ask them to come waste their
14 time, take time off of their day, hurt their businesses for
15 something that's of this nature, just for my own personal
16 gain.

17 Q. You don't think it's worth their time?

18 A. Absolutely not. Somebody else's livelihood to
19 take off work, right. For something that should -- is
20 wasting as much of whoever's in this room's time. I mean, I
21 respect the judicial process as much as possible, but this is
22 absolutely ludicrous and weird.

23 Q. So if it's in your zeal to protect resources of
24 people's time, why didn't you rush back to Dunleavy's to give
25 this side of the story to police officers that were there for

1 an hour to hour and a half questioning your wife (inaudible)?

2 A. I don't understand the question.

3 Q. What part of that don't you understand?

4 A. I -- can you please repeat it?

5 Q. You admit you never came back?

6 A. Correct.

7 Q. You admit -- you knew that the cops were asking
8 you and you didn't go back and turn yourself in for several
9 days to Sullivan's Island Police Department?

10 A. I don't know what -- if it was the next day or
11 whatever. I -- first thing I did in the morning was call
12 Mr. Dunleavy and ask him to pull all the video from inside to
13 show that I wasn't drinking.

14 Q. And you did not come back that night and you
15 didn't go to the police department the next day, you're
16 talking to cops about right now, correct?

17 A. I -- I don't know remember when -- when I did
18 that.

19 Q. But an arrest warrant had been issued for you for
20 second degree assault and battery and you leaving the scene
21 of the accident and the police were actively investigating
22 this incident, correct?

23 A. I did not know any of that at the time.

24 Q. And multiple witness statements and documents that
25 were in the record and (inaudible) that night providing

1 documentation that were transpired, correct?

2 A. I don't know the answer to that.

3 Q. You don't know because you weren't there, you
4 never showed back up.

5 A. That's right.

6 Q. So when we see the videos of everybody that's
7 describing what happened, we see this lady, we see this
8 camera, we see your wife, we don't see you anywhere, do we?

9 A. Correct.

10 Q. You admitted you had walked out and not paid your
11 tab being (inaudible) too. Correct?

12 A. I do not recall admitting that.

13 Q. You went to the U.S. Naval Academy.

14 A. I did.

15 Q. You trained as a boxer while at the U.S. Naval
16 Academy.

17 A. Everyone at the academy has to take boxing.
18 Correct.

19 Q. You testified in the deposition you've been in
20 many altercations around hundreds of sparring matches by
21 bouts?

22 A. I don't know how many, but possibly.

23 Q. All right. Approximately 62, 63?

24 A. Sixty-two, 63.

25 Q. You were in a vehicle at the time this incident

1 occurred?

2 A. I'm sorry. I couldn't --

3 Q. You were in a vehicle at the time this incident
4 occurred?

5 A. A golf cart, correct.

6 Q. Which is a speed vehicle, right? It's actually
7 got a license tag, it's got white seat belts, things like
8 that?

9 A. Yes.

10 Q. Do you know that BJ -- and you admitted at least,
11 striking him the first time, I think you testified that as
12 you were fleeing the scene -- let me make sure -- sure I get
13 this right. He took a swing at the golf cart. So you hit
14 him, he jumps back and you are flying by and what? He just
15 takes a mighty (inaudible) at the windshield. Is that your
16 testimony?

17 A. Yes. I don't know if it was the windshield. I
18 don't know what it was. I just know he swung at it.

19 Q. Pretty crazy condo. Right?

20 A. It was absolutely the most insane thing I've --
21 probably weirdest event I've ever been part of.

22 Q. So if everybody else -- everybody else says that,
23 in fact, you ran into him once, knocked him back 8 to 10
24 feet, accelerated so fast the second time you smash into him
25 shattering your windshield and when you flee the scene, all

1 of those other folks are lying and the (inaudible) should
2 leave. That's your testimony here today?

3 A. My testimony is that he was standing in front of
4 me. I asked him, counted to three or five, whatever it was,
5 told them I'm going to go. And if he didn't move, I was
6 going to go, I counted to three or five, whatever it was, and
7 I jerked forward until he put his hand out and hit the -- hit
8 the windshield and then he backed up and then he jumped on
9 top of the golf cart and started kicking down on it, kicking
10 the -- kicking it, et cetera.

11 At that point, I slammed on the gas, slammed on the
12 brakes, he went flying and I drove around him and then he
13 took a swing at the golf cart as I went by. That's my
14 testimony.

15 Q. Okay. And so, the fact that your prior testimony
16 in this court, you struck him, not once but twice,
17 intentionally and unlawfully and the second strike shattered
18 the windshield and injured BJ Crosby and now you're saying he
19 was lying at that time?

20 A. I -- I think you'll see that I'm -- I'm not lying,
21 I'm saying what my testimony is right now.

22 Q. Which is very different than what you agreed to in
23 this courtroom (inaudible).

24 A. That does not seem that different.

25 Q. Knocking somebody 8 feet and then accelerating and

1 smashing into him a second time with sufficient force to
2 shatter the windshield and then fleeing the scene is a very
3 different sport.

4 A. I believe the windshield was mostly shattered from
5 me flying into it.

6 Q. And where are your photographs of your head with
7 all the blood and the injury from the -- from the shattered
8 windshield as you violently struck him?

9 A. I don't have, but I believe they have DNA evidence
10 of my hair inside the windshield.

11 Q. So your ER was?

12 A. I did not go to the -- I did not go to the doctor.

13 Q. How many stitches did you have?

14 A. No stitches. I had a bump on my head that was it.

15 Q. (Inaudible) any scarring?

16 A. See the big bump on my forehead.

17 Q. Why didn't you -- you tell Judge McCoy all this
18 when you were pleading guilty?

19 A. I didn't have a chance to testify or do anything.
20 It was not relevant at that time. I accepted my hundred
21 hours of community service or \$500 fine and I was good with
22 admitting that.

23 Q. So you called 911, you pretty clearly said
24 (inaudible) was, "I fear that my wife's been kidnapped."

25 A. Okay.

1 Q. (Inaudible). Correct?

2 A. I don't know. I'd have to read the transcript.

3 Q. Exhibit Number 3, it's a 911 (inaudible). I'll
4 read it (inaudible) this is a 911 call.

5 THE COURT: This is Exhibit 3 you said?

6 MR. MCCULLOUGH: Yes, Your Honor.

7 THE COURT: Okay. Is this also stipulating to anything
8 else? Okay. Thank you (inaudible).

9 BY MR. MCCULLOUGH:

10 Q. The female responder, "911, what's the address of
11 the emergency? Yes, my name's Eric Bowman, I was at
12 Dunleavy's in Sullivan's Island." She said, "Yes, sir." You
13 said, "Yes. I was there with my wife. I just had a
14 gentleman that tried to kidnap my wife. I barely just got
15 away. If you could send the police immediately, that would
16 be greatly appreciated." Okay. So first, how, and when, and
17 where was your wife kidnapped?

18 A. Being illegally detained. So I said that, because
19 I know this case from Minneapolis when somebody got charged
20 with kidnapping because a bunch of protesters were limiting
21 the movement of somebody in a car and that he actually got
22 charged with kidnapping, the protesters did.

23 So limiting your movement, doing a citizen arrest in
24 the state of South Carolina is actually kidnapping. Like the
25 fact that he didn't get charged with anything is mind

1 blowing.

2 Q. So --

3 A. So that's --

4 Q. Did your wife -- I thought she walked into
5 Dunleavy's? I thought you already testified.

6 A. She did. They were detaining us from leaving in
7 the car.

8 Q. Okay. And she didn't file a lawsuit, did she?

9 A. She did not.

10 Q. And we'll see her. She actually stayed around.
11 She hasn't mentioned anything about being kidnapped on the
12 dash or the video of the police officer, does she?

13 A. I don't know the answer to that.

14 Q. So your first story was that your wife had been
15 kidnapped, but the story is now that you been -- you had
16 been. That's the story you're telling the jury now.

17 A. The words that I used for 911 could have been said
18 better and more concise, but the intent was to get the police
19 there as soon as possible.

20 Q. All right. So the 911 call was incorrect?

21 A. I don't know what that means.

22 Q. You don't know what incorrect means?

23 A. What's your definition of incorrect? What was
24 incorrect about the definition of that?

25 Q. You just said that it was not accurate.

1 A. It could have been by definition that can be
2 considered kidnapping and people have been charged of that by
3 limiting somebody's ability to move in a car or vehicle as
4 you stated.

5 Q. All right. The 911 call was not right and guilty
6 plea was not right, but we're supposed to believe (inaudible)
7 today is correct. Correct?

8 A. I don't -- is that a question?

9 Q. Yes.

10 A. Like should you believe me? I would hope so.

11 Q. Okay. You know that (inaudible) Sullivan's
12 Island?

13 A. I did.

14 Q. And you were living there since this incident
15 occurred?

16 A. I'm sorry, I couldn't hear you.

17 Q. You were living there when this incident occurred?

18 A. Yes, sir.

19 Q. That's a five-bedroom, four and a half bath, 4,945
20 foot -- square foot house on Sullivan's Island?

21 A. Probably. Close to that.

22 Q. (Inaudible) monthly revenue November of 2023 for
23 monthly income of 39,500 per month?

24 A. I did not list it.

25 Q. You (inaudible)?

1 A. Possibly.

2 Q. You used to own the Charleston Battery soccer team
3 and everything that came with it?

4 A. I did not at -- I owned part of the team. I
5 believe the stuff that came with it was owned by trust.

6 Q. Did it get sold 2019?

7 A. Yes. November of 2019.

8 Q. And you were an owner of SPARC that you described
9 previously?

10 A. Correct.

11 Q. It was sold in 2015 for \$53 million.

12 A. That's not accurate.

13 Q. What did you sell it for?

14 A. I don't know offhand.

15 Q. And you received approximately \$27 million?

16 A. That's not accurate.

17 Q. How much did you receive to your benefit?

18 A. I don't know offhand.

19 Q. So that's another inaccuracy. All the reporting
20 about what is only for how much you received is also
21 inaccurate?

22 A. Yes, definitely. There are all sorts of hold
23 backs, there's all sorts of employee ownership. There are
24 all sorts of other things that are inside there. Or not
25 ownership, other things.

1 Q. You were sued because you didn't do what you were
2 supposed to do with the employee fees, right?

3 MR. COOK: Objection, Your Honor. It's not relevant.

4 MR. MCCULLOUGH: Follow up.

5 MR. COOK: It's also hearsay.

6 THE COURT: Sustained. (Inaudible). Move on Mr.
7 McCullough.

8 MR. MCCULLOUGH: That's all I've got. Thank you, Your
9 Honor.

10 THE COURT: All right. Re-direct?

11 MR. COOK: Nothing on re-direct. Thank you, Your
12 Honor.

13 THE COURT: All right. Sir, you may step down. Have a
14 seat at the counsel table. Ladies and gentlemen, we'll take
15 our lunch break at this time. Plus, I'm going to ask that
16 you try to give me a look because I'm going to tell you to
17 come back 15 minutes or so earlier today. So I'm trying to
18 ask you be back at 2:00.

19 We'll resume at that time. You'll be able to have your
20 cell phones going over the break. We'll see you back then.
21 Thank you very much.

22 (Jury exits courtroom.)

23 THE COURT: Court will be at ease as well until that
24 time. Thank you, gentlemen. Just for our planning, you all
25 could let me know a little bit about next witnesses as soon

1 as that (inaudible). So who else do we anticipate calling
2 this afternoon?

3 MR. COOK: That's all we have. We're going to close.

4 THE COURT: Oh, okay. Well, all right. (Inaudible)
5 motion. That's fine. We'll do it this afternoon. No
6 problem. We've plenty time in the week. And so, Dan you got
7 your witnesses for this afternoon then?

8 MR. SLOTCHIVER: We do.

9 THE COURT: Can you have them ready? Perfect.

10 MR. MCCULLOUGH: Yeah. I mean, we'll obviously we'll
11 -- we'll take my motions I guess when we get time.

12 THE COURT: Yeah, we will.

13 MR. MCCULLOUGH: Okay.

14 THE COURT: We can do it one or two ways when we come
15 back and you all can think about it until then. I can bring
16 them back in. We can state the Plaintiff rests or -- or we
17 can let them continue their break. We can take up the
18 motions that are appropriate at that time and then when they
19 come back in, I'll ask you if you can make plans and we'll
20 just move. Depends on if you want them to come back in and
21 leave.

22 MR. COOK: Yeah, I don't --

23 THE COURT: If it's too late, we're not.

24 MR. COOK: I don't need a dramatic close.

25 THE COURT: Do we need a dramatic, we'll still get the

1 second, but. Okay. Well, then we'll probably -- probably
2 just plan on doing that. If you all want to come back a
3 little bit before 2:00, say maybe a quarter of 1:45 and we'll
4 just -- we can maybe proceed with some of our legal things we
5 need to discuss. Okay?

6 MR. SLOTCHIVER: Perfect.

7 THE COURT: We'll see you all back then.

8 MR. SLOTCHIVER: For planning purposes, Judge, how late
9 do you plan to go today? We've got a couple of --

10 THE COURT: Good question.

11 MR. SLOTCHIVER: -- call.

12 THE COURT: Yeah, that's a fair question. I usually
13 try to leave by 5:00. I'm -- I'm not one of these into the
14 night. I find jurors are typically -- start doing this and
15 start getting really nervous at 5:00 and really aren't paying
16 much attention to what's going on in the courtroom anymore.
17 So 5:00 is usually my -- my go-to, of course, I try not to
18 interrupt a witness mid testimony, but that's my general
19 rule.

20 MR. SLOTCHIVER: If we're getting close to it and we
21 have a witness. The question is, I call people that are
22 coming in that aren't here today. What do I -- if we're
23 getting near 4:30, do we call them and squeeze them in or?

24 MR. MCCULLOUGH: I think we should --

25 MR. SLOTCHIVER: Yeah. Okay.

1 THE COURT: I mean, we'll just have to kind of, I don't
2 know how long your testimony --

3 MR. MCCULLOUGH: We -- it won't --

4 THE COURT: It's only Tuesday.

5 MR. MCCULLOUGH: We've got some videos --

6 THE COURT: We've got plenty of time this week.

7 There's no huge rush. I mean, I'm not going to be mad if we
8 break early if you're asking that.

9 MR. SLOTCHIVER: Okay. Well, let's -- I'm just not
10 sure how the timing works, but that helps. Okay.

11 THE COURT: Yeah, we got -- I think we got plenty of
12 time.

13 MR. SLOTCHIVER: I'm not used to being on the defense
14 side. I'm trying to figure this one out, so.

15 THE COURT: That's okay. That's all right. Okay.
16 We'll see you all back about 1:45.

17 (Off the record.)

18 THE COURT: Going to (inaudible) McCoy, that
19 (inaudible).

20 MR. SLOTCHIVER: We can proceed --

21 THE COURT: Didn't get any verdict forms last night.

22 UNIDENTIFIED SPEAKER: I got -- we're working --

23 THE COURT: Working on it? I like that.

24 MR. MCCULLOUGH: That's correct. We're planning on --

25 THE COURT: Depends on the next 15 minutes. Okay.

1 Well, we discussed before we broke for lunch that it was made
2 known to me that the Plaintiff will now be resting, first
3 party Plaintiff will now rest their case.

4 MR. COOK: That's correct.

5 THE COURT: Then we discussed having the jury come back
6 in only to exit immediately and hear arguments on the record
7 verdict or if we could go ahead and dispense with those. And
8 then have the jury come in and not leave immediately. And
9 you indicated you were okay with that. Is that still the
10 case?

11 MR. COOK: That's -- that's correct, Your Honor.

12 THE COURT: Okay. I'm happy to (inaudible). First
13 party Plaintiff (inaudible) be addressing any motions at this
14 stage of the trial from either side?

15 MR. COOK: Yes, Your Honor. We move for directed
16 verdict on all of the causes of action. And I guess I would
17 like to know whether you would like me to argue, they're
18 (inaudible) causes of action. I can just go through all of
19 them or we can do one at a time. What would your preference
20 be?

21 THE COURT: It -- it really matters not to me. It's
22 totally up to you all. However, how would you all like to
23 respond, if one at a time to each one or all at once, do you
24 all have preference?

25 MR. COOK: It -- it doesn't make any difference. So

1 why -- why don't you just (inaudible) all.

2 THE COURT: Do them all (inaudible).

3 MR. MCCULLOUGH: Throw it all up against the wall, see
4 what sticks, right?

5 THE COURT: Okay.

6 MR. MCCULLOUGH: As a -- obviously, I'm not going to
7 belabor it, but we believe that he's collaterally estopped
8 from taking many of the positions that he's taken not only in
9 his -- the complaint, but in the -- in some of the testimony.
10 So the first cause of action is for battery which is the
11 infliction of any forcible contact on the person of another.
12 The implied element is the Plaintiff's injuries were
13 proximately caused by the Defendant.

14 First, there has been no evidence of any forcible
15 conduct with Mr. Bowman. There has been testimony that BJ
16 Crosby struck the golf cart. There's been testimony that the
17 other two gentlemen attacked Mr. Bowman and physically
18 touched him. But there's been no testimony that Crosby did.
19 And it was unclear, kind of, that there were the two guys
20 from behind, jumped on and did stuff. There had been no
21 testimony about any physical contact. Can't prove contact at
22 all.

23 THE COURT: Person to person?

24 MR. MCCULLOUGH: Correct.

25 THE COURT: Okay.

1 MR. MCCULLOUGH: And the only testimony about his
2 injuries is a result of a block away with his fighting with
3 somebody else and he slams on the brakes and his forehead
4 hits the windshield. So number one, there's no contact
5 between Crosby and Bowman. And number two, there's no injury
6 caused by anything that Mr. Crosby did. Even taking all --
7 everything in the light most favorable to the Plaintiff.

8 On the assault, it's the conduct of the Defendant that
9 places the Plaintiff in reasonable fear of bodily harm. What
10 we heard was, number one, he admitted to unlawful intentional
11 striking of Crosby. So if it's unlawful, that by its very
12 nature -- I'm talking about a guilty plea, would indicate
13 that there was nothing reasonable about his fear of bodily
14 harm.

15 And more importantly, he testified, "I can take care of
16 myself." He testified about being fearful related to the
17 other two folks that were out there that are not in the
18 courtroom. But there was nothing that Mr. Crosby did that
19 would rise to the level of a reasonable fear of bodily harm.

20 On the defamation, it's my understanding that the
21 defamation claim is based on saying, "Hey, go inside and pay
22 your bill." Two points on that. Number one, again, in the
23 guilty plea, one of the things that he admitted was that he
24 had fled the scene without paying the bill. So it was true.
25 And number two, he has presented no damages associated with

1 telling that true statement that they hadn't paid the bill.

2 Next on false imprisonment, the Defendant has
3 restrained the Plaintiff. The restraint was intentional and
4 the restraint was unlawful. Well, there's been no testimony
5 that there was any restraint. The testimony is that Mr.
6 Crosby was standing in front of the golf cart when he was run
7 over. But there's nothing in the -- in the sense that --
8 well, first of all, we know he could leave because he did
9 leave. He admitted he could have walked back into the
10 restaurant much like his wife did.

11 And again, there's nothing -- you can't say he acted
12 unlawfully, speaking about Crosby, when -- in the guilty
13 plea, he had already admitted to the unlawful intentional
14 striking. So we don't believe even taking everything in
15 light most favorable to the Plaintiff that he can prevail at
16 that point on -- on those points. On the intentional
17 infliction of emotional distress, again, because of his
18 collateral estoppel arguments not being able to pass muster
19 with regards to the conduct itself.

20 More importantly, there's been no testimony of extreme
21 or outrageous conduct other than by Mr. Bowman. And there's
22 been absolutely no testimony about any emotional damage or
23 stress or damages at all about what happened that night. And
24 then finally, in the malicious destruction of property, the
25 vast majority of what he described and was complaining about

1 as damage to the golf cart was actually done after he struck
2 and left Mr. Crosby on the ground.

3 It was all of the stuff the other guys did including
4 shattering the windshield. So it was one of two things,
5 either what he told you in the criminal case, which is that
6 he shattered the windshield when he ran him over, and it was
7 intentional, which means he can't sue him for it.

8 Or what he's saying here today was that it happened a
9 block down the road while Crosby was lying on the ground. So
10 I know that was a lot of moving parts, but basically at this
11 point, (inaudible) they have failed to meet the elements for
12 each of their causes of action not only by what was presented
13 here today, but also incorporated what he's already admitted
14 in his guilty plea. Thank you.

15 THE COURT: (Inaudible).

16 MR. COOK: Thank you, Your Honor. When you came out
17 this morning, you mentioned the -- the case law that you
18 studied, and so I'm not going to belabor that, but the
19 Zurcher case, which factually is closely on point. The only
20 thing the court decided in that case was whether a guilty
21 plea or, I guess, it was an Alford --

22 THE COURT: Alford plea.

23 MR. COOK: -- plea.

24 THE COURT: Correct.

25 MR. COOK: Had the same preclusive effect as the

1 conviction and the court said it did, and we don't disagree
2 with that. The court really didn't discuss what was -- what
3 exactly is precluded. And -- and they -- they specifically
4 said that this is collateral estoppel. They didn't say res
5 judicata, which is cause for confusion. It's collateral
6 estoppel. I noticed in the Plaintiff's briefings, they --
7 they gave you Judge Toal's order from the Kovach case. And I
8 -- I was involved in that case.

9 THE COURT: Kovach.

10 MR. COOK: And that was reversed by the Supreme Court.
11 And so, Judge Toal took a very broad approach to, "Hey, once
12 you've pleaded guilty, you've admitted to all the underlying
13 allegations then you're just precluded from bringing any kind
14 of a lawsuit to the Supreme Court." Just said that that was
15 an abuse of discretion to sanction her for -- for bringing
16 the case.

17 But if you look at the colloquy and it's on pages six
18 through eight of the transcript of the guilty plea, those are
19 the facts that are laid out. We know that they're not all
20 exactly correct. For example, the solicitor recites that
21 Melissa Britton got out of the golf cart after the first
22 contact and before the second. And we now know that, you
23 know, that that's not true.

24 And Mr. -- But Mr. Bowman was asked on page 15, "All
25 right. So Mr. Bowman, you heard the facts of the allegations

1 stated from the solicitor, those that were stated from the
2 solicitor regarding the events that took place back in
3 October, 2018. Are those correct to the best of your
4 recollection?" "Yes, Your Honor." So I think he's stuck
5 with those particular facts, but there's nothing in that
6 recitation of facts that rules out the possibility that
7 Mr. Crosby also committed an assault or also committed a
8 battery or committed a -- a false arrest or false
9 imprisonment.

10 And as a matter of law, he did because there is no
11 common law right in South Carolina to make a warrant with a
12 citizen's arrest. And in our requested charge, we've cited
13 State versus McAteer 532 S.E.2d 865, 2000 case. State versus
14 Boswell 707, S.E.2d 265, 2011 case. The only right you have
15 to make it an -- a warrantless citizen's arrest in South
16 Carolina is by statute, and that is set out in section
17 17-13-10 and 17-13-20.

18 And in essence the only situation that would've allowed
19 an arrest would be if he had committed a felony, if he has
20 entered a dwelling house without express or implied
21 permission, has broken or is breaking into an outhouse with
22 intent to plunder, has in his possession stolen property, or
23 being under circumstances which raised just suspicion of his
24 design to steal or to commit some felony or flees when he is
25 held.

1 None of those circumstances apply. So that was, as a
2 matter of law, an unlawful arrest. And the larceny statute
3 is section 16-13-30, and larceny of goods, chattels,
4 instruments or other personalty, they valued in excess of
5 \$2,000 is grand larceny. Anything less than that is -- is --
6 is not grand larceny, and it's therefore a misdemeanor. So
7 that was a -- there was -- it was an unlawful arrest.
8 There's nothing in the guilty plea or nothing in the plea
9 colloquy from the solicitor that militates against that.

10 Likewise, with the assault, two people can assault each
11 other. Just because Mr. Crosby was not charged with it
12 doesn't mean that he didn't commit an assault. And there's
13 ample evidence that he did. The battery, you know, they make
14 an interesting point that there's no testimony that he
15 physically contacted Mr. Bowman's person, but the testimony
16 was that he swung his fist at him and hit the golf cart that
17 he was sitting in, and we would submit that that's sufficient
18 to constitute a -- a battery.

19 Malicious destruction of property. There's testimony
20 that he did swing -- that he climbed on top of the golf cart,
21 that he broke part of the fender off, that he swung at the --
22 at the golf cart. And -- and it was obviously damaged.
23 Again, that's not eliminated by the fact that Mr. Bowman
24 himself has agreed that he committed a third -- third degree
25 assault and battery. Intentional infliction of emotional

1 distress.

2 These facts are almost exactly what the Court found in
3 Ford versus Hutson. Remember that was the case where the
4 Defendant loudly berated the Plaintiff in public. She was a
5 real estate agent, he was a doctor, he didn't like his house,
6 he was yelling at her in public. And the Court said, that's
7 intentional infliction of emotional distress, which is
8 exactly what happened here.

9 Slander, I think the jury could find that he was being
10 accused of a crime of running out on this tab. And the
11 testimony was that there was no intention to run out on his
12 tab. That if for some reason he did owe the money, he
13 would've come back later and paid. That was consistent with
14 the policies and conduct of Dunleavy's. And so, the jury
15 could find that -- that Mr. Crosby defamed him by publicly
16 accusing him of running out on his tab. So for all those
17 reasons, we would oppose the directive order.

18 THE COURT: Let's talk a little bit more about the
19 Zurcher case because it is actually similar. Well, not
20 similar procedurally, fact (inaudible) we're doing right now.
21 In that case it specifically binds a person to an
22 adjudication based on the same facts underlying criminal
23 conviction, which is exactly what we have here. I guess, I
24 just don't understand the distinction that you're (inaudible)
25 with that.

1 And so, I'd like for you to talk to me a little bit
2 about that. I mean, it stops somebody from denying
3 liability. So, you know, let's talk about that a little bit
4 more. With the phase that we're in right now. I mean, we
5 sort of, their motion, you know, for directed verdict and
6 your evidence or are we -- that -- at that point yet for --
7 collateral estoppel even precludes him from denying
8 liability, let's talk about that.

9 MR. COOK: Well, we're -- he's not denying liability at
10 this stage. And so, let's just -- to -- to -- to make it a
11 little simpler let's assume for the sake of argument that
12 he's liable to Mr. Crosby for assault and battery, okay? And
13 the Court there even though the -- I still submit that the --
14 the Appellate Court did not decide what the -- what the scope
15 of prohibition was. The lower court had held that -- that
16 his claim should be thrown out for under summary judgment and
17 that the counterclaim summary judgment would be granted
18 leaving open the question of damages and proximate cause.

19 The Court of Appeals did not determine whether that was
20 right or not. But -- but even if the -- even if that is the
21 scope, let's just assume for the sake of argument that --
22 that you have the directed verdict against Mr. Crosby on
23 their claim for assault because that's all he admitted to.
24 He didn't admit that Mr. Crosby didn't falsely imprison him.
25 He didn't admit that Mr. Crosby didn't assault him or

1 battered him or intentionally inflict emotional distress on
2 him or defame him. None of those were elements that the --
3 the absence of guilt on his part is not an element of -- of
4 what Mr. Crosby -- what Mr. Bowman's charged. So that's the
5 distinction I'm trying to make.

6 THE COURT: Yeah, I understand that. And I do think it
7 was brought up earlier and we'll clear that up on the record.
8 I think that the -- I think the issue here really is that
9 this solicitor read this long recitation of facts during
10 (inaudible), which she wrote herself, I'm sure, and I don't
11 know, maybe some of them are (inaudible), some of them are
12 maybe arguable -- arguably different. That's fine. He
13 doesn't -- he's representing now that he doesn't agree with
14 all of that. Okay?

15 And he sort of keeps (inaudible) and saying, "Well, no,
16 I agreed to, you know, that I'm guilty of the crime." And
17 that's fine. That's not what he said in court, he agreed
18 with the facts and circumstances presented by the State in
19 the order on the record, he was represented by two of the
20 most excellent criminal defense lawyers in our bar.
21 Ostensibly, what he told me in the -- in the plea colloquy,
22 "Have you had enough time to discuss your decision with your
23 lawyers?" Yes."

24 You know, so I have to take him at his word during the
25 plea trial that he's talked to his lawyer he's had enough

1 time, you know, "You want to do this? Are you under the
2 influence? Has anybody forced you or you know, done anything
3 to you to make you be here today?" "No."

4 And so, these are the reasons we go through this plea
5 colloquy. So I'm assuming and maybe that's where our whole
6 difference is here. I'm assuming he's been advised by a
7 competent attorney; I'm assuming he has discussed all of his
8 defenses, the possible outcomes of trial.

9 And that's sort of what I like where Zurcher really
10 hones in on. That, you know, we are going to -- we are -- we
11 are going to assume that when someone pleads guilty that all
12 of these things have been discussed. The possibilities of
13 litigation have been discussed thoroughly with competent
14 attorneys. And that's why I have to ask him these questions
15 during a plea. And that's why I rely on this answer. So for
16 today to be like, "Well, no, I really don't agree with what
17 the solicitor said."

18 Obviously, puts a lot of things into question. I mean,
19 gosh, I do probably 50 pleas a day, any given week, criminal
20 week. So of course, like I have to take it as word. And I
21 think that's where the disconnect is. He wants to now say,
22 "No, that wasn't all right."

23 I'm not accepting all those allegations from the
24 solicitor. Yes, I plead guilty to the charge, and this is --
25 these are the elements of the charge, and they're this big

1 and the solicitor said this much." So I think -- let's talk
2 about that a little bit more.

3 MR. COOK: Yeah. And -- and great -- great point. And
4 so, let's -- let's say for the sake of argument that Mr.
5 Bowman Quid with the exact facts and whether they were right
6 or not. Let's just -- for the purposes of this motion, let's
7 say that everything that -- that was -- was stated by the
8 solicitor was true. But that's the truth, but it's not the
9 whole truth.

10 THE COURT: Right.

11 MR. COOK: And so, what the jury has heard is what we
12 call the rest of the story. And that is why this was a false
13 arrest. I mean, that was irrelevant to the question of
14 whether he pleaded guilty or not. We -- we believe that the
15 facts still support a false arrest on his part.

16 He may have, you know, exceeded the reasonable amount
17 of force that was required to overcome it. That doesn't
18 negate the fact that he committed a false arrest. It doesn't
19 negate the fact that he might have also assaulted and
20 battered Mr. -- Mr. Bowman because he was not charged with
21 it.

22 That was totally irrelevant to the question that he
23 pleaded guilty to. Likewise, the defamation never came up in
24 the -- in the -- in the guilty plea. And so, those are --
25 none -- none of the things that -- that we need to prove to

1 establish our claims against him, were negated by the facts.
2 Even if you take every word that the solicitor said is
3 absolutely true. She didn't purport to tell all the facts.

4 I mean, it was not relevant that -- that Mr. Crosby
5 climbed on the roof of the golf cart and -- and banged on it.
6 She didn't say he didn't do that. She didn't say that --
7 that the custom of -- of Dunleavy's was that if somebody
8 left, you would never try to stop him and you would let him
9 come back and pay later. That was not relevant to what Mr.
10 Bowman pleaded to.

11 THE COURT: (Inaudible). Talk about it a little more
12 (inaudible) distinction (inaudible). I do feel like that's
13 kind of where we are in terms of ways.

14 MR. MCCULLOUGH: His guilty plea, he admitted it was
15 unlawful. And if -- if you are fleeing a false arrest, it
16 would -- it would be lawful. And he specifically admitted he
17 intentionally and unlawfully struck Mr. Crosby, not once, but
18 twice, and fled the scene because he hadn't paid his bar tab.
19 So the -- the -- you can't admit all that because otherwise
20 it would be lawful.

21 I mean, if -- if -- if you were in the process of being
22 attacked by a gang and you're fleeing for your life, that's
23 lawful, that's not what he said happened at all. And so, he
24 is absolutely trying to get out of the criminal, push the
25 civil as far as possible, and then change the story here.

1 And -- and we believe you've collaterally estopped him from
2 (inaudible).

3 THE COURT: Do you think you -- I know you -- I mean,
4 you're giving your argument on each cause of action. I'm not
5 sure that the argument with the collateral estoppel really
6 applies to the slander.

7 MR. MCCULLOUGH: It does because he admitted he left
8 without paying the tab, so it's true.

9 THE COURT: Oh, okay.

10 MR. MCCULLOUGH: And there -- and he testified about no
11 damages associated with that, but more importantly, it's
12 true. He admitted it was true.

13 THE COURT: All right. Well, let me think about this.
14 (Inaudible) you all got any other motions at this stage of
15 the trial before we bring the jury back in?

16 MR. MCCULLOUGH: Not from -- I keep saying the
17 Plaintiff, whatever, You Honor. Are not --

18 THE COURT: I'm sorry. (Inaudible) confusing. That's
19 all right. Okay. We'll take a few minutes. One more break
20 before we bring the jury back in. We'll get for about --
21 about 10 minutes. Okay?

22 MR. COOK: Thank you.

23 THE COURT: All right.

24 (Off the record.)

25 THE COURT: Let me know when you're ready. Number 57

1 ended up coming to the courthouse (inaudible) a moment ago.
2 She's fine. We did have some idea, a welfare check, just
3 because that's our practice. She had a medical situation
4 basically that arose, so I did have to excuse her for the
5 rest of the week, but I appreciate her at least showing
6 personal (inaudible), just so you know, she's okay and fine.
7 Okay. Thank you.

8 MR. SLOTCHIVER: Good -- good reason to have
9 alternates, right?

10 THE COURT: Yes.

11 MR. SLOTCHIVER: No one knows.

12 THE COURT: Yeah. Okay. Well, we talked a lot about
13 where we are right now, what the case law says, where it
14 contemplates stages. I think where we are right now, I am --
15 I'm going to deny the motion for directed verdict at this
16 stage.

17 However, obviously that will be renewed after the next
18 stage. And I think they will be a little bit different at
19 that point in time in terms of collateral estoppel precluding
20 liability of the same facts and civil actions.

21 So we will go forward as by -- there has been at least
22 some evidence in the record, be it from Bowman or the other
23 various witnesses have testified to at least give the
24 question to the jury on all the causes of action at this
25 point in time. So we'll go ahead and bring the jury back in,

1 if you don't mind.

2 MR. MCCULLOUGH: Your Honor, really quickly, I just
3 want to make sure, is there any objection? We have filed the
4 transcript as part of the record and so I was going to read a
5 portion of the guilty plea transcript and I just wanted to
6 make sure that that was appropriate. We talked a lot about
7 it, obviously to Mr. Bowman.

8 THE COURT: Do you want to publish it in other words to
9 the jury?

10 MR. MCCULLOUGH: Yes, Your Honor.

11 THE COURT: It's already been marked and admitted as a
12 exhibit without stipulation (inaudible)?

13 MR. MCCULLOUGH: It is not. We filed it -- we filed it
14 and that's why I'm bringing it up now.

15 THE COURT: Okay.

16 MR. MCCULLOUGH: They can obviously counterpublish
17 anything.

18 THE COURT: Is it a certain portion you're seeking to
19 publish or are you just going to read it?

20 MR. MCCULLOUGH: Yeah, I was just going to read the --
21 the portion of the -- the -- frankly the -- what we've been
22 talking about the whole time.

23 THE COURT: Have you done like a page one designation
24 much like you would for other sworn testimony?

25 MR. MCCULLOUGH: It's essentially -- or it is page six.

1 THE COURT: Hold them up in the hallway for a minute.

2 Okay. Go ahead. Sorry.

3 MR. MCCULLOUGH: Page six, line 25.

4 THE COURT: Page six, line 25.

5 MR. MCCULLOUGH: Through page eight, line 23

6 THE COURT: Through eight, line 23?

7 MR. MCCULLOUGH: Yes, ma'am.

8 THE COURT: Okay.

9 MR. MCCULLOUGH: And then the only other one was on
10 page 15, line 16 through 23.

11 THE COURT: 16 through what?

12 MR. MCCULLOUGH: 23.

13 THE COURT: All right. Looked like that was already in
14 the court. You asked about (inaudible).

15 MR. MCCULLOUGH: It was -- it was just so disjointed.
16 I thought it would frankly be for clarity's sake, just --

17 THE COURT: Okay. All right. What's your position on
18 that?

19 MR. COOK: You going to do it right now?

20 MR. MCCULLOUGH: Yes.

21 MR. COOK: That means we have to decide now.

22 THE COURT: Take a minute. Take a minute and talk.
23 Take your time. We can hold them in the hallway for
24 (inaudible).

25 (Off the record.)

1 MR. COOK: Your Honor, I think you correctly analogized
2 to a deposition and I think the rules provide the way to
3 cross-examine the witness with this prior testimony and that
4 was done. So we would object to the transcript itself going
5 into evidence. Interestingly, the footnote in that Zurcher
6 case says that a guilty plea to a misdemeanor is hearsay.
7 And so, we would object on that basis as well.

8 MR. MCCULLOUGH: He's party opponent and he is in the
9 courtroom. So hearsay doesn't apply.

10 THE COURT: I couldn't hear it. I'm sorry.

11 MR. MCCULLOUGH: He's a party opponent and he is in the
12 courtroom. So hearsay doesn't apply.

13 THE COURT: I'll -- I'll allow you to read it in. If
14 there are any other designations that you would like me to
15 read Mr. (inaudible), you all go offer those as well. I'm
16 not sure that the entire transcript would be --

17 MR. MCCULLOUGH: I have not planned on the entire -- I
18 mean, there are other things in there about false arrest and
19 things of that nature, no.

20 THE COURT: No, not --

21 MR. MCCULLOUGH: Which is why --

22 THE COURT: -- honestly that would not, yeah, that would
23 be a problem, but.

24 MR. MCCULLOUGH: And that's why --

25 THE COURT: We're basically trying to get in the

1 solicitor's recitation of the allegations and facts from that
2 day that he ultimately accepted. I don't have a problem with
3 that. We've already discussed earlier, he is already been
4 examined, all that and he's already cross-examined on,
5 rather.

6 MR. MCCULLOUGH: And that's all we're -- that's the
7 just sole portion that we're looking to prediction -- or to
8 tell the jury.

9 THE COURT: All right. What -- what -- we mark that
10 then that would be even for purposes of discussion now we
11 need, I guess a clean copy of that transcript we have for
12 tomorrow, the exhibit?

13 MR. MCCULLOUGH: We -- we can -- we don't -- just like
14 Friday.

15 THE COURT: We need to do that anyway because by
16 virtue, we're talking about it right now.

17 MR. MCCULLOUGH: Sure. You --

18 MR. COOK: These are (inaudible)? Can you give us the
19 page and line (inaudible)?

20 THE COURT: Page six, line 25.

21 MR. COOK: Okay.

22 THE COURT: Through eight, line 23. Scribner's error.
23 The last -- third word from the last, this golf "car"
24 incident. I would say that's just a golf cart.

25 MR. COOK: Your Honor, I think we would, additionally,

1 object to the part where they're reciting the -- the extent
2 of the injuries and the medical treatment. I know they're
3 going to have evidence of that. There's no way that
4 Mr. Bowman would've been expected to know whether that was
5 true or not.

6 THE COURT: So you're proposing to cut it after line 14
7 then?

8 MR. COOK: Yes. Well, even -- let's see. Yeah, I
9 mean, even when I -- I -- I'd cut it off at line seven on
10 page eight because the rest of it is talking about other
11 witnesses.

12 THE COURT: All right. Mr. McCullough, for what
13 purpose are you seeking to introduce this?

14 MR. MCCULLOUGH: Frankly, for clarification. There was
15 so much confusion in the -- in the cross-examination as to
16 what he agreed to, what he -- what he admitted to. He even
17 said he didn't -- in response to your question, he said
18 something other than what he actually said, which is -- I
19 agree.

20 Yes, Your Honor. So frankly, I -- I want to nail it
21 down. His story has changed repeatedly. And so, this is the
22 only one that's nailed down and he should be held -- should
23 be accurate. And so, I feel like your jury's entitled to
24 hear it.

25 THE COURT: I feel like you should have done this when

1 he was on the stand.

2 MR. COOK: Yeah.

3 THE COURT: We were going to do it. That would've been
4 be the appropriate time.

5 MR. MCCULLOUGH: Frankly, that's why we filed it, to
6 have a part of the court record so we could use it like a --
7 like a deposition. I think we're --

8 THE COURT: I mean you can recall him as a witness for
9 this purpose if you want to do that. I'm just not sure that
10 publishing part of the plea transcript --

11 MR. MCCULLOUGH: If that's what they're asking us to
12 do, is to read this and say, "Did you say, Yes, Your Honor?"
13 I mean, I -- well, we can publish it.

14 THE COURT: Okay. Well, my solution would be to -- to
15 recall him for the purpose of, you know, going back over this
16 with him. I think that would be the most appropriate way to
17 do what you're seeking to do. You all -- you all wouldn't
18 consent to some other type of form qualification that does
19 not involve him getting a recall to the witness. Then you
20 take a minute and discuss that. Okay?

21 MR. COOK: Well --

22 THE COURT: But I don't think it -- I think he's going
23 to have to be recalled.

24 MR. COOK: And even if they recall him, I mean, they're
25 not going to ask him about blood pressure going up and

1 slashing his hands and there's no way he would've known
2 anything about it, not about that objection.

3 MR. MCCULLOUGH: Right (inaudible) stipulation over our
4 previous objection.

5 MR. COOK: Okay. I think we -- I think we're okay.

6 MR. MCCULLOUGH: You are not objecting to us publishing
7 it up to line seven. You get into lines nine through 23.

8 THE COURT: Okay. I think that's appropriate. I think
9 starting out that, you know, at nine through 23, then that
10 gets into solicitor basically going into what happened later,
11 you know, more on the victim side of things versus his
12 involvement. Okay. So I think that would be most -- more
13 appropriate to just cut it off. If that's how you all want
14 to do it and we're not going to recall him then I'm happy for
15 you to do it. Is that what you want to do first when we come
16 in?

17 MR. MCCULLOUGH: Yes. I was just going to read it and
18 then sit down.

19 THE COURT: Yeah, just make sure -- I'm going to, you
20 know, just call out what you read. We'll mark it as Court 1.
21 And we'll go with that. Are you trying to -- you're not
22 trying to admit that as an Exhibit A, is that correct?

23 MR. MCCULLOUGH: Of course, I believe.

24 THE COURT: Thank you. We'll do that first. And this
25 will be Court 1.

1 (Court's Exhibit 1 marked for identification.)

2 MR. MCCULLOUGH: (Inaudible).

3 THE COURT: Okay. All right. You can bring the jury
4 in now bailiff, (inaudible) the hallway.

5 (Jury enters courtroom.)

6 THE COURT: Thank you so much. Come in and have a
7 seat. Everybody will be seated. All right. Plaintiff, you
8 may call your next witness.

9 MR. COOK: Plaintiff rests, Your Honor.

10 THE COURT: All right. Thank you so much. Ladies and
11 gentlemen, at this time the first party Plaintiff rests and
12 we will go over to the defense now.

13 MR. MCCULLOUGH: Thank you, Your Honor.

14 THE COURT: You may call your next -- first witness.

15 MR. MCCULLOUGH: Your Honor, may it please the Court we
16 would like to publish a portion of the guilty plea of
17 (inaudible).

18 THE COURT: Okay. And just, you can publish that at
19 this time. Please know that while you're that getting out,
20 go ahead and Mr. McCullough is going to read to you a portion
21 of a transcript he's designated. It'll be a court's exhibit.
22 It won't go back with you in the jury room. And Mr.
23 McCullough, you could just state the transcript date and the
24 type of proceeding it was. Go ahead.

25 MR. MCCULLOUGH: Thank you, Your Honor. This is a

1 hearing (inaudible) the State of South Carolina versus Eric
2 Bernard Bowman. The date is November 30, 2023. The time is
3 2:25 p.m. to 2:47 p.m. location, South Carolina Circuit Court
4 9, South Carolina (inaudible) Exhibit 1. And we'll start on
5 page six, line 25.

6 THE COURT: And the speaker typically identifies the
7 speaker who spoke these words.

8 MR. MCCULLOUGH: Yes, that is the solicitor, deputy
9 solicitor Mallory, her last name, H-A-L-I-E-N-A, 9th circuit
10 solicitor.

11 THE COURT: All right. Mallory Haliena, assistant
12 solicitor 9th circuit. Go ahead.

13 MR. MCCULLOUGH: Thank you. Madam Solicitor Haliena.
14 "Thank you, Judge. Mallory Haliena with the state. In late
15 night hours of October 5, 2018, Samantha Albert was working
16 as a bartender at Dunleavy's Pub at Sullivan's Island in
17 Charleston County.

18 Dunleavy's was exceptionally busy that night and not
19 being sufficiently staffed for the number of customers
20 visiting the establishment. Albert's boyfriend, Wallace
21 Crosby came to Dunleavy's to assist her of performance of
22 barback duty (inaudible) related to the bar for the shift to
23 him.

24 Around that same time, Mr. Bowman arrived only with his
25 wife and a friend. The Defendant looked at the tab with

1 Albert at the bar, ordering several drinks and shots. After
2 midnight, Albert and the victim were outside the bar, and
3 Albert observed the Defendant and his wife attempting to
4 leave the bar without paying their tab.

5 Albert told Defendant that he needed to pay his tab
6 before exiting but the Defendant refused to comply. The
7 victim who was several feet away at the time, away from the
8 stationary golf cart stood up at this time and reiterated
9 that the Defendant needed to go back and pay his tab before
10 leaving.

11 In response, this Defendant hit the gas and
12 intentionally ran his vehicle into the victim. Defendant's
13 wife disconnected herself from the situation and exited the
14 golf cart walking back into the bar at this time. Then, as
15 the victim was attempting to regain his footing, the
16 Defendant, again, intentionally slammed his vehicle into the
17 victim, hitting him to the point until the windshield
18 shatters and the victim hit the ground.

19 Defendant would flee away on his golf cart. At least
20 one witness attempted to chase after the golf cart to stop
21 the Defendant from fleeing but was unsuccessful." When you
22 turn on page 15, (inaudible). "So, Mr. Bowman, you've heard
23 the facts there. Allegations stated (inaudible) those stated
24 from the solicitor regarding the events that took place back
25 in November of 2018. Are those correct to the best of your

1 recollection of Defendant (inaudible)? 'Yes, Your Honor.'"

2 THE COURT: Thank you so much. Okay. Any prior
3 witnesses, please?

4 MR. MCCULLOUGH: Your Honor, we call Savannah Rippy by
5 prior deposition (inaudible).

6 THE COURT: Okay. Is that queued up (inaudible)?

7 MR. MCCULLOUGH: It is.

8 THE COURT: All right. Ladies and gentlemen, you are
9 about to view a deposition that was taken by video of the
10 next witness. This was taken under oath. The person was
11 placed under oath just like they would be here in the
12 courtroom, and the lawyers were present to question, examine
13 and cross-examine the witness. You are to give it your full
14 attention and consider the testimony as if it was given live
15 here in the courtroom. All right. Please go ahead.

16 MR. MCCULLOUGH: Thank you, Judge.

17 (Video starts)

18 THE SOLICITOR: We are on the record at 10:37 a.m. on
19 March 5, 2024. This is the video deposition of Savannah
20 Rippy. Counsel has (inaudible) reading of the caption.
21 Counsel, please state your appearances for the record.

22 MR. SLOTCHIVER: Dan Slotchiver for the Defendant, BJ
23 Crosby, Wallace Blair Crosby, and also for Samantha Albert.

24 MR. TURNER: Ray Turner for Eric Bowman.

25 THE CLERK: And Ms. Rippy, if you would raise your

1 right-hand, I will swear you in.

2 SAVANNAH KENDRICK RIPPY,

3 having been duly sworn, testified as follows:

4 THE CLERK: Thank you very much.

5 DIRECT EXAMINATION

6 BY MR. SLOTCHIVER:

7 Q. Would you state your full name for the record?

8 A. Yes. Savannah Kendrick Rippy.

9 Q. And would you like me to call you Savannah or
10 Ms. Rippy?

11 A. Savannah's fine.

12 Q. Okay. Thank you. Savannah, you're here today for
13 your deposition under a subpoena, correct?

14 A. Yes, that's correct.

15 Q. Okay. And we have a trial which is currently set
16 -- possibly with a case currently set, possibly to go to
17 trial next week. And I understand that the reason you would
18 not leave town next week is you're going to get married this
19 week, is that correct?

20 A. Yes. I'm getting married on Saturday and I'll be
21 out of the country for my honeymoon next week.

22 Q. If for some reason the case is not reached next
23 week, then you will be available hopefully to come and
24 testify.

25 A. Absolutely.

1 Q. I -- I see that you're wearing medical scrubs. My
2 understanding is that you are a dentist student?

3 A. Yes. I actually will be a dentist in two months
4 and then moving on to specialize.

5 Q. Okay. Congratulations. Well, today we're taking
6 the deposition and this is for purposes of a complaint for
7 the jury and the judge. So this is a -- this is as if you
8 are going into court.

9 A. Okay.

10 Q. Okay. So I'm going to ask you some questions and
11 -- and try to get information that you have relevant to the
12 case that we're here for today.

13 A. Okay.

14 Q. Okay. For the benefit of ladies and gentleman of
15 the jury, would you please give us a little bit about your
16 background?

17 A. So I am from a very small town by the name of
18 Blacksburg, South Carolina. I moved to Charleston in 2015
19 where I attended the College of Charleston and I obtained two
20 bachelor's from there.

21 And then I went on to the Medical University of South
22 Carolina to pursue my DMD, which is my doctor of dental
23 medicine. And I'm now moving on to specialize, which I will
24 be board certified prosthodontist. So that's a little bit
25 about me. It is all academics, but that's pretty much my

1 life.

2 Q. What is a prosthodontist?

3 A. A prosthodontist is a dental specialist that works
4 on prosthesis. So anything implants, dentures, crown and
5 bridge, just really large dental cases, pretty much the
6 cadillac of dentistry.

7 Q. Okay. And do you plan to stay in Charleston after
8 you graduate or are you going somewhere else?

9 A. I'm going to Louisville, Kentucky for my
10 residency.

11 Q. Okay. Fair enough. Now, I represent to you that
12 the events for which we're calling you to testify that day
13 took place in the late evening, early morning hours, October
14 5, October 6, 2018 on Sullivan's Island outside of Dunleavy's
15 Pub.

16 A. Yes.

17 Q. Were you there that evening and that early
18 morning?

19 A. Yes, I was, I was working there as a server
20 part-time to support myself during my college education.

21 Q. Is it fair to say that that evening, early morning
22 was far from routine at Dunleavy's Pub?

23 A. Yeah, I had never witnessed anything like that,
24 much less at work. It was a really nice environment. I -- I
25 really liked working there. Everybody was super nice. I've

1 never seen anything like that in my three years of working
2 there.

3 Q. Okay. And what you are referring to as a
4 (inaudible) that took place right outside of Dunleavy's Pub?

5 A. Yes.

6 Q. Okay. Do you remember the events well?

7 A. I do. So I was bringing out the trash that night
8 trying to close up, the bar was really busy so I was helping
9 Sam and helping her shut down --

10 Q. I'm going to ask you some questions, just for
11 clarity, okay?

12 A. Yes.

13 Q. So when you say Sam, who is Sam?

14 A. Samantha Albert.

15 Q. And who was --

16 A. She was the bartender at Dunleavy's Pub.

17 Q. That night?

18 A. Yes.

19 Q. All right. Go ahead.

20 A. Okay. So I heard a noise. I went over to the
21 building and there were some people trying to get Mr. Bowman
22 to pay his tab at the bar, regulars, patron club. And they
23 were pretty much saying something to effect that, "You don't
24 come here and can't pay your tab." Samantha was standing in
25 the doorway between the building and Mr. Bowman's golf cart

1 and she was just quietly asking, you know, "We don't really
2 know you that well, you can't just leave without paying your
3 tab."

4 Like, "I get it, you leave cards instead at home
5 sometimes, but you can't leave a bar without paying your
6 bill." And her boyfriend, BJ now her husband, was helping
7 out that night before and he was standing in front of the
8 golf cart just also asking to help. He was asking him to pay
9 the tab as well.

10 Q. Okay. Can you -- for the benefit of ladies and
11 gentlemen of the jury that don't know Sullivan's Island.

12 A. Yeah.

13 Q. Or don't know Dunleavy's Pub.

14 A. Right.

15 Q. Can you explain where it is in the, kind of the
16 area surrounding it, where all this took place?

17 A. Yeah, so there's a One-Way Street. It's a one-way
18 street going this way and then there's the ocean and then
19 Dunleavy's Pub is out in the corner.

20 Q. Okay.

21 A. It's a pretty small community. Everybody knows
22 everybody. Really nice conversation and things were going
23 on, usually was kind of busy outside, but it was a very
24 relaxed environment.

25 Q. Is there an outside seating area or just inside?

1 A. Yes.

2 Q. So there's an outside seating area in front of the
3 pub, correct?

4 A. Yes. But they were beside the pub on the corner
5 of the street of the building.

6 Q. Okay. And that's where Mr. Bowman's low speed
7 vehicle, golf cart type vehicle was parked?

8 A. Yes -- yes.

9 Q. And that's what he was sitting in when Samantha
10 was talking about?

11 A. Yes.

12 Q. Okay. And what happened next?

13 A. Honestly, it was the craziest thing. Mr. Bowman
14 just charged at BJ in the golf cart and violently hit him
15 knocking BJ to the ground.

16 Q. Okay. Did -- did you -- were you close enough to
17 hear and see everything that was transpiring between them?

18 A. Yes.

19 Q. Did BJ do anything or say anything to provoke Mr.
20 Bowman?

21 A. No, he was just asking him to pay his -- pay his
22 bill at the bar, which is perfectly normal. And anybody
23 would've done, I would've done it. If I was had been there
24 at an earlier time.

25 Q. Okay. And when he -- when BJ was charged, did

1 that knock him down on the ground?

2 A. Yes, it knocked him down to his knees and on his
3 hands. And then BJ was attempting to stand up and he put his
4 arms up and Mr. Bowman charged and violently hit him again
5 with the golf cart.

6 He didn't give a warning or anything, it was just like
7 an unprovoked attack. BJ's a pretty reasonable guy from what
8 I had encountered of being around him. Really nice,
9 reasonable guy and for him to just charge BJ was very, very
10 unprovoked and concerning.

11 Q. Was anybody on the golf cart with Mr. Bowman when
12 this took place?

13 A. No. Nobody was in the golf cart besides him.

14 Q. Was he with anybody that evening?

15 A. His wife was also present during that night in the
16 cart.

17 Q. Do you know anything about any bill that Mr.
18 Bowman ran off on (inaudible)?

19 A. Yeah, he had been there for a while. I was
20 helping Sam behind the bar and I knew they were continually
21 drinking. I don't know exactly how long, but I knew they
22 were there for a while.

23 Q. Let me show you a picture and ask if this appears
24 to be a picture of Mr. Bowman?

25 A. Yes.

1 Q. Okay. You can mark that as an exhibit please. I
2 know this took place several years ago, back in 2018. Did
3 you review anything to refresh your recollection prior to
4 coming to testify today?

5 A. Yes. I was reading the police report.

6 Q. The police report?

7 A. That I -- that I gave the night of the event.

8 Q. The statement?

9 A. Yes. The statement. Yes.

10 Q. I'm going to show you a copy of what I believe was
11 the statement and ask if you can identify that.

12 A. Yeah, that's the statement.

13 Q. Would you read the statement on the record,
14 please?

15 A. "On October 6th around 1:00 a.m. I was leaving
16 Dunleavy's Pub when I heard a commotion outside. I ran
17 towards the noise and saw a man in the golf cart arguing with
18 our bartender, Sam Albert and her boyfriend BJ Crosby. I was
19 by the scene for maybe 20 seconds and I saw the man in the
20 golf cart hit BJ's body. BJ flew back several feet, crawled
21 out of the way and the golf cart struck him again. After the
22 second hit the golf cart sped away from the restaurant.

23 I'm not exactly sure what followed the cart -- what
24 followed the cart, but some men chased it down and fought the
25 driver. Again, I can only hear at this point because it was

1 1:00 a.m., pitch black. But I know for a fact that it was
2 not BJ because he was standing beside Samantha Albert at the
3 time. After this, I proceeded to go home, but I stayed in
4 case Sam needed me. The man's wife was rude to everyone
5 around that night as well as -- as well and even seemed
6 unbothered by her husband's faults."

7 Q. This is second page.

8 A. Okay. These are just questions. You want me to
9 read those questions?

10 Q. Sure.

11 A. Okay. This is one of the police officers I was
12 speaking to. Questions says, "Describe what the man in a
13 golf cart hit BJ Crosby with." And I answered, "With his
14 golf cart." Next question. "Can you describe the fight that
15 occurred between the person who chased the driver down?" And
16 I answered, "I only heard them yelling at each other. I
17 didn't visibly see the fight." Question, "Was there any
18 unpaid tab?" I answer, "Yes."

19 Next question. "Do you know who it was for and
20 approximately how much?" I said, "It was the driver of the
21 cart and his wife who owed money. I believe it was around
22 \$120." Next question. "Did anyone make a promise to come
23 back to pay the tab prior to law enforcement arriving at the
24 scene?" I answered, "No, they did not." And then I stated,
25 "I worked at Dunleavy's Pub on Sullivan's Island one to two

1 times a week."

2 Q. Okay. Thank you. We're going to introduce this
3 as an exhibit. What was going through your head when you saw
4 BJ being knocked down the first time or even the second time?

5 A. I just remember being really worried for BJ and
6 just kind of freaking out, not knowing if the man was going
7 to get more violent with everybody standing around. I kind
8 of was fearful thinking, "What have I got myself wrapped into
9 standing here?" I was like, "Do I need to go inside?

10 Do I need to" -- like I didn't know if he was going to
11 pull out a gun. He was acting very like possessed and like
12 -- I don't even know how to really explain it in words, but
13 it was kind of like it was frightening. I been at that time
14 in my life. I've never been in any altercation like that or
15 been in around anything violent.

16 Q. Had you ever to your knowledge interacted with
17 Eric Bowman before that occurred? Before ---

18 A. I -- no. I think I -- I know I saw him one time
19 at (inaudible) at St. Patrick's celebration. I don't
20 remember what year that was, but he was not a regular at the
21 bar.

22 Q. And you stated you knew Samantha beforehand
23 because you worked with her?

24 A. Yeah, I don't have a relationship with her outside
25 the bar. I never have, but I've worked with her a couple

1 years at the time this happened.

2 Q. And what about BJ Crosby?

3 A. I had seen him for I think maybe six months to a
4 year prior to that and he would just come to the bar and help
5 out. We were busy and he was at (inaudible) right there once
6 -- once Samantha was working.

7 Q. Did you have an opportunity to -- to view the
8 wounds to BJ afterwards?

9 A. Yes. So BJ was bleeding from his hands from where
10 he was holding them up. Like he took off cut glass. His
11 knees, his shins were bleeding. He was standing up. Okay.
12 But at the time, like, I think his adrenaline was going so
13 much that we didn't realize how injured he was and being in
14 the medical field now I'll understand like when your body's
15 in shock, you are just kind of going to be in the fight or
16 flight mode. And he was fine at the time, but I'm sure --
17 I'm very sure that he's become seriously injured from that
18 attack.

19 MR. SLOTCHIVER: Savannah, thank you very much. And if
20 you'll answer any questions that Mr. Bowman's lawyer may ask
21 you.

22 THE WITNESS: Of course.

23 CROSS-EXAMINATION

24 BY MR. TURNER:

25 Q. Savannah, nice to meet you. Thank you for being

1 call BJ Crosby.

2 THE COURT: Okay.

3 WALLACE BLAIR CROSBY, II,

4 having been duly sworn, testified as follows:

5 THE CLERK: Please be seated. Please state your full
6 name, spelling your last name loudly, clearly into the
7 microphone.

8 THE WITNESS: My name is Wallace Blair Crosby, II. And
9 my last name is C-R-O-S-B-Y.

10 MR. SLOTCHIVER: May it please the Court?

11 THE COURT: Yes, sir.

12 DIRECT EXAMINATION

13 BY MR. SLOTCHIVER:

14 Q. I'm going to call you BJ. That's what you go by,
15 correct?

16 A. Yes, sir.

17 Q. And I'm going to stand back here so I'm not
18 blocking the jury while talking to you.

19 A. That's fine.

20 Q. Right. Let's start with the most pressing
21 question. Did you take a citizen's arrest that night?

22 A. No. I'm not -- I honestly don't even know how to
23 make a citizen's arrest or what you would do.

24 Q. Why don't we talk about your background and talk
25 about the case? Okay. So BJ, where do you live?

- 1 A. I live in Summerville, South Carolina.
- 2 Q. Okay. And you met her?
- 3 A. Yes.
- 4 Q. Who are you married to?
- 5 A. Samantha Crosby.
- 6 Q. And that's who's sitting at the desk with us
- 7 today?
- 8 A. Yes.
- 9 Q. And she's the bartender that was working at
- 10 Dunleavy's?
- 11 A. Yes.
- 12 Q. You weren't married at the time and you since got
- 13 married?
- 14 A. That is correct.
- 15 Q. Do you have any children?
- 16 A. I have one daughter.
- 17 Q. Okay. How old is your daughter now?
- 18 A. She is 12 years old.
- 19 Q. And how old -- so she would've been six years old
- 20 back when this event occurred?
- 21 A. She was six at the time.
- 22 Q. And do you have regular custody of her?
- 23 A. I have joint custody with my ex-wife, 50/50.
- 24 Q. Okay. So she would've been with you during the
- 25 duration of everything that happened to you on this incident?

1 A. Yes.

2 Q. Are you and her close?

3 A. Yes, we are extremely close.

4 Q. Is she here today?

5 A. No, she is not.

6 Q. Okay.

7 A. This has been very difficult for her seeing her
8 hero as a dad. So I just don't feel it's necessary to put
9 her back through this again.

10 Q. You just talked a little bit about yourself.
11 Where are you from originally?

12 A. Right here in Charleston.

13 Q. And where did you go to school?

14 A. I went to school at James Island Christian School.

15 Q. How old were you?

16 A. I am 40 years old.

17 Q. And did you receive any college?

18 A. Yes, I did.

19 Q. And where did you go?

20 A. I went two years at College of Charleston,
21 followed by two years at Trident Tech.

22 Q. Let's talk about your work after. Okay. After
23 college, where did you work?

24 A. I worked at Old South Carriage Company. I was
25 there approximately four years after that. I went to work

1 for the Sherwin-Williams Company. I was with them for 18
2 years and now I'm currently self-employed.

3 Q. And what type of job did you do at Sherwin-
4 Williams ?

5 A. I was a sales rep and a store manager for the
6 flooring department.

7 Q. Okay. At the time that this -- that this event
8 occurred, right in 2018, were you working at
9 Sherwin-Williams?

10 A. Yes, I was.

11 Q. And what was your job?

12 A. I was a sales rep.

13 Q. As a sales rep, do you have a salary or is it
14 mostly based on commission?

15 A. We do have a base salary, but the rest of our
16 income is based off of bonus incentives.

17 Q. When did you leave Sherwin-Williams ?

18 A. I left Sherwin-Williams February of last year,
19 2023.

20 Q. Why?

21 A. I was having some issues. I was given an
22 opportunity to become self-employed, and just given my
23 limitations, I just knew as far as in my future if that I
24 were not going to be able to beat those limitations or be
25 successful and it gave me an opportunity to do something else

1 to where I could more so work around my own schedule. And if
2 I had to take three hours off from work for any reason, I
3 could do that without having to go get special permission.

4 Q. All right. When you talk about limitations, what
5 type are you talking about?

6 A. I have all sorts of lifting limitations. As far
7 as sitting and stuff, it's -- that's -- I can only lift so
8 much weight as far as there's times where I can lift
9 something simple as a bottle of water and just picking that
10 up, I'll have issues with my shoulders popping up.

11 Q. Are these limitations you had before October of
12 2018 or after?

13 A. These are all after the October of 2018.

14 Q. Are these all things that you attributed to what
15 happened on that night when you were hit with the golf cart?

16 A. I'm sorry, will you say that again?

17 Q. Are these all things that you attribute to when
18 you were hit that evening?

19 A. Yes.

20 Q. Probably by a golf cart?

21 A. Yes.

22 Q. Or by a golf cart?

23 A. Yes.

24 Q. Thank you. And now was your chance for you --
25 what does your business do?

1 A. We do garage floors -- garage floor express.

2 Q. We are getting closer to the day of the event. As
3 far as your work now, is it physical for you?

4 A. It's not physical for me. We do have installers
5 that do work for us in the garage. Our job is to basically
6 go out and sell the job and then they handle all the -- as
7 far as material and going and doing the physical work on the
8 job itself. And then our thing is just more so from a
9 management standpoint of the job.

10 Q. Thank you. BJ, other than your divorce from your
11 first wife, have you ever been involved in any lawsuit?

12 A. No.

13 Q. Including -- other than this one and your divorce
14 with your wife?

15 A. No, I have not.

16 Q. Have you ever been arrested before?

17 A. No.

18 Q. You ever been in a fight before?

19 A. No.

20 Q. Is it fair to say that you've lived relatively
21 uneventful life up until this occurred?

22 A. It is, yes.

23 Q. On the morning of this event before it occurred
24 and the wee hours when you first got out, you got (inaudible)
25 that day. Did you have any ailments to your legs?

1 A. No.

2 Q. To your left shoulder?

3 A. No.

4 Q. To your right shoulder?

5 A. No.

6 Q. To your back?

7 A. No.

8 Q. To any of the areas that were impacted -- your
9 body (inaudible)?

10 A. No, I did not.

11 Q. Okay. I'm going to go into the facts of the case.
12 Okay? At this point the jury has heard Mr. Bowman. I'll let
13 you have an opportunity to tell your side of that.

14 A. All right.

15 Q. Now, I know October 5th -- 6th back 2018 was a
16 long time ago. Is it fair to say that it still sticks out in
17 your mind?

18 A. Yes, it does.

19 Q. Why is that?

20 A. It's practically burning in my brain, just the
21 image.

22 Q. Can you tell me about the events of that day
23 leading to your (inaudible) at Dunleavy's?

24 A. So that morning it was a Friday. I had gone to
25 work that day at Sherwin-Williams. After that I do remember

1 that day specifically, I had just gotten my Jeep back. It
2 had been in the shop for about a month with a blown motor.
3 So after work I had a friend go take me to pick up my Jeep.

4 I went and picked it up. I -- my brother had later
5 called me and said he wanted to hang out that evening and I
6 told him that I'd love to. After he left his house on John's
7 Island, he came to Summerville where I live. So that's the
8 events leading up to Dunleavy's.

9 Q. And tell me about what you observed at Dunleavy's
10 when you arrived.

11 A. When I got there it was as -- it was a packed
12 house. It was busier than I've ever seen it in the times
13 since the time that I had been going out there.

14 Q. There was a big party going on, right?

15 A. It was huge. It was probably four or five rows
16 deep from the bar to where -- to even try to walk up to it
17 full of people.

18 Q. You got (inaudible)?

19 A. Some like producer or movie person. Yes, sir.

20 Q. Other than your brother and Samantha and Savannah,
21 did you know anybody else in there?

22 A. Not that I recognized that night.

23 Q. Have you ever met or run into Mr. Bowman or his
24 wife before?

25 A. No, I have not.

1 Q. Is it fair to say that other than the event that
2 was transpired that evening on/or about the premises of
3 Dunleavy's, that your experience it's usually a pretty
4 relaxing place to be?

5 A. It was a very down-to-earth family-friendly
6 atmosphere. Everybody got along. Nobody was a stranger in
7 there. You could just walk in and talk to anybody. It was a
8 very super relaxed atmosphere.

9 Q. You ever seen a fight there or disturbance there?

10 A. I've never seen any confrontation or any issues
11 whatsoever.

12 Q. BJ, what time did you and your brother arrive?

13 A. All I remember it was like -- it was -- it was
14 after dark, I want to say sometime in between like 9:00,
15 10:30, 9:00 to 10:30. I'm not certain the exact time.

16 Q. Did you consume any alcohol before you went to
17 Dunleavy's?

18 A. No, I had not.

19 Q. Did you consume any alcohol while at Dunleavy's?

20 A. After I finished helping Samantha with some of the
21 boxes and stuff, I sat down at the bar with my brother and
22 had started my first beer.

23 Q. Oh no, I understand the event was sometime 11:30,
24 12:00-ish. How long in advance of that if you started to sip
25 your first beer?

1 A. From the incident happening, it might have been
2 maybe five minutes.

3 Q. And is that the only alcohol you had sipped that
4 night?

5 A. That is.

6 Q. Has your plan been to -- to wait until Sam was
7 done with work then leave?

8 A. It was. It was to stick around and help her get
9 things closed up and wrapped up.

10 Q. Let's talk about what happened next. You were
11 inside the bar when you got there, correct?

12 A. Yes, sir. I had just sat down.

13 Q. And at some point you went outside Dunleavy's?

14 A. Correct.

15 Q. There's the testimony today about Dunleavy's being
16 on Sullivan's Island (inaudible) the bridge. There's a strip
17 area of restaurants and bars. And this is the first one you
18 come to?

19 A. Yes.

20 Q. Okay. And this is on kind of the corner of the
21 One-Way Street?

22 A. Yes.

23 Q. So my understanding the front in on the main
24 street, there's an entrance there at -- outside Dunleavy's,
25 correct?

1 A. Yes.

2 Q. And the second door is inside that goes out on the
3 One-way street?

4 A. Yes.

5 Q. Is that the -- is that the exit that you went on?

6 A. That is the exit, yes.

7 Q. Excuse me. And why did you go out?

8 A. So I had just sat down and started drinking my
9 beer to relax and my brother was sitting there with me and I
10 said, "I'm going to go outside and go smoke a cigarette."
11 And he had just recently quit smoking, so he said, "I'll
12 pass, go do it on your own."

13 Q. Now, just jump on ahead for a second. We know
14 you're going to talk about the assault that you received, but
15 the question is, did your brother see that?

16 A. No, he never left the bar.

17 Q. Okay. So he didn't witness any of what occurred?

18 A. No, he did not.

19 Q. Okay. And is that why he's not here today? He
20 has no impression.

21 A. Correct.

22 Q. Can you please tell the ladies and gentlemen of
23 the jury what first caught your attention of Mr. Bowman?

24 A. My -- it was Samantha talking to him. She was
25 standing on the side and she had said to -- yeah, I -- I

1 noticed her talking to him about his tab.

2 Q. And what did you say?

3 A. I had just heard something about you need to pay
4 your tab, and I wasn't 100 percent sure what was going on, so
5 I stepped from the side. I was about 3 feet, I want to say
6 in front of it and just casually walked out and said, "Hey,
7 you need to go pay your tab." Just a regular conversation.

8 Q. You were about 3 feet in front of his LSV?

9 A. That is correct.

10 Q. Okay. And you were in front of the windshield?

11 A. Correct.

12 Q. And the windshield has -- and there's no side
13 windshield, small piece. Correct?

14 A. No, it's just one glass windshield.

15 Q. Did you curse at him?

16 A. No.

17 Q. Did you threaten him?

18 A. No.

19 Q. Were you confrontational?

20 A. Not at all.

21 Q. Was it conversational?

22 A. Oh, yeah. It's just a casual conversation.

23 Q. BJ, how tall are you?

24 A. I'm 5'9.

25 Q. And back in 2018, what did you weigh?

1 A. About 180.

2 Q. Is it fair to say that you're much smaller than
3 Mr. Bowman?

4 A. Yes.

5 Q. How tall do you think he is?

6 A. My guess would be 6'2, 6'3-ish.

7 Q. Did it appear to you that he had been drinking
8 that night?

9 A. I -- not -- not at all. All I heard was, "Pay
10 your tab."

11 Q. Okay. So you didn't observe one way or the other?

12 A. Nope.

13 Q. Were you careful with your words not to be
14 confrontational?

15 A. I wasn't careful at all because I was just having
16 a casual conversation with him.

17 Q. So you didn't -- you didn't have to consider that
18 you just had a casual conversation?

19 A. No. Or I'm sorry. Yeah, I just had a casual
20 conversation. I didn't see it as a volatile situation or
21 anything whatsoever.

22 Q. Is there a reason why you didn't walk over around
23 the golf cart and stand right next to him -- to him when you
24 spoke?

25 A. So I felt that given the distance being in front

1 of it, the 3 feet or so, that that was not confrontational at
2 all. It was just, again, a conversation I felt as had. I
3 actually walked around to the side of the golf cart where
4 there is no door, there's no barrier between me and the
5 driver. I felt like me putting myself in his face, that
6 would've been a confrontational moment. So I stayed where I
7 was to make my comment.

8 Q. While was (inaudible), did you expect or
9 anticipate that you might be hit by a golf cart?

10 A. It would've never crossed my mind that anyone
11 would do that.

12 Q. So what happened next?

13 A. So I -- like I said, I made the comment.
14 Initially I said something about, you know, "You don't just
15 go to Arby's and go get a sandwich and not pay." And then --
16 or, "You don't go to a steak house and order a steak and then
17 tell them, I'm going to come back and go pay whenever I
18 want." It was at that moment with no warning, just out of
19 nowhere, just wham I got hit. And once I got hit the first
20 time, I had no idea what was going on. I hadn't even started
21 processing it at the moment.

22 I was wearing shorts and a t-shirt and I had flip-flops
23 on. Once I got hit, I went flailing backwards, throwing my
24 arms backwards in the air, just trying to catch my balance as
25 if you were like falling backwards off a log or anything

1 whatsoever. By the time I finally had regained my balance
2 and just realized, Oh my God, I think I got hit. I --
3 immediately looked up and then when I looked up, I mean, I
4 guess maybe I had a foot or two's notice to before I could
5 throw my hands up.

6 Otherwise, it would've been my face impacting the
7 windshield. I was able to manage to get my hands up and I
8 got nailed. The last thing I remember upon impact was just
9 seeing the glass just spider webbing all across the
10 windshield. I remember seeing that vision. That's what I
11 say, it's burned into my brain. It still is. Once I went
12 backwards, my tailbone made impact with the asphalt first.

13 The momentum of me flying backwards, then my right
14 shoulder went down and then I was completely laid out. I had
15 just come to the realization that I was hit a second time. I
16 then got up realizing I'm missing one of my shoes or my flip
17 flops. Went and picked that up and then I -- that's when I
18 noticed Bowman down the road with the other -- one of the
19 witnesses or that was there that night.

20 Q. Somebody that you talked about (inaudible)?

21 A. Yes.

22 Q. Let's -- let's back up. I'll check what you said
23 a little bit, then come back. Okay? So you put both hands
24 in front of you. He was, I believe, you said eight or 10
25 feet away, is that right? When he accelerated the second

1 time?

2 A. Yes.

3 Q. And he went forward. So the -- the windshield
4 actually impacted both of your hands. Correct?

5 A. So, yes. Both hands were hit and that's where my
6 shoulder damage came from.

7 Q. (Inaudible) and then you went flying back?

8 A. Yeah. So it took the brunt of the impact.

9 Q. If Mr. Bowman wanted to, is there room that he
10 could have just driven off without ever hitting you at all?

11 A. Easily.

12 Q. There was enough room?

13 A. Yes.

14 Q. And did you see anybody else who was attacking him
15 and jumping on him at that time at the Dunleavy's, I know, he
16 talked about people down the road chasing afterwards, but
17 prior them chasing him down after him did you see anybody
18 else that was jumping on him or attacking him?

19 A. No. Only thing I remember was just Samantha
20 telling him to -- or asking him to go pay his tab. I don't
21 recall seeing anybody else around the golf cart. I don't
22 recall seeing groups of people around it or anything.

23 Q. He testified that you jumped on his golf cart and
24 started punching it. Did that happen?

25 A. In fact, I was wearing flip flops and if I was

1 punching it, there would've been damage to my knuckles. I
2 didn't -- I never touched the golf cart. I never made
3 personal contact with the golf cart voluntarily.

4 Q. So you never punched the golf cart?

5 A. No.

6 Q. You never kicked the golf cart?

7 A. No.

8 Q. You never attacked the golf cart?

9 A. No.

10 Q. Damages to your hands on your palms?

11 A. Yes. On both palms.

12 Q. Anywhere else you were physically -- your legs?
13 Were your legs damaged?

14 A. My legs, my hips were bruised, my ankles, my feet,
15 my back was in extreme excruciating pain.

16 Q. What did your leg make contact with?

17 A. The -- it was my left leg. I assume that the
18 broken fender that was broken off of the golf cart is from
19 the golf cart impacting my leg.

20 Q. I'll show you a couple of pictures and ask if you
21 can identify them.

22 THE COURT: I think (inaudible) marked previously
23 already exhibited?

24 MR. MCCULLOUGH: Yes. Exhibit 4.

25 MR. SLOTCHIVER: (Inaudible).

1 MR. MCCULLOUGH: I have Exhibit 4.

2 THE COURT: Yes. That's okay. Thanks. Exhibit 4.

3 BY MR. SLOTCHIVER:

4 Q. Okay. So these, I'm just going to walk through
5 this, a handful of pictures and who, just tell the jury in
6 your own words what they exemplify, what they show.

7 A. So this is my right hand and you can actually see
8 on my wrist too where skin was peeled off. But like it's the
9 glass and the abrasions and my pinky and in my palms and
10 stuff. After the initial impact or after the impact.

11 Q. Let's go to the next one.

12 A. That is my left leg. And in fact you can see on
13 both legs where I'm missing hair. But that is where -- my
14 belief is that the passenger fender was broken off, was right
15 there on that space that I was pointing to on my shin.

16 Q. Okay. How about this one?

17 A. That is my right elbow from where I went down
18 after the second impact.

19 Q. When you went down, what was the -- what was the
20 ground? Was it -- I'm assuming, was it asphalt?

21 A. Rough asphalt.

22 Q. So it's a tough fall?

23 A. Yes. All right. It's like sandpaper.

24 Q. Let's go to the next one. What is that? Another
25 picture of your hand?

1 A. So yes, this is another picture of my hand after
2 they cleaned the blood off while we were still out there.

3 Q. Okay.

4 A. Prior to the hospital.

5 Q. All right. Let's go to the next one. Another one
6 of your hand?

7 A. Yep.

8 Q. Okay. What is that?

9 A. That is part of the glass shards that they pulled
10 out of my hand, out of my palms at the hospital.

11 Q. How long in duration were glass shards coming out
12 of your hand?

13 A. This happened late Friday night, early Saturday
14 morning. So Sunday I was still having glass removed from the
15 palms of my hands. They can't see it on an X-ray, so.

16 Q. Right here?

17 A. This is at the hospital. This is my right foot
18 and my ankle, I'm not 100 percent certain if the black area
19 on there is from a tire mark of my foot being run over or
20 from the asphalt.

21 But that mark was not there prior to any of this.
22 That's my left hand at the hospital. Again, after it was
23 cleaned that was where they removed some glass, actually I
24 think it was prior to. You can see actually some of the
25 glass on there now, so.

1 Q. Okay.

2 A. That's my right hand at the hospital during the
3 glass extraction from my palm.

4 Q. Okay.

5 A. How I wish that could be zoomed out a little.
6 That's -- looks like my -- my hand, the top of my hand, like
7 on the outside, like a scrape or something.

8 Q. It's all right.

9 A. That is my right foot. The outside of it looks
10 like after or -- yeah, at the hospital. And that's just
11 marks from the asphalt from going down.

12 Q. All right.

13 A. That's my shin on my left leg after it was cleaned
14 up at the hospital as well. This is an X-ray of my right
15 shoulder.

16 Q. Okay.

17 A. That's another X-ray of my right shoulder.

18 Q. That's it. Okay. So -- and was there any warning
19 at all to you before you were hit by the golf cart for the
20 first time?

21 A. No, there was nothing said at all from any
22 warnings or anything to me whatsoever.

23 Q. And your testimony is he had room to go around you
24 before he hits you the first time?

25 A. Easily. Yes.

1 Q. Was there any warning before he hit you the second
2 time?

3 A. No, there was no warning whatsoever.

4 Q. At that point, you're 8 to 10 feet away?

5 A. Yes.

6 Q. He claims that when he rode by you swung at his
7 golf cart and you hit, it caused damage to the windshield.
8 Is that what happened?

9 A. No. In fact, I was on the ground trying to get up
10 and it wasn't until afterwards that I noticed he was down the
11 street after I got off the ground. And again, the damage
12 that was done was to the palms of my hands. Had I swung at a
13 moving vehicle with my fist, it would've busted my knuckles
14 and busted the outside of my hand as well.

15 Q. BJ, you testified earlier that you never had a
16 fight before. Have you ever had any kind of injury like any
17 of these before?

18 A. None whatsoever.

19 Q. Let's talk about the (inaudible). Okay. When did
20 you first see that (inaudible)?

21 A. The night of when I went to East Cooper.

22 Q. And what was your initial understanding of your
23 injuries?

24 A. I'm sorry. Can you better --

25 Q. Sure. When did you first seek medical treatment?

1 A. So that was at East Cooper and they pulled the
2 glass out of my hands and did X-rays.

3 Q. What was your understanding of the injuries at
4 that time?

5 A. I -- I had no idea. I was still pumped full of
6 adrenaline and I didn't know what was wrong with me. I was
7 just in extreme pain.

8 Q. How did you feel the next day?

9 A. Like I had been run over by a train.

10 Q. And what was bothering you when you got up the
11 next day?

12 A. Everything. My back, my shoulders, my palms were
13 still bothering me really bad. It was difficult to walk.

14 Q. Did you seek medical assistance again?

15 A. Yes, I did.

16 Q. And where did you go?

17 A. I went to Roper or it was like Roper Express Care
18 in Summerville.

19 Q. What's going through your mind at this point? You
20 wake up in the morning after this event occurred, you're in
21 pain everywhere and you go back to the doctor again?

22 A. Still trying -- I was still trying to process what
23 happened along with trying to explain to doctors what
24 happened and just try to determine the next steps as far as
25 what to do in the healing process and what do I not know

1 about that has occurred as far as after the assault.

2 Q. Have you ever had pain in any of these areas
3 before?

4 A. There was one time after I -- I brief -- briefly
5 lived in Tennessee for three years and I came back. I was
6 healthy, had a normal right after moving back, just a normal
7 follow-up doctor's visit. And I had mentioned after having
8 moved that my right shoulder bothered me a little bit.
9 Nothing major. He did a cortisone shot, after that, never
10 had an issue with it again up until this incident.

11 Q. What year was that? Do you recall?

12 A. That was back in 2015.

13 Q. Okay. (Inaudible) earlier you'd over used it, you
14 had a shot and it was over?

15 A. That was it.

16 Q. Was the pain in 2015 that bad as it was in 2018?

17 A. Nowhere near.

18 Q. All right. Let's start with your shoulders and
19 then let's go to your back.

20 A. Okay.

21 Q. Okay? Which shoulder was injured? You said both
22 of them, right?

23 A. Both shoulders.

24 Q. Let's start with your left shoulder, or you're
25 right, whichever one you want, but I want to talk about what

1 treatment you had to each shoulder.

2 A. Okay.

3 Q. And I know the doctors will testify tomorrow, but
4 I wanted to get it from you. So to the best of your ability,
5 what treatment did you have in your left shoulder?

6 A. So my left shoulder had -- I think it's called
7 torn ligaments. I don't know all the exact medical terms.
8 But as far as for the -- the treatment, is that correct or?

9 Q. Treatment.

10 A. So they did an MRI with eye scan to see what was
11 going on. Then they determined that I had like, torn
12 ligaments. Some issues with -- just from the incident. The
13 process was I went in for surgery, they detached my bicep
14 muscle, repaired the damaged areas in my shoulder and then
15 they reattached it to a separate part of my arm. That was
16 for my left arm. And then that was followed up by, I want to
17 say a month to a month and a half of heavy physical therapy
18 twice a week.

19 Q. Was -- was that surgery one that you had to go
20 under anesthesia for?

21 A. Yes, I did have to go under anesthesia.

22 Q. Now, obviously, you were in pain before you had
23 the surgery. Tell me about the surgery. Did that call
24 (inaudible).

25 A. Initially after, yes. The -- they did a nerve

1 block to do the surgery which typically wears off that night.
2 So it was excruciating. When I went to physical therapy, I
3 had no idea what to expect, what the process was going to be.
4 I had to rely on transportation to be taken to and from
5 physical therapy.

6 I started with the hopes of getting the best
7 improvement possible, but being told that I would never be
8 back to full capacity again. Like I said, I think it was
9 about a month and a half of twice a week for about an hour to
10 an hour and a half each session for my left arm.

11 Q. Do you still have left arm pain and restrictions
12 today?

13 A. I do, yes.

14 Q. So when you finished and I'm about left first --
15 right first, I know I'm just asking you to talk about those
16 shoulders, but when you finished one shoulder, you never went
17 to the next shoulder.

18 A. That is correct.

19 Q. Is there a reason why the doctor couldn't just do
20 both surgeries at the same time? One anesthesia, one set of
21 surgeries and one (inaudible) physical therapy?

22 A. Ideally that would've been nice. However, I
23 would've been completely without the use of both arms for a
24 good solid month and a half and I just -- I couldn't go that
25 long and it just -- it was too much on me at once.

1 Q. So a lot of things you would to be able to do if
2 you only had one arm?

3 A. Correct. Yes.

4 Q. All right. So make sure I get it straight. You
5 had the first surgery, you went through only physical therapy
6 and then shortly thereafter you went -- had the second
7 surgery?

8 A. Yes.

9 Q. Tell me about your right shoulder.

10 A. So my right shoulder, I -- it was very similar. I
11 think there was one other thing that they had to do with that
12 shoulder as far as repair work. Again, similar process,
13 detach the bicep, make the repair, reattach it to a different
14 part of my arm. I did have a nerve block for that, that was
15 also followed by physical therapy for another month and a
16 half or so.

17 Q. So let's back up a little bit. So while you're
18 getting the surgery to your right arm or to your left arm,
19 I'm assuming your -- your right -- excuse me, to your left
20 shoulder, I'm assuming your right shoulder was waiting in
21 pain during surgery, continued to bother you?

22 A. Yes, it was. I mean, all the way up until surgery
23 I had shoulder -- I had shoulder pain in both.

24 Q. Okay. Was that painful, uncomfortable surgery
25 also?

1 A. It was extremely uncomfortable. I mean, it was
2 extremely painful trying to readjust to life without being
3 able to do normal daily activities.

4 Q. So while you had a surgery of your right shoulder,
5 your left shoulder was still recovering from it's surgery?

6 A. From its initial surgery.

7 Q. And when you had the surgery of the left shoulder,
8 your right shoulder was still waiting for its this surgery?

9 A. Yes.

10 Q. After your second shoulder surgery, you then went
11 to a series of physical therapy, correct?

12 A. Yes.

13 Q. Okay. Similar to what you had for the left
14 shoulder?

15 A. Yes.

16 Q. Is the pain gone in your right shoulder?

17 A. No, it is not.

18 Q. Okay. Is -- are there limit -- are there
19 limitations to your right shoulder?

20 A. There are still, yes.

21 Q. So as it applies to your left and your right
22 shoulders, you still got limitations and pain with both?

23 A. Yes. And that is -- or that is permanent
24 limitations for the rest of my life.

25 Q. How often do you have pains to your shoulders?

1 A. So it just kind of depends. If there's physical,
2 I mean if I say physical activity, like stuff like going to
3 the grocery store, it could be something as simple as picking
4 up something off the shelf, something minuscule and they pop.
5 There -- there's not a day that goes by that I'm not in pain.
6 Something as simple as trying to sleep on your side in bed is
7 not possible anymore.

8 Q. When you say it pops, please tell us what that
9 means. Is that (inaudible)?

10 A. It's almost like it's -- it's almost like a rubber
11 band stretching and then it just literally makes a loud pop
12 noise and then it's like someone just taking a knife and just
13 stabbing it right into your joint.

14 Q. You -- you take pain medicine to help alleviate
15 some of those problems?

16 A. No, I did not take pain medicine.

17 Q. And why did you not take pain medicine?

18 A. So once I had my surgeries, I was on pain
19 medicine. But as I started to get to the point where I could
20 go back to work, I realized that if I stayed on the pain
21 medication that I was pretty much useless, I couldn't go do
22 my job as I should be able to, I wouldn't be able to drive a
23 car, carry on a normal conversation without sounding silly.
24 So I -- it was my ultimate decision to stay off of pain
25 medicine.

1 Q. So you're kind of going to catch-22 that you're in
2 pain and working or you're not (inaudible)?

3 A. Yes.

4 Q. And who was the doctor that performed the shoulder
5 surgeries for you?

6 A. Dr. Schaaf.

7 Q. He'll testify that?

8 A. Yes.

9 Q. Let's talk about your back. Who did you seek
10 treatment from?

11 A. Dr. Forrest was who did my initial back
12 injections. So Dr. Forrest --

13 Q. Southeastern Spine?

14 A. Southeastern Spine? Yes.

15 Q. Tell us about the type of treatment you received
16 for your back.

17 A. When I -- so the treatment started out with doing
18 a shot between the nerves. So they did one injection just to
19 see -- it was almost like a cortisone injection just to see
20 if that would alleviate the pain. So that's what it started
21 out with.

22 Q. Did you ultimately have to go to surgery?

23 A. Ultimately, I did. After several tests.

24 Q. Did you have to go through anesthesia again before
25 the surgery?

1 A. Yes.

2 Q. Did you have to go to physical therapy again after
3 the surgery?

4 A. Yes.

5 Q. Is it fair to say that the length of time from the
6 first surgery until the physical therapy ended and the second
7 surgery was about a year and a half?

8 A. In total. Yes, it was about a year and a half.

9 MR. SLOTCHIVER: I'm going to show you a time line.
10 Show this to counsel. We're going to mark it (inaudible).

11 THE COURT: Okay. Cool. (Inaudible).

12 BY MR. SLOTCHIVER:

13 Q. BJ, this is a two-page document. I want to ask
14 you about this, okay?

15 A. Yes.

16 Q. So -- and just from a time perspective, so your
17 first surgery would've been in November of '18, your first
18 injection would've been the autumn of '18 at Southeastern
19 Spine. Correct?

20 A. Yes.

21 Q. And then you went to Lowcountry Outpatient Surgery
22 Center, that was Dr. Schaaf you referred to for your shoulder
23 surgeries, correct?

24 A. Correct.

25 Q. Okay. And the first -- so first surgery you had

1 appears to have been your right shoulder, is that correct?

2 A. That is correct.

3 Q. And that was on December 11th of '18?

4 A. Yes.

5 Q. And then following that, you received nine
6 physical therapy treatments?

7 A. That is correct.

8 Q. Okay. And following that, you took a break for
9 about, looks like six days, not much of a break, correct?

10 A. No. It's not.

11 Q. And then you went and had your second shoulder
12 surgery to your left shoulder, correct?

13 A. Yes.

14 Q. And following that, you had -- looks like you had
15 11 physical therapy treatments again, progressive physical
16 therapy?

17 A. Yes.

18 Q. So your last PT was on March of '19?

19 A. For my shoulder, yes.

20 Q. For your shoulder. The following -- that you --
21 then two days later went back to Southeastern Spine to start
22 treating your back?

23 A. Yes. This was I think my second -- no, my second
24 or third injection.

25 Q. And so, first you had an injection on the 15th.

1 And then on June of '19 you had another injection, three
2 months later at Southeastern Spine?

3 A. Yep.

4 Q. And then following that, you waited another month
5 and then you had a nerve injection study, correct?

6 A. Correct.

7 Q. And if you're still proceeding, you have even more
8 treatment. So then October, you went back to Southeastern
9 Spine, correct?

10 A. Yeah.

11 Q. And you had the -- you had an injection.

12 A. Yep.

13 Q. Then following that, you ultimately had a lumbar
14 fusion at East Cooper Hospital by Dr. Frisch, correct?

15 A. Yes.

16 Q. You testified to them already. And following
17 that, continuing your medical treatment, you then had 11 more
18 physical therapy treatments?

19 A. Yes.

20 Q. And they got you until March of 2020?

21 A. Yes.

22 Q. Correct? And that, as I understand it, is where
23 you left off with your medical treatment, correct?

24 A. That is correct.

25 Q. Do you still have pain and discomfort in your

1 back?

2 A. Yes, I do.

3 Q. How often do you have pain and discomfort in your
4 back?

5 A. It's on a daily basis still.

6 Q. On a daily basis?

7 A. Yes.

8 Q. What's worse? Your back or your shoulders or is
9 it hard to differentiate?

10 A. It just depends on the time of day. It seems like
11 it's -- they -- they all randomly vary.

12 Q. Let me show you -- let me show you a list of -- of
13 the damages summary (inaudible).

14 A. Okay.

15 Q. This is already admitted as an exhibit. Hold on a
16 little bit. BJ, you've seen this before, correct?

17 A. I have.

18 Q. And you understand that this is a list of all the
19 different medical treatments that you've received as a result
20 of damages that you've incurred by being hit by the golf
21 cart?

22 A. Yes, that is correct.

23 Q. And I show as the list shows a total of
24 \$386,452.61 in medical bills?

25 A. That is correct.

1 Q. Is there any other treatment that you know of or
2 that you've been offered that can help you get better so you
3 don't have these healing pains?

4 A. There currently at this time is not. I've been
5 told that I've, this is the best that I'm going to get by
6 doctors.

7 Q. And is that why the treatment stopped after you
8 last set physical therapy?

9 A. That is correct.

10 Q. BJ, what alterations have you had to make to your
11 daily living?

12 A. Every aspect of my life has changed. As far as
13 doing things like around the house, for example, simple
14 things that you wouldn't even think twice of. Now, I've got
15 to find somebody to do it. If I can't do it or my wife can't
16 do it, we've got to hire somebody to do it. My -- as far as
17 things like with my -- with our daughter for example, like
18 there are limitations that I have of things that I would like
19 to be able to do with her that I can't do. I got to depend
20 on somebody else to do.

21 Simple things like going grocery shopping, you might
22 think like, "Oh, I'll take -- I'll carry -- it'll take me two
23 trips to carry this stuff into the house." It'll take me
24 five if I don't have someone there to help me. So it is just
25 -- it's extremely slowed down my life and has taken away at

1 least half, if not more than what I used to be able to enjoy.
2 And physical and outdoor activities and just -- not just
3 that, but things that I would do with family and friends that
4 I'm no longer a part of because I can't do it.

5 Q. Does it ever get easier explaining to your
6 6-year-old daughter when she is 12 years old that daddy can't
7 do these things?

8 A. It doesn't get easier. I think she has come to
9 understand and feel sympathy for me. So it's pretty sad when
10 a 12-year-old is telling me, "It's okay, dad, I got this."
11 And you can't do it.

12 Q. Have you missed work -- opportunities at work
13 because of this?

14 A. I have.

15 Q. Is there any way you can calculate what your lost
16 wages are?

17 A. It's -- it is nearly impossible to calculate it
18 without being able to actually go out and perform the job to
19 your fullest duties.

20 Q. Is that partly because you work on sales, which is
21 commission based, that if you're not able to work, you can't
22 prove how much you invested even though you're doing
23 (inaudible)?

24 A. So my job was -- my job was to go out and sell.
25 When -- prior to being injured. I could easily get out to 9

1 to 12 jobs a day. It might be a thousand dollars job, it
2 could be \$100,000 job. I don't know until I get there and
3 sell it. So when you go from being able to visit 9 to 12
4 customers or potential customers a day to now, you can only
5 get to two or three.

6 And normally getting to that customer might take an
7 hour, but now I'm having to pull over because I have a manual
8 transmission vehicle. And shifting gears, I know it sounds
9 silly, but it's a lot of work back and forth with both arms.
10 It might turn into an hour and a half, two-hour drive. So it
11 definitely limited my ability to go out and effectively
12 measure and bring in more business. So there's no way to
13 give an actual definitive number.

14 MR. SLOTCHIVER: All right. BJ, I've got nothing
15 further. You can please answer any questions Plaintiff has.
16 Plaintiff's counsel has for you.

17 THE WITNESS: Okay.

18 CROSS-EXAMINATION

19 BY MR. TURNER:

20 Q. BJ, do you remember back in May of (inaudible) you
21 spoke before we took your deposition? Do you remember that?

22 A. That is correct.

23 Q. Okay. And you have vivid memory of that
24 deposition?

25 A. I do have a good memory of it, yes.

1 Q. BJ, after -- when the police initially spoke with
2 you, you did refer to Samantha -- Samantha, you referred to
3 her as a bartender. Would you agree to that?

4 A. That is correct.

5 Q. Okay. And you remember we spoke too in your
6 deposition about this same -- same matter you said -- we were
7 talking about Samantha speaking with the police and are you
8 aware of what she said to the police in the video, so about
9 that?

10 A. That is correct.

11 Q. Would you admit that she referred to you as
12 someone instead of her boyfriend?

13 A. She absolutely did.

14 Q. Okay. And you would admit you were given three
15 drinks by her at the bar at Dunleavy's, weren't you? When
16 you did get to Dunleavy's, you were given three drinks?

17 A. I did not pay for that drink.

18 Q. Okay. All right. So you were given a free drink,
19 correct?

20 A. I don't know if when you say free, she paid for
21 them. I did not.

22 Q. You did not. Okay. And you would agree you were
23 never reported to Dunleavy's or anything, is that correct?
24 You're not employed?

25 A. That is correct.

1 Q. Okay. And -- and the incident with Eric, that was
2 the first time you had ever tried to stop anybody from
3 leaving or stop anybody from or ask anybody about a tab or
4 anything like that?

5 A. That was the first time I had asked someone,
6 something like that. Yes.

7 Q. And you're not a police officer or anything like
8 that?

9 A. No.

10 Q. And you would agree that you stood about two,
11 three feet from Eric's -- from Eric's golf cart, correct?

12 A. Yes, that is correct.

13 Q. And you could have -- you would agree with me that
14 you could have the option, at least you could have stood
15 beside him, beside the golf cart and communicated with him
16 that way, right?

17 A. Samantha was on the passenger side speaking with
18 him.

19 Q. Okay. Would you -- could you agree to either side
20 of the golf cart was at least a possibility that you could
21 have stood on one side or the other and spoke with him?

22 A. It is a possibility. Yes.

23 Q. Okay. But you chose to stand in front of him,
24 correct?

25 A. I chose to stand in front of the golf cart.

1 Q. With the window up to communicate with him.

2 Right?

3 A. It was a glass windshield so you can't put it
4 down.

5 Q. Right.

6 A. So --

7 Q. You chose to speak through the windshield to him
8 instead of either side of him, correct?

9 A. That's correct.

10 Q. Okay. And Mr. Bowman, actually, before you were
11 struck by the golf cart, he gave you a countdown, right? He
12 told you he was going to count for three and actually counted
13 for three, correct?

14 A. I didn't hear Mr. Bowman say one word that
15 evening.

16 Q. Okay. We'll get to that later. Did you make the
17 cracks in -- did you make these cracks in his windshield with
18 your hand?

19 A. No, I did not.

20 Q. You were showed a picture of your hand earlier.
21 You had a abrasion to your right hand earlier, correct?

22 A. To my palms.

23 Q. You were showed similar one earlier. I can give
24 that one you were showed --

25 A. What appeared to be on the outside.

1 Q. But you had at least one with some scraping or
2 something to the top of your right hand. Do you agree?

3 A. If I could see the picture again, I could better
4 answer.

5 Q. And after the incident, you saw a man who actually
6 chased Eric down, right?

7 A. I didn't see him chasing. I looked down the
8 street and saw some sort of confrontation going on a few
9 streets down.

10 Q. And I think you testified earlier you saw Eric
11 push somebody off of the golf cart?

12 A. It appeared it would look like that.

13 Q. And you claimed that -- and I think you even said
14 earlier, you didn't know, you claimed you didn't know Eric
15 before, isn't that correct?

16 A. Correct.

17 Q. But you made the mention to officers that
18 something about his rich mom or daddy, he's going to run back
19 to his rich mom -- mommy or daddy. Would you admit that you
20 told officers that but you didn't know him?

21 A. I did tell officers that I did not know him. I
22 just made a random statement after being assaulted and I was
23 sitting there bleeding profusely.

24 Q. Okay. I'm going to play a little bit (inaudible).

25 THE COURT: Okay. Has this been already agreed to

1 stipulated to?

2 MR. SLOTCHIVER: I believe we agreed.

3 THE COURT: (Inaudible) listen to.

4 MR. MCCULLOUGH: I believe we've agreed that the
5 bodycam put it --

6 MR. COOK: Yeah. Bodycam. Yeah.

7 THE COURT: Bodycam?

8 MR. MCCULLOUGH: Part of the bodycam.

9 THE COURT: As you know, it's been marked. And so,
10 where it's been marked.

11 MR. TURNER: No objection.

12 THE COURT: Do we have an exhibit number for it?

13 MR. MCCULLOUGH: I don't know that we have an exhibit
14 number for the video.

15 THE COURT: We'll just do it in a minute. You all go
16 ahead and --

17 MR. MCCULLOUGH: Okay.

18 THE COURT: Just remind me to (inaudible).

19 (Video starts.)

20 UNIDENTIFIED SPEAKER: I don't help (inaudible).

21 THE WITNESS: I'm good with this.

22 UNIDENTIFIED SPEAKER: Did you see it after
23 (inaudible)?

24 THE WITNESS: Oh, no. I -- I -- I observed, I watched
25 with my own two eyes, the windshield shattered. And I --

1 UNIDENTIFIED SPEAKER: (Inaudible) know --

2 THE WITNESS: Oh, I'm pretty sure (inaudible) black
3 color or whatever.

4 UNIDENTIFIED SPEAKER: (Inaudible) like a vehicle where
5 it's a golf cart?

6 THE WITNESS: I don't know, just like that. To me --
7 to me it looked like that I was on the front end of it. I
8 mean, I didn't see the whole thing, but the (inaudible) was
9 long hair (inaudible). Still I saw them at the stop sign
10 down here, they got into a verbal confrontation because they
11 were trying to stop him and the guy driving the golf cart,
12 literally I could see him shoving him backwards and, yeah, I
13 kept screaming at him (inaudible) left.

14 He turned left. I'm pretty sure he turned left and
15 (inaudible), but the other guy was trying to stop him and he
16 came back and he was like, "(Inaudible) I'm so sorry."

17 UNIDENTIFIED SPEAKER: (Inaudible). Yeah.

18 THE WITNESS: Okay. Would you mind getting a little
19 bit more louder (inaudible)?

20 UNIDENTIFIED SPEAKER: You ready (inaudible) I feel
21 I've gone speak to everyone (inaudible).

22 THE WITNESS: (Inaudible).

23 UNIDENTIFIED SPEAKER: (Inaudible).

24 THE WITNESS: (Inaudible). I -- I -- I honestly, I've
25 never met him.

1 UNIDENTIFIED SPEAKER: (Inaudible).

2 THE WITNESS: I've never met him before. I've never
3 talked to him before. Literally she walked out and said,
4 "Sir, you (inaudible)."

5 (Video ends.)

6 BY MR. TURNER:

7 Q. In that video you saw the one that rubbed on your
8 back (inaudible), that's (inaudible), correct?

9 A. That is correct.

10 Q. And she's coming here to testify, right?

11 A. Yes. That's ---

12 Q. You obviously have (inaudible), she's a friend or
13 something along those lines, correct?

14 A. Correct.

15 Q. And you don't dispute that you did attempt at
16 least attempt to not let Mr. Bowman leave, correct?

17 A. I -- I never at one point in time tried to stop
18 him from leaving.

19 Q. Okay. But you stepped in front of his golf cart
20 on your own accord, correct?

21 A. Correct.

22 Q. Okay.

23 A. I was 3 feet in front of it.

24 Q. Okay. And you claim that you only had one drink
25 that night, right?

1 A. Not even a full one.

2 Q. Okay. And you and Samantha -- but you all weren't
3 married at this time, correct?

4 A. Correct.

5 Q. When EMT first approached you and talked with you
6 about this matter, you -- you didn't tell them anything about
7 your left shoulder or your back hurting, correct?

8 A. No, I didn't.

9 Q. Okay. And I think you -- you only told him that
10 your legs and your body, elbow hurt. Is that correct?

11 A. I was addressing the blood pouring from the palms
12 of my hands along with the glass coming out of them and the
13 blood on my legs and stuff. So that was what I was
14 immediately focused on.

15 Q. Okay. We'll play another little snip of the
16 video.

17 (Video starts.)

18 UNIDENTIFIED SPEAKER: What's the -- the name?

19 THE WITNESS: (Inaudible) you said right there.

20 UNIDENTIFIED SPEAKER: So he dragged you?

21 THE WITNESS: Look, he -- the first time, basically
22 they were leaving here and not paying the tab. And so,
23 Samantha walked -- so Samantha walked off and said, you know,
24 "You guys can't come here and don't pay." And he gets his
25 phone out and I'm standing right there smoking a cigarette

1 and I said, "You need to go over there and pay your bill."

2 He's like, "No." And she's like, "No, you need to come
3 and pay." I said, "You don't go to Arby's and get a roast
4 beef sandwich and say, I'm coming back tomorrow and pay for
5 it. You go to Walmart and get a steak (inaudible), get a
6 steak, and say you would come back tomorrow and pay for it."

7 UNIDENTIFIED SPEAKER: Okay.

8 THE WITNESS: And then he hit me the first time with
9 the golf cart and I started falling on my back. I started
10 (inaudible) trying to catch my balance after the first time
11 he hit me.

12 And as I'm flailing backwards, starting to catch my
13 balance, he just, full force, smashed the gas and slammed
14 into me. I mean, like I said, his windshield was (inaudible)
15 golf cart just shattered. And I watched it shatter when he
16 slammed into me.

17 UNIDENTIFIED SPEAKER: Okay. All right.

18 THE WITNESS: And that's when I really hit the ground.
19 And I mean, when I hit the ground on my right elbow, and I
20 mean, it is -- it may not be (inaudible) my hand wasn't
21 swollen. You could feel it, but I mean, my right elbow and
22 whatnot, I mean that smash took the full force to the front.
23 When I hit the ground.

24 UNIDENTIFIED SPEAKER: I got you. What you guys
25 (inaudible).

1 THE WITNESS: (Inaudible) you --

2 UNIDENTIFIED SPEAKER: Screw back --

3 THE WITNESS: Surround there. So there (inaudible).

4 UNIDENTIFIED SPEAKER: All right. Okay. Bye.

5 (Video ends.)

6 BY MR. TURNER:

7 Q. Now, at that -- at that point you -- you clearly
8 just saw yourself, you were using (inaudible) correct report
9 of things and showing the officer what -- what had
10 transpired. Correct?

11 A. Yes.

12 Q. Okay. But you actually ended up going to East
13 Cooper later on that evening, right?

14 A. Yes.

15 Q. Okay. And when you went there, would you admit
16 that you didn't tell them anything about your back or left
17 side thing or anything there?

18 A. I don't recall specifically the -- what I stated
19 there. Again, I was just pointing out the areas that were
20 visually hurting and I say hurting, bleeding, and blood was
21 pouring from along with glass.

22 Q. Right. But when you got these (inaudible)
23 anything about back pain. Would you agree with that?

24 A. I don't remember my specific words, but I don't
25 recall specifically stating that.

1 Q. Okay. I'm going to hand you something, just help
2 refresh your recollection. Take a look at this. Now here,
3 correct me if I'm wrong, appears to be your record from East
4 Cooper October 6, 2018?

5 A. I'm sorry, will you repeat that again?

6 Q. That appears to be your record from East Cooper
7 Medical Center on October 6, 2018?

8 A. Yes, that is correct.

9 Q. Okay. If you look down where it's highlighted
10 back, it says (inaudible) normal, range of motion normal
11 line, no cell. Is that what it says?

12 A. Yes. That was also during the time where my
13 adrenaline was still through the roof.

14 Q. Okay. But that's what it says, correct?

15 A. That is what it says, yes.

16 Q. And do you remember you -- you testified earlier
17 you were talking about your limitations you know, we talked
18 about your limitations at your deposition. You remember
19 that?

20 A. Yes.

21 Q. And you had to hire people doing things around
22 your house and things all that nature, you testified to the
23 (inaudible), correct?

24 A. Yes.

25 Q. Would you agree that by April of 2019, just a

1 couple months after that accident, you were able to start a
2 blower with your right arm when you had a crank boat or a
3 blower?

4 A. Off the top of my head it doesn't sound like, I
5 mean --

6 Q. I can go get a video. We can't waste the jury's
7 time and say you do it other than it can hit that by April of
8 2019 you were pulling on a -- a blower to start a motor.

9 A. I can't sit here and say that I was.

10 Q. You deny that you did it? Able to start a blower
11 by April of 2019?

12 A. I -- I have a blower at home. That's an electric
13 blower that I use.

14 Q. Okay.

15 A. I don't --

16 Q. Would you agree that you were able -- by April,
17 2019 you're able to crank that blower with your right?

18 A. I can't say that I was.

19 Q. Okay.

20 THE COURT: Before we (inaudible) and gave you all that
21 stuff, Mr. Turner?

22 MR. TURNER: Yeah.

23 THE COURT: We marked this? Is this another ---

24 MR. TURNER: I -- I don't -- I -- I don't think we
25 discussed it. I think I marked it. I -- I notified as an

1 exhibit, but I don't know that we marked it.

2 THE COURT: Your first one (inaudible).

3 MR. TURNER: I'm sorry.

4 (Bench conference.)

5 THE COURT: I want to take you off the roll there. All
6 right. Ladies and gentlemen, we're going to break just a few
7 minutes. Take another afternoon break here. Let's stretch
8 our legs into the restroom. We'll bring you back here in a
9 few minutes. Thank you so much. Do I stay here? Yeah, just
10 sit tight where you're. Do you need a break?

11 THE WITNESS: I'm okay.

12 (Jury exits courtroom.)

13 (Bench conference.)

14 THE COURT: Okay. Thanks. You all have a minute to go
15 through the exhibit really quick so we can just clear the
16 record. You want to take a break first or we're going on?

17 MR. TURNER: Whatever the Court is happy with?

18 THE COURT: I need -- we just got to clean this stuff
19 up really quick. So first of all, that bodycam needs to be
20 marked. We need to discuss whether or not --

21 MR. TURNER: Yeah, I -- I'm sorry, I got confused about
22 something. I was -- me and (inaudible) talked about and
23 everything was marked. I (inaudible) was everything marked?
24 I was assuming some of this stuff was marked. That's just my
25 mistake.

1 THE COURT: It's fine. It's just that when the Court
2 response might read this one day, they're going to want to
3 know what video, what it is specifically.

4 MR. TURNER: So the bodycam is marked and admitted as
5 Exhibit 11.

6 THE COURT: Exhibit 11. Thank you so much for the
7 records of bodycam photos that we just watched as Exhibit 11.
8 Okay.

9 (Plaintiff's Exhibit 11 admitted into evidence.)

10 MR. MCCULLOUGH: I -- I just (inaudible) we marked.
11 That was the only exhibit that I actually gave you. I just
12 (inaudible) thought that we ---

13 THE COURT: It's okay. I just -- if you don't slow
14 down and I don't do it now. I don't (inaudible). And then
15 the other issue, the reason that we stopped was you were
16 getting ready to show a video and we just sort of went --
17 jumped right into it.

18 So before we published it to the jury, which need to go
19 through the process of authenticating it, admit it and all
20 that stuff, if it has not already been stipulated.

21 MR. TURNER: I saw it was stipulated. That's not --

22 MR. MCCULLOUGH: No. So -- so we're not disputing its
23 authenticity and -- and so --

24 THE COURT: Okay.

25 MR. MCCULLOUGH: It was a hearsay and so we didn't

1 leave in to call the private investigator to -- to testify
2 that I took that, but I have not marked or admitted it. I
3 don't -- that's the extent.

4 THE COURT: (Inaudible) I don't know anything about it.
5 I know you all are like (inaudible). We got to take a step
6 back. We got to lay a foundation for it. What is it? Is it
7 -- do we need all (inaudible) not specifically to the file as
8 to mark it and move on.

9 MR. TURNER: Can we --

10 MR. MCCULLOUGH: Yeah, we're not objecting. He does
11 not need to call the guy (inaudible).

12 THE COURT: Correct.

13 MR. MCCULLOUGH: I just don't check. He did.

14 THE WITNESS: I have no idea. And how do I know this
15 wasn't recorded 10 years ago?

16 MR. TURNER: I'd be glad to play it.

17 THE COURT: I don't know. Yeah, we have to at least
18 give the opportunity to see it before you publish it to the
19 jury.

20 MR. TURNER: Yes, ma'am.

21 THE COURT: Okay. That's awesome. We'll take a quick
22 break. In that break you could let him see it if you can
23 take him a laptop or something.

24 THE WITNESS: Okay. May I step off?

25 THE COURT: Need to talk about anything. Sir?

1 THE WITNESS: May I -- may I step off of the --

2 THE COURT: You can break.

3 THE WITNESS: Okay. That's fine. I'll break.

4 THE COURT: He's just going to bring it to you and then
5 if you need to take a bathroom break afterwards, you
6 certainly can.

7 THE WITNESS: Okay.

8 THE COURT: Just don't discuss the case at all during
9 the break while you're testifying with your lawyer.

10 THE WITNESS: Certainly.

11 THE COURT: Or anybody. That's all.

12 THE WITNESS: Yes, ma'am.

13 THE COURT: Okay. Thank you.

14 (Off the record.)

15 THE COURT: Jury back in. Thank you, sir.

16 (Jury enters courtroom.)

17 MR. MCCULLOUGH: This is your worst nightmare.

18 THE COURT: Yes. Thank you so much. Be seated. Thank
19 you all for that break in your request.

20 And so, Mr. Turner, can you please proceed?

21 BY MR. TURNER:

22 Q. BJ, you've had an opportunity to review the video
23 in question, correct?

24 A. That is correct.

25 Q. And it's from a -- it is of you from April 20th of

1 2019?

2 A. That's correct.

3 Q. And it's an authentic video of you in the --
4 depiction of you in the video, correct?

5 A. That is correct.

6 MR. TURNER: I move into evidence at this time
7 (inaudible), Your Honor.

8 THE COURT: (Inaudible) any objection?

9 MR. SLOTCHIVER: No.

10 MR. MCCULLOUGH: No objection.

11 THE COURT: All right. And it'll be marked as what
12 number? That's two.

13 MR. TURNER: It'll be number two, yes.

14 THE COURT: Okay. Thank you. That's two. And just
15 make sure we have some sort of hard copy we can retain. All
16 right.

17 MR. TURNER: Okay. I know.

18 THE COURT: At some point.

19 MR. TURNER: Yeah.

20 (Plaintiff's Exhibit 2 admitted into evidence.)

21 BY MR. TURNER:

22 Q. BJ, I know you didn't admit, would you now admit
23 that -- that -- that you were using your right arm on April,
24 2019 to crank a blower in your yard?

25 A. Yes. Out your --

1 Q. Multiple times, cranked them multiple times,
2 correct?

3 A. Yes.

4 Q. And I think you -- you testified at Eric's plea
5 hearing that you were unable to teach your daughter how to
6 ride a bicycle, correct?

7 A. Yes.

8 Q. Okay. Since May of 2019, you said you hadn't
9 taken any medications or anything like that, correct?

10 A. I don't remember the specific, but yeah, I stopped
11 -- I -- I stopped taking pain medicine.

12 Q. Okay. And you haven't had any type of injections
13 or orthopedic or anything done since around the time of your
14 surgery back in 2020?

15 A. Not that I recall.

16 Q. Okay. You had worn any type of back brace or
17 anything like that since around that time. Correct or?

18 A. I have a back brace that I wear occasionally, just
19 depending on when necessary.

20 Q. Okay. Back during the time of your deposition, I
21 think you told me you couldn't even remember the last time
22 that you --

23 A. Worn it. Yeah.

24 MR. TURNER: That's all the questions.

25 THE COURT: All right. Any re-direct?

1 MR. SLOTCHIVER: Very briefly, Your Honor.

2 RE-DIRECT EXAMINATION

3 BY MR. SLOTCHIVER:

4 Q. BJ, you testified earlier to the treatments that
5 you received as a result of the injuries you sustained. Do
6 you recall that?

7 A. Yes, that is correct.

8 Q. Okay. And you sought treatment because you had
9 medical issues, correct?

10 A. That is correct.

11 Q. Would it be fair to say that you also sought
12 treatment because you wanted to make yourself healthier?

13 A. As good as I possibly could be?

14 Q. As good as you could be. All right. So, I know
15 the defense (inaudible) had a -- the Plaintiff. Excuse me.
16 Had a PI that followed (inaudible) this is what they found,
17 this is what they wanted to show you today.

18 A. Yeah.

19 Q. Let's talk about it from a date in perspective.
20 So April 20th of 2019, they have a video of you starting a
21 blower?

22 A. That is correct.

23 Q. Okay. Looking at our chart, it shows that you, at
24 the time that you had started this blower, you'd already gone
25 through one surgery with Dr. Schaaf to one shoulder and a

1 series of physical therapy, and then you'd gone through
2 another surgery with Dr. Schaaf on the other shoulder and had
3 completed your last physical therapy about a month before you
4 tried to start the (inaudible).

5 A. That's correct. This is March 13th that was my
6 last date, and it wasn't until April 20th of the video.

7 Q. And -- and at that point you were getting
8 injections, which basically, numbed your back.

9 A. Correct.

10 Q. Hoping that one day it would help your back pain
11 go away?

12 A. Correct.

13 Q. And you testified to the fact that if you had that
14 there were things that you aren't able to do for which you
15 will have to go hire somebody to do. Do you remember that?

16 A. Yes.

17 Q. But you also want to live your life to the best of
18 your ability. You want to try to do this?

19 A. Yes.

20 Q. Okay. So I take it on April 20th, the month after
21 your last physical therapy, you decided that you were going
22 to try to do something on your own?

23 A. In order to ride the bike. You got to get back up
24 on it again.

25 Q. Isn't that exactly why you went to physical

1 therapy and had surgery to begin with; you try to do as best
2 you can?

3 A. It is.

4 MR. SLOTCHIVER: Thank you. I'll (inaudible).

5 THE COURT: Anything else? Okay. You can have a seat
6 back at counsel table (inaudible) schedule. Okay. That's
7 what I was going to ask. Good. Okay. Great. Thank you all
8 so much, (inaudible). I think we have one more witness
9 today, ladies and gentlemen and then we'll call it a day
10 right after that, just trying to discuss that. Then go ahead
11 and call your next witness in that case.

12 MR. SLOTCHIVER: Thank you, Judge. We call Maura
13 Bannon.

14 THE COURT: All right.

15 THE CLERK: Please raise your right hand and place your
16 left on the Bible.

17 MAURA HAGARTY-BANNON,

18 having been duly sworn, testified as follows:

19 THE CLERK: Please be seated. Please state your full
20 name, spelling your last name loudly and clearly into the
21 microphone.

22 THE WITNESS: Oh, my name is Maura Haggerty-Bannon.
23 Did you want me to spell it? Sorry.

24 THE COURT: Yeah, we do.

25 THE WITNESS: Oh -- oh, I'm sorry. H-A-G-A-R-T-Y B as

1 in boy, A-N-N-O-N.

2 DIRECT EXAMINATION

3 BY MR. SLOTCHIVER:

4 Q. Maura, I'm going to step back here while I'll ask
5 you some questions. Okay. Can you hear me okay?

6 A. Yes.

7 Q. Where do you reside now? What part of Charleston
8 County?

9 A. I -- I reside most of the time in North Charleston
10 near Park Circle.

11 Q. Okay. And back in 2018, the night that we're
12 talking about now, in October.

13 A. Yes.

14 Q. Where were you residing then?

15 A. I was residing at the Montclair Town Homes right
16 opposite Towne Center Mall on Highway 17.

17 Q. Where did you -- where did you work then?

18 A. I worked at the Red Cross. I was a -- I was under
19 contract to raise money for their employee giving campaign
20 every year for -- for the Red Cross and all the stuff.

21 Q. Are you still working with the Red Cross today?

22 A. No, I'm not. I -- that was a contract job and I
23 moved on to other things.

24 Q. What type of stuff do you do now?

25 A. Now, I am a dog walker, a dog sitter. I walk dogs

1 downtown and out on the islands where I, you know, stay
2 frequently. And that's about -- I guess that's it.

3 Q. Okay. So Maura, were you at Dunleavy's Pub on
4 Sullivan's Island on or about October 6, 2018?

5 A. Yes, I was.

6 Q. Can you please tell me about what events you --
7 what were you doing? Were you just socially there?

8 A. Yes, it was probably a weekend because I was
9 really busy at the Red Cross, so must have been a weekend
10 night. I went there. We used to live on Sullivan's Island,
11 so I was familiar with the folks there.

12 And so, I'd go and see my friends. And Sam -- Samantha
13 Albert worked there. She was a bartender and she became a
14 friend of mine, and I helped her take care of her mom. But
15 she had glioblastoma and we became friends.

16 Q. Okay. So you knew Samantha?

17 A. Yes.

18 Q. And did you know BJ?

19 A. Yes, I did.

20 Q. Okay. Did you know Mr. Bowman --

21 A. No.

22 Q. -- before that night?

23 A. No, I did not.

24 Q. Did you know his wife was threatened before that
25 night?

1 A. No, I do. Did not.

2 Q. Anything eventful that you can recall that
3 occurred on that night?

4 A. Well --

5 Q. Morning -- late night.

6 A. I'm sorry?

7 Q. It was that early --

8 A. Oh -- oh --

9 Q. -- morning.

10 A. Okay. I'm sorry. I thought you said from the
11 early morning. I remember it was I think it was busy that
12 night and I remember seeing, sorry. Sam -- Sam would go out
13 for, to have a cigarette. And so, I would take that
14 opportunity to go out and talked to her. Usually, we went
15 out to the side -- the side street there and have a
16 conversation, talk and I saw her go out.

17 So I followed her out there and there seemed to be --
18 there was something going on with this -- there was a guy in
19 a -- in a golf cart. I never did see his face. And he was
20 talking to -- I think he was talking to BJ and Samantha was
21 talking to somebody, but I didn't know that was his wife
22 because I -- prior to that, I had not known anything about
23 their bill or whatever. I think I was out front and I'd come
24 through and then saw Sam.

25 Q. What was the conversation about?

1 A. I think it was something about the bill.

2 Q. Okay. The -- not paying the bill. And that's
3 basically what it was. And -- was Sam having a conversation
4 or BJ (inaudible)?

5 A. I -- I -- Sam was having a conversation. I don't
6 remember BJ talking, I don't recall him talking. I just
7 remember seeing him standing, you know, in the front of the
8 golf cart.

9 Q. Okay. And what happened? Who did you notice
10 next?

11 A. Well, I -- the -- Mr. Bowman, I -- I think Sam
12 went back in. I can't remember. I don't remember
13 everything, but I do remember him moving forward. Mr. Bowman
14 moving forward and striking -- striking BJ. And then it
15 seemed almost before he could gather himself together, he
16 sort of like sideswiped him. And off he went. And I -- what
17 I really remember is seeing his head. He seemed to be up in
18 a -- one of those I don't know those bigger golf carts.

19 Q. LSV?

20 A. Yeah. Oh.

21 Q. That's one of the big six passenger.

22 A. Okay. because he was elevated up there and there
23 was a car coming this way. It's a one-way street, so the car
24 was coming towards us. But it can turn -- I'm sorry, I --
25 it's -- it's a one-way street just for the block.

1 And then the last block is a two-way street. So this
2 guy was coming this way. I don't know whether he -- where he
3 turned or not. I just remember seeing Mr. Bowman's a
4 silhouette against that fellow's headlights.

5 Q. Was there anything confrontational that you
6 noticed from BJ towards Mr. Bowman?

7 A. No. I mean, BJ's kind of, he's a calm guy. He
8 doesn't get really excited about stuff. So I think, you
9 know, he was going like this with his hand. I think if he --
10 I don't know what he was saying.

11 Q. Okay. And did you -- did you hear Mr. Bowman give
12 BJ any kind of warnings before he started with the cart?

13 A. I didn't hear Mr. Bowman say anything.

14 Q. Did you see Mr. Bowman do anything to attack the
15 golf cart? Did you see the golf cart running -- excuse me.
16 Did you see Mr. Crosby do anything towards the golf cart or
17 did you see Mr. Bowman and the golf cart run into BJ?

18 A. I didn't see BJ do anything to the golf cart other
19 than just stand there. And then I saw --

20 Q. From your perspective, was it an unprovoked
21 attack?

22 A. Oh, I don't -- BJ was just standing there, from
23 what I can remember.

24 Q. Is your memory pretty good today?

25 A. Do -- do I --

1 Q. Do you remember the events pretty well that night?

2 A. I -- I suppose so. I didn't remember when I saw
3 that video of myself there. I didn't remember doing that.

4 Q. (Inaudible).

5 A. Yes -- yes.

6 MR. SLOTCHIVER: Okay. Give me one second. Okay.

7 Maura, thank you very much. If you'll answer any questions
8 that Mr. Bowman's lawyers have.

9 THE WITNESS: Okay.

10 CROSS-EXAMINATION

11 BY MR. TURNER:

12 Q. Hi, Ms. Bannon.

13 A. Hello.

14 Q. I got a couple questions for you.

15 A. Okay.

16 Q. You provided a sworn affidavit to Samantha and
17 BJ's attorney?

18 A. Yes, I did.

19 Q. Okay. And you provided that back on October 25th.
20 October -- October 25, 2018, correct?

21 A. That sounds about right.

22 Q. Okay. And certainly not (inaudible) affidavit, I
23 think you said something in the line of you had to drink or
24 eat food.

25 A. Yes.

1 Q. All right. (Inaudible) most people were about.

2 A. It's a bar.

3 Q. All right. Wouldn't have been uncommon, correct?

4 A. Yeah.

5 Q. Okay. And you said you -- you noticed there was a
6 confrontation down the street with --

7 A. After Mr. --

8 Q. -- with Mr. Bowman?

9 A. Yeah, after Mr. Bowman. it was sort of like, you
10 know, something going on, but I didn't pay too much attention
11 because there was more going on, you know.

12 Q. I think you already testified your friends with
13 BJ, Samantha. You were in -- you were in (inaudible) --

14 A. Yeah.

15 Q. Talking to BJ after that. Correct?

16 A. I was what? Doing?

17 Q. Rubbing the shoulders, I believe?

18 A. Oh -- oh, probably I can't remember.

19 MR. TURNER: Okay. All right. Thank you. That's all
20 the questions.

21 THE WITNESS: Okay.

22 MR. SLOTCHIVER: We've got nothing, Your Honor. Thank
23 you.

24 THE COURT: Okay. You're free to step down and free
25 you go. Thank you.

1 THE WITNESS: Thank you.

2 THE COURT: Okay. Ladies and gentlemen, at this point
3 I'm giving you an hour. We're going to go ahead and break
4 for the day. Once again, I'll ask you to be back tomorrow
5 morning again, 9:30 and we'll get started as soon thereafter
6 as you can. Please also remember not to discuss the case
7 tonight with anybody or each other.

8 Don't try to look up any of these topics or these folks
9 on your own or go do any independent investigations in any of
10 these things. And we'll see you back in the morning. Take
11 care.

12 (Jury exits courtroom.)

13 THE COURT: All right. See you back in the morning.

14 MR. TURNER: Thank you.

15 MR. SLOCHIVER: Thank you, Judge.

16 THE COURT: Okay.

17 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT 4:25
18 P.M.)

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CERTIFICATE OF TRANSCRIBER

I, NATASHA BARRIENTOS, a Court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 9 of Charleston County, South Carolina, on the 11th Day of June, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 28, 2024



Natasha Barrientos

Transcriber

1 CONTINUATION OF PROCEEDINGS - JUNE 12, 2024

2 THE CLERK: Wednesday, June 12, 2024. Charleston
3 County, Judge McCoy.

4 THE COURT: All right. Got your next witness ready to
5 go?

6 MR. MCCULLOUGH: Yes, Your Honor. I'd like to take up
7 two quick housekeeping things and then ---

8 THE COURT: Okay.

9 MR. MCCULLOUGH: -- our first witness is going to be a
10 video.

11 THE COURT: Okay.

12 MR. MCCULLOUGH: And about 45 minutes. Second witness
13 is Sergeant Erickson from Sullivan's Island. 15, 20 minutes.

14 THE COURT: Okay.

15 MR. MCCULLOUGH: Next video -- next is another doctor,
16 again, 40, 45 minutes.

17 THE COURT: Okay.

18 MR. MCCULLOUGH: And then Samantha will be our last
19 witness. So that's the plan for the morning video, live,
20 video, live.

21 THE COURT: Okay.

22 MR. MCCULLOUGH: And I wanted to let you know that we
23 have been continuing to work. We do take our tasks. So
24 we're -- we're -- we're drafted in the verdict form, and I
25 think we both agree we've got a -- a trim down verdict form

1 in Word, but not until the directed verdict.

2 THE COURT: Okay.

3 MR. MCCULLOUGH: We can pass up what we've got.

4 THE COURT: The only thing I -- my -- my concern just
5 off the cuff for your thoughts with the one Mr. Turner handed
6 in yesterday, because I -- I don't think it's proper to do.
7 Yes, no. Yes, no. I think you need to attribute an amount
8 of damages to each cause of action and you will have some --

9 MR. COOK: We do that --

10 THE COURT: -- severe coverage issues later on.

11 MR. COOK: Right. We were trying to keep it simple,
12 but we -- I don't think we -- I think you're right. We have
13 to do it that way.

14 THE COURT: I think you have to do it --

15 MR. COOK: Because otherwise you can't do election.
16 You can't appeal, I mean, you know --

17 THE COURT: Correct. I think you'll have a whole --
18 whole host of problems down the road if you don't do that.

19 MR. MCCULLOUGH: So we're well beyond what we passed
20 up, so I just wanted to let you know.

21 THE COURT: Good. That's fine. I just -- that was
22 their first glance. I was like, "Well, it'd be nice, but I
23 don't think" --

24 MR. TURNER: That was my first draft. I searched our
25 firm's directory for 20 years of documents, and we didn't

1 have one even remotely similar to the law.

2 THE COURT: Yeah. Don't think I haven't asked every
3 circuit judge the same. So this is a unique situation that
4 we all find ourselves in, but I'm very confident we will get
5 it right. So we'll keep working toward that -- to that end.
6 So thank you for the update on that.

7 MR. MCCULLOUGH: Sure. And -- and I just, I think we
8 both wanted, for clarity's sake it put on the record by
9 stipulation and -- and it -- they're marked as Plaintiff's
10 exhibits just by habit, so ---

11 THE COURT: Okay.

12 MR. MCCULLOUGH: And I don't think we're really going
13 to quarrel with that. But by stipulation Plaintiff's
14 Exhibits, Numbers 1 through 19, 21 and 22 have been admitted
15 into evidence by agreement by stipulation.

16 MR. TURNER: Yes.

17 THE COURT: Okay. Now, the only question I'm going to
18 ask now, is what about -- what was 18? Which I ruled, was it
19 admissible? Or would be -- if it was -- no one ever sought
20 to introduce it, I thought.

21 MR. TURNER: No. We -- well, I think we just -- what
22 was 18?

23 MR. MCCULLOUGH: That 18 was a Facebook profile
24 picture?

25 MR. TURNER: That.

1 THE COURT: Then never mind.

2 MR. TURNER: Yeah -- yeah. Okay. Yeah, that's fine.

3 THE COURT: Because your initial MIL reference, the
4 Midtown Bar video was playing this 18 or defense --

5 MR. MCCULLOUGH: Yeah, it was --

6 THE COURT: -- 18.

7 MR. MCCULLOUGH: Yeah, they add -- I sent that in
8 before --

9 THE COURT: We numbered.

10 MR. MCCULLOUGH: -- they added an exhibit.

11 THE COURT: That's kaput.

12 MR. MCCULLOUGH: Yeah.

13 THE COURT: All good. So 1 through 19, 21 and 22 all
14 admitted by stipulation without objection. Is that correct?

15 MR. MCCULLOUGH: Yes, Your Honor.

16 (Plaintiff's Exhibits 19, 21 and 22 admitted into evidence.)

17 THE COURT: Thank you for that. Okay. Anything else
18 before we bring the jury in?

19 MR. TURNER: No, Your Honor.

20 THE COURT: Okay. We'll see, I don't know. This is
21 going to put us right at a -- a cusp of what do we do? Are
22 we going to close and charge today? We'll have to see how
23 far we go. I think Justice Toal (ph) is to say, "After 3:00,
24 don't even think about it." I -- I think that's a good rule.
25 So we'll just have to see where we are. I don't know. We

1 could be, hopefully we'll close the charge today. That's my
2 hope. But --

3 MR. MCCULLOUGH: Well, and -- and we were just having
4 that same discussion. We'll be crisp this morning, but we're
5 going to mock right there.

6 THE COURT: It's going to be close. Yeah.

7 MR. MCCULLOUGH: And -- and candidly, if there's some
8 things through DB that change some things --

9 THE COURT: Yeah.

10 MR. MCCULLOUGH: -- maybe they give us an opportunity
11 to clean up verdict forms and things of that nature.

12 THE COURT: Yeah.

13 MR. MCCULLOUGH: I'll be in trouble with the crowd back
14 here. I've told them we'd probably be done today. The 403
15 crowd. We may have to come back.

16 THE COURT: Oh, they'll be all right. They'll survive.
17 I'm actually worried about 403 students. Okay. so yeah.
18 You know, and this charge is going to be a -- a doozy. I
19 mean, it's going to be long.

20 MR. MCCULLOUGH: I think we're going to trim our case
21 -- case down potentially.

22 THE COURT: Okay. And I -- I, you know, I know in the
23 verdict form, I -- I'm glad you all working -- on we're
24 obviously already working on the charge but it's -- you know,
25 it's going to be long, so that all plays into our time

1 calculations. So anyway, we'll just see where we go. Okay.
2 Well we can bring the jury in. Thank you so much.

3 (Jury enters courtroom.)

4 THE BAILIFF: Jury is ready.

5 THE COURT: Thank you so much. Everybody, please be
6 seated. Good morning, ladies and gentlemen. We are ready to
7 proceed. You may call your next witness.

8 MR. SLOTCHIVER: Thank you, Your Honor. We would call
9 Dr. Adam Schaaf.

10 THE COURT: Okay.

11 MR. SLOTCHIVER: He's going to be by video.

12 THE COURT: Perfect. We'll get that queued up. Ladies
13 and gentlemen, once again. This witness will be testifying
14 by video. They're cuing that up right now for you all to
15 watch it on these screens. They took sworn testimony of this
16 person at another place in time with these attorneys present.
17 They were placed under oath. Looks like they are here in the
18 courtroom and you should consider that testimony just as if
19 they were testifying live today.

20 (Video begins.)

21 THE VIDEOGRAPHER: Today is October 17, 2022. This is
22 the videotape deposition of Dr. Adam Schaaf. Counsel have
23 agreed to waive the reading of the caption. Counsel, please
24 state your appearances for the record.

25 MR. MCCULLOUGH: I'm Clay McCullough here on behalf BJ

1 Crosby.

2 MR. SLOTCHIVER: Dan Slotchiver, also on behalf of BJ

3 Crosby.

4 MR. TURNER: Ray Turner on behalf of Eric Bowman.

5 THE VIDEOGRAPHER: Madam Court Reporter, you may swear

6 and (inaudible) the witness.

7 THE REPORTER: Doctor, please raise your right hand, I

8 will swear you in.

9 ADAM SCHAAF,

10 having been duly sworn, testified as follows:

11 THE REPORTER: Thank you.

12 DIRECT EXAMINATION

13 BY MR. MCCULLOUGH:

14 Q. Good afternoon, Doctor. Please introduce yourself

15 to the jury.

16 A. Sure. I'm Adam Schaaf.

17 Q. And where are you located and what's your job

18 position?

19 A. We are (inaudible) Orthopedic in North Charleston,

20 South Carolina.

21 Q. And what do you do for a living?

22 A. I'm an orthopedic surgeon.

23 Q. What does that mean? What's an orthopedic

24 surgeon?

25 A. That's specialty medicine where we specialize in

1 bones and joints. 75 percent of my practice is probably
2 primarily knee, shoulder and that is after doing a sports
3 medicine fellowship.

4 Q. All right. And have you had the opportunity to
5 treat Wallace BJ Crosby?

6 A. I have.

7 Q. All right. And we're here today to talk to you
8 and ask you some questions about your treatment. But let's
9 start with a little bit of background information. Where did
10 you go to a college?

11 A. Miami University in Oxford, Ohio.

12 Q. And did you go to medical school?

13 A. I did. At Ohio State University.

14 Q. And then did you do a surgical internship?

15 A. I did a surgical internship in residency, which
16 was a combined program at Summa Health System in Akron, Ohio.
17 That's spelled S-U-M-M-A.

18 Q. And did you also have a fellowship?

19 A. (Inaudible) research on Virginia, Richmond,
20 Virginia.

21 Q. And board certified?

22 A. I am.

23 Q. And -- and what specialty?

24 A. I'm an orthopedic certified.

25 Q. What does it mean to be board certified?

1 A. That is a two-part program. The first part, which
2 is a written test. The second part is based on a review of
3 actual patients that you have treated best by other
4 orthopedic surgeons.

5 Q. And are you medically licensed in South Carolina?

6 A. I am.

7 (Video paused.)

8 MR. MCCULLOUGH: At this time, we would tender Dr. Adam
9 as an expert witness in the field of orthopedic surgery.

10 MR. TURNER: No objections.

11 THE COURT: All right. Can you hold it quickly for me?

12 (Video continued)

13 BY MR. MCCULLOUGH:

14 Q. Did you have an opportunity to treat BJ Crosby?

15 A. I did.

16 (Video paused.)

17 MR. MCCULLOUGH: And we're good.

18 THE COURT: Okay. Ladies and gentlemen, normally
19 witnesses cannot give opinion testimony. They can only tell
20 you about things that they eye witnessed or saw or heard.
21 For example, we make an exception for folks that are deemed
22 experts in some art or science.

23 Dr. Schaaf has been deemed an expert in the field of
24 orthopedic surgery. That means he can deliver opinions in
25 that area. Now, you don't have to accept his opinions if you

1 don't want to. It's just information for you to use in any
2 way that you see fit. Go ahead.

3 (Video continued.)

4 BY MR. MCCULLOUGH:

5 Q. The medical records. But generally, describe for
6 the jury what you recall about your treatment of Mr. Crosby.

7 A. Sure. Mr. Crosby was referred to me from Dr.
8 Richter, who was the orthopedic dermatologist at Trident
9 Medical Center at the time. I (inaudible) first in early
10 December of 2018. And he reported to me that he was struck
11 by a golf cart. Was traveling at a high rate of speed. He
12 told me that he broke the windshield. He injured both of his
13 shoulders and that Dr. Richter had already obtained MRIs of
14 both of his shoulders and that's why he was sent to me.

15 Q. Okay. And I'm going to hand you right in front of
16 you is this Exhibit Number 1, which is a medical packet or a
17 packet of the medical records obtained from your office.
18 Could you take a minute and look at that. And are those
19 records regularly kept in your treatment and containing
20 information associated with your care and treatment of Mr.
21 Crosby?

22 A. They are.

23 Q. All right. At the time you had mentioned that
24 MRI, these first couple of pages that you just flipped
25 through, if you were to explain to the jury what these

1 documents show.

2 A. Sure. So the first one I'm looking at is a left
3 shoulder MRI. Most of the story of the shoulder is
4 (inaudible) primarily on an MRI. That (inaudible) patients,
5 that the experts tell me if you have a broken bone and how
6 much effects you have, that is about it. So most of the
7 things that require treatment will always show up on an MRI.
8 The left shoulder MRI that you presented with and that we
9 reviewed for the first visit was I showed a SLAP tear.

10 It stands for superior labrum tear in the anterior
11 posterior direction. I will tell my patients that's probably
12 one of them my (inaudible) forget to name it. But
13 essentially there is a rubber cartilage bumper that sits
14 around the shoulder socket, deep in the socket that's called
15 the labrum (inaudible) one that is torn away from the
16 shoulder socket.

17 Q. And how does that type of injury normally occur?

18 A. There's a variety of ways that we have seen those.
19 Those can be associated with falls. Those can start with
20 traction, fall injuries that certain (inaudible) that are
21 involved with motor vehicle accidents.

22 Q. And again, how did Mr. Crosby tell you that this
23 injury had occurred?

24 A. He told me he was struck by the golf cart. Yes.

25 Q. And the impression from this MRI is that

1 consistent with the type of injury of -- of being struck by
2 the vehicle?

3 A. It is.

4 Q. All right. And did he also have, if you continue
5 on, a similar MRI of his right shoulder?

6 A. He did in addition to the SLAP here on the right
7 shoulder, if he was on the -- had a full thickness
8 (inaudible) that's a little bit of an unusual injury for a
9 patient in their thirties. That's a much more common injury
10 for older patients. So that is not something we typically
11 see in this age group to just be an incidental finding.

12 Q. And again, what type of thing would cause that
13 type of injury?

14 A. (Inaudible) could be a direct (inaudible), it
15 could be a fall. It could be a traction injury if somebody
16 was falling and tried to break their fall. And certainly,
17 I've seen a lot involved with motor vehicle accidents for the
18 patients place or their arm out oftentimes before they have a
19 collision.

20 Q. And so both left and shoulder -- right shoulder
21 trauma was associated and showed up in the MRIs?

22 A. Yes, sir.

23 Q. And both instances that would be consistent with
24 being struck by a golf cart (inaudible)? Okay. And again,
25 this -- he had been referred to you -- Mr. Crosby had been

1 referred to you by another treating physician?

2 A. That's correct.

3 Q. All right. So this next record appears to be a --
4 in a new patient intake form from your office and dated 12 of
5 2018. Is that correct?

6 A. That's correct.

7 Q. So walk me through the jury through the intake
8 process here at your office.

9 A. Certainly. So they send the demographics for
10 purposes of billing and contacting the patient. There'll be
11 some insurance information and then we'll typically, like, in
12 the patient's own words, what brought them here, who referred
13 them so we can get a letter to the referring doctor and also
14 the nature of the injury. Was it work related? Was it a car
15 accident? Did it happen at home? Those kind of details.

16 Q. And what did BJ say was the reason for his visit?
17 What did he write down?

18 A. He put, "SLAP tears in both shoulders from
19 incident on October 6, 2018 when I was run over intentionally
20 by a low speed vehicle."

21 Q. Okay. And again, the -- the diagnosis of the SLAP
22 tear in the MRIs had been performed prior to MRI with you, is
23 that correct?

24 A. That's correct.

25 Q. All right. And then did you have an examination

1 and meet with BJ? I'm not saying (inaudible) through '18.

2 A. I did.

3 Q. Walk the jury through your examination and your
4 finding.

5 A. Sure. So he was -- there are a variety of tests
6 that we'll perform on a shoulder. For him, we thought that
7 his shoulder was weak with rotator cuff strength testing,
8 particularly on the side where he had the rotator cuff pain.
9 We found that he had tendon (inaudible) AC joint and his
10 biceps tendon. We walked and see pain over the biceps tendon
11 where patient has a SLAP tear. In the remainder of this
12 physical exam as far as how far I -- we moved the (inaudible)
13 and skin sensation, capillary, (inaudible), vascularity,
14 those were all avoidance.

15 Q. All right. And then looking at the second page,
16 it looks like, again, bilateral, no servers referred from
17 Dr. Richter from Trident then said he was hit -- struck very
18 hard by the golf cart breaking the windshield. Is that all
19 consistent with your recollection of that -- what he told
20 you?

21 A. Yes.

22 Q. And again, these are notes that you were to put
23 down with your staff to document, you follow based on your
24 diagnosis and treatment?

25 A. Correct.

1 Q. All right. It also mentions that he injured his
2 back in the scene itself (inaudible) spine. Do you have a
3 recollection that -- of what he described as far as the back
4 injuries?

5 A. I did not ask him a lot of questions, particularly
6 related to his back as he was being treated elsewhere
7 (inaudible) in the process of a work up with that.

8 Q. Not -- not -- not just special?

9 A. Correct.

10 Q. All right. And he also says no previous shoulder
11 or issues or injuries and then both shoulders hurt equal, is
12 that correct?

13 A. That's correct.

14 Q. So he hadn't had like major injuries or surgeries
15 to his shoulder before he came to see you?

16 A. Correct.

17 Q. All right. And how do you -- and again, during
18 that he had been in that medical office with you. How do you
19 present in somebody physically? How do you check somebody's
20 shoulders?

21 A. First, I'll ask them to move their shoulder on
22 their own and then if they're short of any particular range
23 of motion or stiff, I'll see if I can passively move them.
24 I'll ask them to resist me in certain positions to check
25 their strength and then I will press in certain areas and see

1 if the patient has pain there.

2 Q. And -- and did you do all that in this
3 (inaudible)?

4 A. I did.

5 Q. Any doubt in your mind as to the fact that the
6 diagnosis was accurate at that point and what showed on the
7 MRI was in fact what -- what would be going on with BJ
8 Crosby?

9 A. His physical exam findings were consistent with
10 his MRI imaging.

11 Q. Okay. So what was your plan?

12 A. We just had -- we discussed treatment for him. I
13 had a discussion with him that my preference would be to
14 address his right shoulder first because the (inaudible) can
15 enlarge over time. So that was the showing that I
16 recommended being addressed surgically at first. We
17 discussed how that surgery's performed, what we actually do
18 for the surgery, how long that takes, then how long he would
19 be a in sling afterwards, as well as risk and benefits of the
20 surgery.

21 Q. Is there another option that you would recommend
22 maybe or would this just heal itself?

23 A. Never. Nature does not heal rotator cuff tears or
24 SLAP tear like this. It's not necessarily going to heal
25 without some type of surgical intervention.

1 Q. And why not do those surgeries at the same time?

2 A. My check with patients is if you are ready to get
3 both shoulders done at the same time we find out who your
4 real friends are. But usually it is easier to go through
5 life with at least one decent shoulder for taking care of
6 your self, hygiene and activities of daily living. And then
7 I would tell patients once you feel like you can adequately
8 take care of yourself on the first side then we can work on
9 the other side.

10 Q. Okay. Because even with the left back shoulder,
11 they already incapacitated for a time after surgery, is that
12 correct?

13 A. Correct.

14 Q. All right. And so you recommended surgery on both
15 shoulders?

16 A. I did.

17 Q. All right. And just continuing to flip through,
18 it looks like you gave him a shoulder abduction pillow. What
19 is that?

20 A. That is a (inaudible) pillow that is not before
21 surgery but it's for after surgery for the patient. Correct.

22 Q. Okay. And then I see a surgery order that -- the
23 surgery was in order on that -- that, right? December
24 (inaudible) to be got done on the right side with the special
25 day of -- of December 11, '18. Is that right?

1 A. That's correct.

2 Q. All right. Walk me through -- through the -- the
3 shoulder surgery on the right side.

4 A. Certainly. So for that surgery, it's an
5 arthroscopic surgery which just essentially means that it's
6 done through small poke holes with the tendon inside the
7 shoulder. We addressed his labral tear with a procedure
8 called the bicep tenodesis and that's a procedure where we
9 remove the biceps and that is to address the SLAP tear of the
10 type of patients that essentially what makes the SLAP
11 (inaudible) the biceps is holding on it. So if you just
12 remove the biceps and attach on a different spot, that is a
13 -- a very good treatment for a (inaudible).

14 We also (inaudible) down a very small bone down the top
15 of the shoulder, which gives us a little more room to work,
16 to perform the rotator cuff with care. That is quite
17 (inaudible) with decompression. He had a small amount of
18 filling around his labrum that we essentially cleaned up and
19 remove the loose tissue that is the extensive (inaudible).
20 And then the primary procedure was to address his rotator
21 cuff with care where we basically have a degrader type of
22 anchor that's made out of plastic and kind of a dry wall and
23 have sutures coming out of it.

24 And that's inserted in the bone. Sutures are passed
25 through the rotator cuff and then passed through the small

1 (inaudible) into the shoulder. So that can, essentially, if
2 this is the top of the bone and this is the rotator cuff,
3 when you have a tear, the rotator cuff pulls off like this,
4 the anchor will be inserted here, the moving tie knots, the
5 rotator cuff is pulled back down to the bone, essentially.

6 Q. Dumb question, what exactly is your rotator cuff?
7 Can you show it on your shoulder?

8 A. Certainly. The big muscles around your shoulder.
9 So that muscle (inaudible) that type of muscle (inaudible) be
10 looking directly (inaudible) with the cuff and (inaudible)
11 attached to the ball and socket joint of the shoulder and
12 attaches to the ball.

13 Q. And so what happens if (inaudible) cuff?

14 A. His tendon had pulled off from the bone.

15 Q. All right. And so you are re-attaching it?

16 A. So we are reattaching it where it to where it was.

17 Q. And would that procedure -- was that effective?

18 A. Yes.

19 Q. And it was -- I mean, for lack of a better word,
20 successful surgery?

21 A. I would call it's a successful surgery.

22 Q. Okay. And that again was on December 11, 2018?

23 A. That's correct.

24 Q. All right. And then continuing to flip through.
25 It looks like on 12/27/'18 he came back in. And describe for

1 the jury what -- about -- about this -- this --

2 A. Sure. So this would be my routine postoperative
3 visit about two weeks after surgery. Sutures are removed.
4 We go over the arthroscopic pictures of surgery and talk
5 about what we performed during surgery. Then we will give
6 the patient (inaudible) physical therapy and then we will
7 discuss how to go with how the is sling slowly letting
8 yourself out of the sling first in the house and then outside
9 the house.

10 Q. So if you've got somebody -- let's walk through --
11 the jury through this. You get a -- a -- a collision with a
12 vehicle such that you had an injury as described, what
13 (inaudible) patient feeling in that shoulder before surgery?

14 A. The typical rotator cuff complaint. What patients
15 will say is they sit -- they'll say, "I have a deep throbbing
16 pain that I feel right here that keeps me up at night."
17 That's the typical rotator cuff complaint. Complaining
18 (inaudible) deep weakness.

19 Q. All right. And then that's the (inaudible)
20 patient, describe two weeks after surgery.

21 A. Usually, patients (inaudible) sore, particularly
22 regular cuff repair since we do have to make a hole on the
23 bone to insert the anchor. Typically not moving their
24 shoulder very much at all. So that --

25 Q. Did you use those (inaudible) off the swing,

1 (inaudible) protected up there?

2 A. Correct. And typically, you know, I don't a
3 patient walking around out there, playing outside the house
4 and then somebody comes up and slaps them on the shoulder and
5 says (inaudible).

6 Q. Okay. And how long does that soreness and
7 weakness normally last?

8 A. It always varies between patients. I've had
9 patients after (inaudible) or couple (inaudible), coming at
10 three or four months instead of, "I'm getting better but I
11 still can't sleep." I've also had some patients get better a
12 little bit faster than that, that will come in and say, "I'm
13 sure that it's a different kind of pain." So everybody's
14 pain's a little bit different after a procedure.

15 Q. Describe the physical therapy. And again, that
16 this was a pretty -- this was a successful surgery, right?

17 A. Correct.

18 Q. All right. So walk the jury through that
19 expectation, physical therapy and -- and treatment,
20 post-surgery.

21 A. Particularly for a rotator cuff repair. I'll tell
22 a patient it's a 50/50 partnership with me doing surgery, and
23 him doing the therapy and if neither one of us does our job,
24 it won't be a good result.

25 Q. Okay.

1 A. So it is important that after the rotator cuff
2 repaired, work with a therapist to get you motion back first.
3 I will tell the patient actually (inaudible) to get your
4 motion back and then after the patient gets all their motion
5 back, then they'll work on strengthening to keep the shoulder
6 strong again. And the average amount of time in therapy at
7 the rotator cuff repair could be as much as five or six
8 months. Even longer sometimes.

9 Q. All right. Two weeks post-surgery in there would
10 look like the shoulder (inaudible) and he is going through
11 that process, is that right?

12 A. That's correct.

13 Q. Okay. And again reading your discussion of a
14 two-week follow-up surgery discussion for the other shoulder
15 and he would start therapy and follow up in four days, is
16 that right?

17 A. That's correct.

18 Q. Okay. So let's keep flipping through. And it
19 looks like you saw him on January 17, 2019. (Inaudible)?

20 A. That's correct.

21 Q. All right. Again, just walk the jury through
22 where -- which area (inaudible) physically (inaudible).

23 A. At this point in time, he was actually ahead of my
24 average patient. He reported that his pain was fairly
25 minimal at that visit, that he was doing well. He felt like

1 he was regaining most of his strength and he was doing well
2 with regaining his motion.

3 Q. Okay. And (inaudible) through to the next page,
4 looks like patient states he's doing well with (inaudible)
5 pain (inaudible) state. He's -- he's right to absolutely on
6 his left states, he's still in a lot of pain. You see that?

7 A. Yes. That that was the left shoulder.

8 Q. Yeah. So you did such a good job with the right
9 one. He's ready to roll in to the left.

10 A. I (inaudible) anticipated.

11 Q. Okay. And then going further down what you -- you
12 write -- on the physical examine -- examination of his left
13 shoulder, what was his left shoulder looking like at that
14 point? And then describe for the jury, you know, what you
15 anticipated finding when you did the surgery with the left
16 shoulder.

17 A. Sure. His left shoulder still had pain
18 (inaudible) and the typical areas you would expect with the
19 SLAP tear had not really improved at all since my initial
20 visit with him.

21 Q. Okay. And so your initial plan was continuing.
22 You started on the right, start physical therapy, getting up
23 to speed so he can use that right hand a little better than
24 he can the left.

25 A. Correct.

1 Q. All right. And that's really good, right? You
2 got the surgery in order on January 17, 2009, is that
3 correct?

4 A. That's correct.

5 Q. And then it looks like in February of 2019 you
6 performed the surgery (inaudible) on the left shoulder?

7 A. That is correct.

8 Q. All right. Walk the jury through that shoulder --
9 that surgery, please.

10 A. Sure. So this was also an arthroscopic surgery,
11 meaning little poke holes with a telescope. And that
12 procedure we did a biceps tenodesis to treat his SLAP tear,
13 which is the identical procedure we did on the other side.
14 He had a (inaudible) almost (inaudible) but he showed there
15 was some loose tissue around the labrum that we essentially
16 cleaned up for him and we showed him down the end of his
17 clavicle where he had pain at the AC joint. That's a
18 treatment for pain at the AC joint (inaudible) to do surgery
19 with.

20 Q. All right. And so pretty similar slightly
21 different injury, but a pretty similar procedure at least
22 with regards to repair of the SLAP tear.

23 A. Correct.

24 Q. And then again, successful surgery?

25 A. Successful surgery.

1 Q. All right. And it looks like you saw him again
2 for a follow up on February 18, 2019, is that correct?

3 A. That's correct.

4 Q. And presumably, he stood up on both shoulders?

5 A. Correct.

6 Q. All right. Tell the jury your findings from that
7 examination.

8 A. Sure. On that examination, it was primarily just
9 (inaudible) to check for his left shoulder, his incisions
10 what looked (inaudible), he asked if he was doing okay with
11 them. And our primary objective at that visit was to go over
12 surgical findings and to get him started on therapy on the
13 left side.

14 Q. All right. So again -- let me ask you this, was
15 he doing what you asked?

16 A. He was.

17 Q. Was he showing up to his appointments all the time
18 and answering questions you asked?

19 A. He was very compliant, I (inaudible) good
20 patients.

21 Q. And he went to physical therapy as what he was
22 supposed to do?

23 A. Correct.

24 Q. And that 50/50 partnership you talked about, seems
25 that you (inaudible) that to it?

1 A. I put -- he (inaudible) his 50 percent as well.

2 Q. Okay. Good. And then second and third is a
3 clinic that will review little returns to work with a
4 (inaudible) restriction. Did you issue that order in
5 February of '19?

6 A. I did and that was at his request.

7 Q. Okay. And would this -- would these injuries
8 impact somebody's ability from the day of injury through --
9 really I guess completion of PT up to surgery? (Inaudible)
10 return to work that impacts somebody's ability to work, the
11 injuries?

12 A. Absolutely.

13 Q. How so?

14 A. After rotator cuff repair, the patients typically
15 aren't moving their arm above shoulder level for four weeks
16 minimum. So if somebody had any type of employment that
17 required lifting, that would require reaching, that would
18 require any type of weight, those are all absolutely things
19 that would be impacted by having shoulder surgery.

20 Q. Okay. All right. Let's keep moving forward. You
21 saw him again on 3/18/2019. Describe for the jury really
22 your finding from the physical examination on that.

23 A. Sure. So this was six week post-surgery,
24 (inaudible) left shoulder, to recheck for the right
25 --(inaudible) whether he was making progress. I actually was

1 very happy with his left shoulder range of motion.

2 Q. Yeah.

3 A. He had full (inaudible) and external rotation,
4 which would be this and this, which is very good for that
5 stage.

6 At that point in time, his right shoulder was getting
7 stronger as well when we checked the strength on his right
8 shoulder. So he was improving appropriately at that visit.

9 Q. Okay. Now, did you assign an impairment rating to
10 him as a result of his under (inaudible) on your treatment?

11 A. I did.

12 Q. What is impair rating?

13 A. Impairment rating is essentially a -- a rating for
14 loss of function. Those ratings will come out of a guide, I
15 call that the AMA guide to impairment. And I tell patients
16 that it's basically an attempt of fairness on society to say,
17 "You know, you're not 100 percent, here's what you lost."

18 Q. So even though in your 50/50 partnership
19 (inaudible) what you're supposed to do, it was not your
20 expectation that he's going to be as good as new?

21 A. Correct.

22 Q. All right. These injuries are significant and
23 have lifetime lasting impact this is best efforts and this
24 (inaudible)?

25 A. Correct. With a rotator cuff repair, I would tell

1 the patient, "Don't pull on the lawn board with (inaudible).

2 Q. Okay. What was your finding as to the left
3 shoulder impairment rating?

4 A. Left shoulder impairment rating, he had 15
5 percent.

6 Q. Okay. And what about right shoulder impairment
7 rating?

8 A. The right shoulder impairment came up to
9 20 percent and a higher rating has to do with the rotator
10 cuff tear on that side in addition to the other things.

11 Q. All right. And even at this day you still had
12 weight restriction on what he (inaudible)?

13 A. Correct.

14 Q. And then looks like on 4/18/'19, did you see him
15 again?

16 A. I did.

17 Q. And there he did. Is this just normal checking up
18 on left shoulder to make sure he's progressing?

19 A. Correct.

20 Q. And was he?

21 A. He was doing not very bad. He reported he got
22 some expected aches and pains but felt significantly
23 improved.

24 Q. And then you saw him again 5/16/'19 again
25 continuing to improve?

1 A. Correct.

2 Q. And this was I think the last time you saw him.
3 Right? I think your last note says that, "Future treatments
4 include, cortisone injections and PT, and you're not -- don't
5 anticipate any future surgeries return as needed.

6 A. That's correct.

7 Q. So tell me what that means. Tell me what you were
8 anticipating, you talked about impairment. What else would
9 you expect would be maybe some (inaudible) issues he would
10 have as a result of these injuries going forward?

11 A. If he were to have a position that required
12 repetitive overhead lifting as compared to somebody who did
13 not have a rotator (inaudible) repair, I would expect him to
14 get more soreness. Would that potentially be an injection at
15 some point in his life? It's not unusual to have a recurrent
16 spell of shoulder issues. I think we'll see after moving
17 (inaudible) the holidays with (inaudible) increased activity
18 you'll have (inaudible) shoulder.

19 Q. Okay. And -- and so basically otherwise unless he
20 needed you, you felt like he was sufficiently healed at this
21 point to be discharged at that point. Is that fair?

22 A. Correct.

23 Q. All right. And -- and you -- I have included that
24 came out of your file, the physical therapy image. And as
25 part of your treatment, did you send him on prescribed

1 physical therapy on those shoulders?

2 A. I did.

3 Q. All right. And did these documents basically show
4 that he did what he was supposed to do and -- and did follow
5 it through on his physical therapy and did what he could do
6 to make himself better?

7 A. Correct.

8 Q. Okay. Doctor, is -- are those materials that you
9 just went through the fair and accurate representation and
10 complete packet of the medical records that were produced by
11 this office for your care and treatment for Wallace Crosby?

12 A. They are.

13 MR. MCCULLOUGH: All right. At this time I would move
14 Exhibit 1 into evidence.

15 MR. TURNER: No objection.

16 (Defendant's Exhibit 1 admitted into evidence.)

17 BY MR. MCCULLOUGH:

18 Q. All right. I've got just a couple of questions
19 and (inaudible) a little cumbersome and I'd like you to list
20 them and answer for the jury. Okay?

21 A. Yes, sir.

22 Q. Doctor, to a reasonable degree -- well, first of
23 all -- all, do you have an opinion to a reasonable degree of
24 medical certainty, most probably, in the field of orthopedic
25 surgery as to the cause of BJ Crosby's right and left

1 shoulder injuries as you described here today?

2 A. I believe that both of the shoulder conditions
3 that I was duly informed of represent the result of the
4 described accident in his medical records involving the golf
5 cart.

6 Q. And were the medical treatments that you performed
7 to his right and left shoulder both directly caused and were
8 necessary as a result of that golf cart incident?

9 A. Correct.

10 Q. And were his treatments required as a direct
11 result thereof?

12 A. Yes.

13 Q. And medical bills to include all of the reviewed,
14 the physical therapy, the surgery, the anesthesia and the
15 rest of that. Was that caused by the accident as of -- the
16 incident as we described pertaining to being run over by a
17 golf cart?

18 A. Medical opinion? Yes.

19 Q. All right. And the impairment rating of 20
20 percent of the right shoulder and left 20 percent of his left
21 shoulder is that opinion, to a reasonable degree of medical
22 certainty, medical probability, in the field of orthopedic
23 surgery?

24 A. Yes.

25 Q. All right. And, you know, we went through a lot

1 of different opinions that were contained in your medical
2 records and just generally as to your treatment and care for
3 Mr. Crosby. Are all of those opinions that you provided here
4 today, to a reasonable degree of medical certainty, medical
5 probability in the field of orthopedic surgery?

6 A. They are.

7 MR. MCCULLOUGH: All right. That's all the questions
8 I've got for you. Thank you so much.

9 MR. TURNER: Doctor, (inaudible) representing Mr.
10 Bowman in this trial litigation. I just have a few questions
11 for you.

12 CROSS-EXAMINATION

13 BY MR. TURNER:

14 Q. Doctor, I'm -- in your place, I'm assuming you
15 treat patients that have been involved in any accidents,
16 motor vehicle accident, golf carts, struck by car or anything
17 like that (inaudible) tear?

18 A. That's right.

19 Q. Okay. And I'm assuming you all -- you treated
20 patients that have (inaudible) tear or a rotator cuff
21 (inaudible) related accidents (inaudible) like the golf cart,
22 correct?

23 A. I have.

24 Q. Okay. (Inaudible) my father has a -- he has a
25 rotator cuff injury and he's not (inaudible). I'm

1 MR. MCCULLOUGH: Yes.

2 THE COURT: All right. We'll bring him in. Thank you
3 so much.

4 THE CLERK: Please raise your right hand and place your
5 left on the Bible.

6 GARY ERICKSON,
7 having been duly sworn, testified as follows:

8
9 THE CLERK: Please be seated. Please state your full
10 name, spelling your last name loudly and clearly into
11 microphone.

12 THE WITNESS: Gary Erickson, E-R-I-C-K-S-O-N. I'm a
13 sergeant with the Sullivan's Island Police Department. I've
14 been employed by them approximately eight years. My
15 jurisdiction is in Sullivan's Island, located in Charleston
16 County.

17 DIRECT EXAMINATION

18 BY MR. MCCULLOUGH:

19 Q. Thank you. Thank you for coming in today.
20 Introduce yourself to the jury please.

21 A. Again, Sergeant Gary Erickson with the Sullivan
22 Island Police Department.

23 Q. Now, I was going to ask you, what do you do for a
24 living?

25 A. I am a police officer. I've been a police officer

1 approximately 41 years, eight years with Sullivan's Island.

2 Q. Okay. And were you one of the investigating
3 officers on the night of this incident October 5, 2018?

4 A. No, sir. I was not.

5 Q. Who were the Sullivan's Island Police Department
6 investigating officers that time?

7 A. It would have been Sergeant Gerena and Officer
8 De Nett.

9 Q. And are those officers any longer with the
10 Sullivan's Islands Police Department?

11 A. No, sir. Officer De Nett moved to Augusta,
12 Georgia where she is a school resource officer and Sergeant
13 Gerena retired.

14 Q. Okay. And as a result have you been asked and
15 have you had an opportunity to review the investigative file
16 taken in a course of -- of Sullivan's Island Police
17 Department's policies and procedure?

18 A. Yes, sir.

19 Q. And as part of that, did you review the entire
20 investigation, file of notes, witness statement, body cam
21 videos and things of that nature?

22 A. I reviewed the body cam videos and statements.

23 Q. Okay. And the statements that were provided to
24 the police officers as a result of this would be BJ Crosby,
25 Samantha Albert Crosby, Savannah Rippy, Jamie Maher and

1 Michael Greeson all provided voluntary statements. Is that
2 correct?

3 A. Yes, sir.

4 Q. All right. You reviewed that information? First,
5 they've been (inaudible) several times, but I'd like to play
6 for you two 911 calls, one from Samantha Albert and one from
7 Eric Bowman. Have you -- have you listened to that?

8 A. Yes, I have.

9 Q. And is it normal? I think everybody knows that.
10 What happened when you got the 911 call?

11 A. It mainly goes to Charleston county consolidated
12 dispatch where a call receiver picks it up at the same time
13 they find out what the problem is and then they relay it to
14 the dispatcher where they're collecting the information.

15 Q. So if somebody calls and says, "Hey, there's been
16 an incident at Dunleavy's in Sullivan's Island," Sullivan's
17 Island is within Charleston County?

18 A. Yes, sir.

19 Q. And so 911 office would take that information.
20 And how does it get to Sullivan's Island?

21 A. It would be relayed by radio.

22 Q. To dispatch in Sullivan's Island?

23 A. Yes, sir.

24 Q. And then what happens?

25 A. There is no dispatcher, it is relayed directly to

1 the officer.

2 Q. So if you're sitting on Sullivan's Island here,
3 tell me about how that works.

4 A. Basically the, this actual key off your unit
5 number. In my example, I am Sullivan's Island Officer 4 and
6 the officer would respond and then they would give a verbal
7 description of the incident and where to respond in the case.
8 It may also be codes for a second or third. First the worst
9 two, three, the lowest.

10 Q. All right.

11 THE COURT: Sergeant, I don't mean to interrupt, I'm a
12 little hard of hearing at this fan, can you put that
13 microphone a little bit closer to you?

14 THE WITNESS: Yes, ma'am.

15 THE COURT: That's -- I appreciate it.

16 THE WITNESS: Thank you. I'm sorry, Your Honor.

17 THE COURT: That's okay.

18 BY MR. MCCULLOUGH:

19 Q. And on this evening when the call came in, who was
20 dispatched to Dunleavy's on your behalf?

21 A. It would've been Sergeant Genera and Officer De
22 Nett.

23 MR. MCCULLOUGH: Okay. And at this point of motion,
24 we're going to play the 911 recording. We're not playing the
25 internal dispatch, but just Savannah -- Sam and

1 Mr. Bowman (inaudible). And it's Exhibit 2.

2 THE COURT: Okay.

3 (Video starts)

4 SERGEANT GENERA: 911, what's your emergency?

5 MS. ALBERT: Yeah. So I'm at Dunleavy's Pub, and I
6 have a guy that just ran somebody over, he's not paid his
7 tab. And (inaudible) box.

8 SERGEANT GENERA: (Inaudible) spoke.

9 MS. ALBERT: Yeah, please.

10 SERGEANT GENERA: And what's the address of Dunleavy's
11 Pub?

12 MS. ALBERT: 2213 Middle Street.

13 SERGEANT GENERA: Repeat that address to make sure I
14 have it right. Repeat the address to make sure I'm right.

15 MS. ALBERT: Just tell them I'm -- I'm --

16 SERGEANT GENERA: Ma'am, repeat the address.

17 MS. ALBERT: (Inaudible).

18 SERGEANT GENERA: Okay. Let me read the address to
19 make sure I have it right.

20 MS. ALBERT: Where did he go?

21 SERGEANT GENERA: Ma'am can you repeat that address to
22 make sure I have it right?

23 MS. ALBERT: Know who he is. I don't know who -- can
24 you what?

25 SERGEANT GENERA: Can you repeat the address one more

1 time just to make sure I have it right?

2 MS. ALBERT: 2213 Middle Street, Dunleavy's Pub.

3 SERGEANT GENERA: Ma'am, you said that he ran somebody
4 over. Is anybody injured?

5 MS. ALBERT: He ran somebody over. He won't pay his
6 tab --

7 SERGEANT GENERA: Anyone -- ma'am, is anyone injured?

8 MS. ALBERT: Yes.

9 SERGEANT GENERA: Okay. What phone number are you
10 calling from?

11 MS. ALBERT: (843) 446-7817. I'm the bartender here
12 and I need a police here.

13 SERGEANT GENERA: Ma'am, the police have been on the
14 way since we started talking. I was just gathering
15 information (inaudible) now. All right. Does anyone have
16 (inaudible)?

17 MS. ALBERT: No. (Inaudible).

18 SERGEANT GENERA: How did he leave?

19 MS. ALBERT: Huh?

20 SERGEANT GENERA: How did he leave?

21 MS. ALBERT: He left on a golf cart. He's drunk and he
22 ran somebody over.

23 SERGEANT GENERA: What color is the golf cart?

24 MS. ALBERT: Black.

25 SERGEANT GENERA: Okay. What direction was he on?

1 MS. ALBERT: He was going -- I -- I don't know. Can
2 you just send somebody out?

3 SERGEANT GENERA: My partner (inaudible) sorry ---

4 MS. ALBERT: (Inaudible) I don't know. We've been
5 (inaudible) all night. I don't have time for this, but they
6 --

7 SERGEANT GENERA: Where was he going? Do you know
8 where he was going? Who's there?

9 (Video ends)

10 BY MR. MCCULLOUGH:

11 Q. That appears to be -- was that Samantha Albert
12 Crosby's call in the 911 seeking Sullivan's Island Police
13 Department to come to Dunleavy's?

14 A. Yes, sir.

15 Q. All right. And as a result of that, we're not
16 hearing (inaudible) call, but the dispatch was radio
17 (inaudible) Sullivan's Island on the same people to there,
18 (inaudible)?

19 A. Yes.

20 Q. All right. And based on kind of the terror of
21 that call, it appears to have been done very closely after
22 this incident occurred because you clearly found out?

23 A. Yes. I'd say timeframe I guess would be very
24 short.

25 Q. Okay. Based on your review of the information

1 that you had seen when the officers arrived with Samantha,
2 anything but helpful in the investigation, did she do
3 everything she could do, facilitated help of Sullivan's
4 Island Police Department with the situation?

5 A. She was from the video upset, but she was
6 providing whatever information they asked.

7 Q. Would -- it was not hindering the investigation?

8 A. Not that I can recall.

9 MR. MCCULLOUGH: Okay. Next video.

10 (Video starts)

11 OFFICER DE NETT: 911 what's your emergency?

12 MR. BOWMAN: Yes. My name's Eric Bowman. I was at
13 Dunleavy's on Sullivan's Island.

14 OFFICER DE NETT: Yes, sir.

15 MR. BOWMAN: Yes. I was there with my wife and I just
16 had a gentleman that tried to kidnap my wife I barely just
17 got away. If you would send the police immediately. I
18 really appreciate it.

19 OFFICER DE NETT: All right. Tell me exactly what
20 happened.

21 MR. BOWMAN: I'm sorry? Can you say again?

22 OFFICER DE NETT: Tell me exactly what happened.

23 MR. BOWMAN: I can't hear.

24 OFFICER DE NETT: Can you tell me exactly what
25 happened?

1 MR. BOWMAN: Oh. Yeah, my -- my wife and I were trying
2 to leave and a gentleman jumped in front of our golf cart.
3 He started punching the golf cart and I tried to go and he
4 was kicking it and then I -- another gentleman jumped on the
5 back and started striking me.

6 OFFICER DE NETT: Okay. When did this happen?

7 MR. BOWMAN: Literally, like five minutes ago.

8 OFFICER DE NETT: Okay. Give me one second.

9 (Inaudible)?

10 MR. BOWMAN: I'm sorry? Can you say that again,
11 please?

12 OFFICER DE NETT: What is (inaudible) phone?

13 MR. BOWMAN: What is the phone number? It is a cell
14 phone.

15 OFFICER DE NETT: Okay. What is the number?

16 MR. BOWMAN: (843) 853-8704.

17 OFFICER DE NETT: Getting help on the way (inaudible).
18 Repeat the location for me.

19 MR. BOWMAN: Oh, yeah. My wife is still there. I'm
20 really worried about her. The only person I'm worried about.

21 OFFICER DE NETT: Okay. Can you repeat the location
22 for me?

23 MR. BOWMAN: At Dunleavy's Bar.

24 OFFICER DE NETT: Okay. We'll be getting help on the
25 way while I'm on the phone with you. Stay right there one

1 moment. Okay?

2 MR. BOWMAN: All right. Thank you.

3 OFFICER DE NETT: One second. Does anyone have any
4 weapons?

5 MR. BOWMAN: I don't know. One gentleman that kicked
6 me in the back of the head, he pulled something out of his
7 pocket. He had long hair. I just ran and got out of there
8 as fast as I could. I -- I don't know if he had a gun or
9 knife or what?

10 OFFICER DE NETT: All right.

11 MR. BOWMAN: There's another gentleman with a beard
12 that -- that started punching the front of the golf cart and
13 I don't know what he had either. But he was not taller.

14 OFFICER DE NETT: Okay. Give me one second. Where
15 (inaudible) now?

16 MR. BOWMAN: I am not.

17 OFFICER DE NETT: Okay. I need to get a description
18 (inaudible).

19 (Video ends)

20 BY MR. MCCULLOUGH:

21 Q. All right. You watched the body cam videos from
22 your two officers where Melissa Britton, Mr. Bowman's wife
23 was interviewed extensively, I assume?

24 A. Yes.

25 Q. And those body cam videos they were lengthy, they

1 were there for quite a while?

2 A. Yes, sir.

3 Q. At any time, did Ms. Britton indicate in any
4 manner that she had been kidnapped or attempted to be
5 kidnapped?

6 A. No.

7 Q. Did she say anything that the people -- provide a
8 hint that she had been abducted, assaulted. Anything?

9 A. No, sir.

10 Q. In fact, based on your observations of -- of what
11 transpired that night did the police officers continue to ask
12 Ms. Britton information about Mr. Bowman and the whereabouts
13 that she could -- refused to provide?

14 A. She basically, in my opinion, skirted the issue
15 and won't provide a proper answer.

16 Q. And so when they repeatedly asked where he was,
17 she would never provide a clear answer?

18 A. No, sir.

19 Q. And when they repeatedly asked for her to take
20 them to his location she refused?

21 A. Yes, sir.

22 Q. Then they repeatedly asked for her home address.
23 They refused -- she refused?

24 A. Yes.

25 Q. Then they asked his identity. She never provided

1 his name or last name of (inaudible)?

2 A. She basically said her husband through most of it.

3 Yes.

4 Q. And so despite repeated questions by two officers
5 for a lengthy period of time, she refused to provide any
6 information about Mr. Bowman's whereabouts?

7 A. Yes, sir.

8 Q. And we have extensive investigative notes and
9 files and various statements and -- and videos, but other
10 than that 911 call, there's absolutely nothing from Mr.
11 Bowman because he never showed up?

12 A. Not on any of the videos of him returning to the
13 scene.

14 Q. So he was so concerned towards the safety of his
15 wife, he went home and never came (inaudible) back from his
16 home (inaudible)?

17 A. It would appear. I don't really have that.

18 Q. Is there any evidence that Mr. Crosby, the
19 gentleman, that was ran over by the golf cart (inaudible)
20 punched Mr. Bowman's golf cart?

21 A. No, sir. I -- there was no forensics that I
22 understand from a determination whether or not the golf cart
23 had been punched.

24 Q. Was there any evidence that what BJ Crosby did
25 prior, during, or after he was ran over twice by Mr. Bowman's

1 golf cart that he hit the golf cart?

2 A. No, sir.

3 Q. And in fact, (inaudible) Sullivan's Island
4 investigation, you issued an arrest warrant for Eric Bowman
5 for assault and battery, second degree and of leaving the
6 scene of the accident?

7 A. Yes, sir.

8 Q. And that was based after an extensive
9 investigation by the Sullivan's Island Police Department?
10 All right. And that arrest warrant, if you read, that is
11 Exhibit 16 that this is Sullivan's Island documentation of
12 this arrest of Mr. Bowman for assault and battery in the
13 second degree and leaving the scene of the accident?

14 A. Yes, sir.

15 Q. All right. Did Sullivan's Island ever charge Mr.
16 Crosby (inaudible) of a crime?

17 A. Not to my knowledge.

18 Q. And did all the documentation have Mr. Crosby
19 listed as the victim?

20 A. Yes.

21 Q. And Mr. Crosby, was the only one that was taken
22 away by an ambulance on a stretcher?

23 A. Yes.

24 Q. All right. Very (inaudible). I'm going to -- did
25 you look at the voluntary statements provided by some of the

1 eyewitnesses?

2 A. Well, as a video of it. Yes, sir.

3 Q. Okay. And this is Exhibit 8, Savannah Rippy. I'm
4 going to read this and tell me if this is your understanding
5 of what Savannah Rippy (inaudible) Dunleavy's employee. She
6 wrote, on October 16 she was at Sullivan's Island Police
7 Department.

8 "I saw the man in the golf cart, hit BJ's body. BJ
9 flew back several feet, crawl out of the way, and the golf
10 cart struck him again. After the second hit, the golf cart
11 (inaudible) from the restaurant." Is that what Ms. Rippy
12 said happened that night?

13 A. Yes. Not quite in that detail, but that was what
14 she said, that this woman had seen the golf cart and it
15 struck him.

16 Q. And Exhibit 9 Jamie Edens. (Inaudible) the
17 Sullivan's Island Police Department on Friday, October 5,
18 2018. "I went to Dunleavy's after work approximately 10:00
19 p.m., around 1:00 a.m. I witnessed a guy in a six-passenger
20 golf cart purposely tried to run a man down on the side of
21 Dunleavy's. The driver purposely ran -- ran the victim over.

22 It is my belief that the driver of the golf cart was
23 trying to hurt the victim on purpose." And the question,
24 "Please identify the victim in statement." Answer, "The
25 victim was one that was run over by the golf cart." Is this

1 your recollection that Mr. Edens said happened that night?

2 A. Yes, sir.

3 Q. And then Mr. (Inaudible) said in his volunteer
4 statement said, "He attacked the man at a slower speed and
5 hit the man at a higher speed and he hit the man the second
6 time and broke the glass and front -- the golf cart." Is
7 that your understanding of what happened when Mr. Crosby was
8 struck the second time on by Mr. Bowman's golf cart?

9 A. Yes, sir. But when he was hit with the golf cart,
10 it broke the windshield,

11 Q. Okay. Is there any -- to your knowledge, based on
12 the Sullivan's Island Police department's investigation, is
13 there any evidence that would cause the Sullivan's Island
14 Police Department to think Ms. Britton had been kidnapped?

15 A. No, sir. Not to my knowledge.

16 Q. Now, had Mr. Bowman had been imprisoned or falsely
17 arrested in any way?

18 A. Not to my knowledge.

19 Q. Had -- has he been assaulted by BJ Crosby or
20 anybody your knowledge?

21 A. From the investigation of the two officers did not
22 appear to be so.

23 Q. In the investigation of the two officers, was the
24 conclusion to charge Mr. Bowman with assault and battery in
25 the second degree (inaudible)?

1 A. Yes.

2 Q. And he didn't bother to show up until he hired a
3 couple of lawyers who finally came down several days later
4 (inaudible)?

5 A. Yes, sir.

6 MR. MCCULLOUGH: Thank you. That's all the questions I
7 have.

8 CROSS-EXAMINATION

9 BY MR. TURNER:

10 Q. Sergeant Erickson, thank you being here today.
11 Sergeant, the most you could be charged for -- for walking
12 out -- and in this situation that -- the most (inaudible)
13 could've been charged for -- for walking out on a tab, a \$124
14 tab would be a misdemeanor defrauding charge, correct?

15 A. Correct.

16 Q. Not a felony, right?

17 A. No, sir.

18 Q. Okay. And a citizen cannot detain someone or
19 arrest someone for committing a misdemeanor, correct?

20 A. You're asking me about the Good Samaritan Law?

21 Q. Yeah. Well, is it -- yeah (inaudible) can they
22 arrest?

23 A. From my understanding of Good Samaritan, I'm not
24 really familiar enough to advise you whether they can or
25 cannot.

1 MR. MCCULLOUGH: It's a video.

2 THE COURT: Thank you.

3 (Video starts)

4 THE VIDEOGRAPHER: On the record 8:09 a.m., on the
5 (inaudible) 2nd, 2022. This is the video deposition of
6 Richard Frisch. Counsel have waived the reading of caption.
7 Counsel, can you state your appearances for the record?

8 MR. MCCULLOUGH: My name's Clay McCullough. I'm here
9 on behalf of BJ Crosby.

10 MR. TURNER: Ray Turner here on behalf of Eric Bowman.

11 THE REPORTER: If you would raise your right to swear
12 you in.

13 RICHARD FRISCH,

14 having been duly sworn, testified as follows:

15 THE REPORTER: Thank you.

16 DIRECT EXAMINATION

17 BY MR. MCCULLOUGH:

18 Q. Good morning, Doctor. My name is Clay McCullough.
19 We met just a minute ago. Would you introduce yourself to
20 the jury, please?

21 A. Sure. My name is Richard Frisch. I'm a doctor
22 here at Southeastern Spine. I'm an orthopedic spine surgeon.
23 I've been here now since 2011.

24 Q. All right. And where are we physically taking
25 this deposition?

1 A. So we we're at Southeastern Spine in Mount
2 Pleasant.

3 Q. All right, Doctor. And although we're in your
4 office, you understand you've been sworn in and this is like
5 -- just like you were down at Charleston County Courthouse to
6 testify?

7 A. I do.

8 Q. All right. And you -- you touched on this, you --
9 you are an orthopedic surgeon?

10 A. Certainly, I'm a spine surgeon. My background is
11 in orthopedic surgery, yes.

12 Q. All right. And it's fairly obvious, but what does
13 the spine surgeon do?

14 A. Sure. So we see patients with spinal disorders
15 and evaluate them and recommend appropriate treatment whether
16 it's surgical or non-surgical.

17 Q. And Southeastern Spine has doctors, like surgeons
18 like yourself and you have doctors that do other types of
19 tasks, correct?

20 A. Correct.

21 Q. Did you personally treat BJ Crosby?

22 A. I did.

23 Q. And did you perform surgery on Crosby?

24 A. I did.

25 Q. And have you also reviewed his medical records

1 from -- through physicians within your practice group that --
2 that provide his care for Mr. Crosby?

3 A. I have.

4 Q. Okay. Great. And -- and one of those doctors is
5 Dr. Leonard Forrest?

6 A. Yes.

7 Q. And is Dr. Forrest no longer with Southeastern
8 Spine?

9 A. That's correct.

10 Q. All right. And are you prepared today to testify
11 about your care of treatment of Mr. Crosby and your practice
12 group care of treatment of Mr. Crosby?

13 A. Yes.

14 Q. All right. Walk the jury quickly through your
15 education and training please.

16 A. Sure. So I went to a medical school that at the
17 time was Holland Medical College of Pennsylvania. New
18 Holland University is now, Drexel University. I did my
19 residency in Philadelphia. I was the resident at
20 Albert Einstein Medical Center. I did my spine specialty
21 training at University of California San Francisco. My first
22 three years of practice I was at Ochsner Medical Center in
23 New Orleans. And then again, I've been here since 2011.

24 Q. Are you board certified?

25 A. I am.

1 Q. And -- and -- and what does that mean?

2 A. It means that you keep up with your credentialing
3 and metric card with knowledge based exams and --

4 Q. And are you --

5 A. -- CMEs.

6 Q. Are you a licensed medical physician in the State
7 of South Carolina?

8 A. I am.

9 Q. All right. And at this time I would tender Dr.
10 Richard Frisch as in -- is that how you pronounce it?

11 A. Frisch.

12 Q. Frisch. All right. Sorry. I didn't want to
13 mispronounce it. As an expert in the field of orthopedic
14 surgery with -- specifically spine surgery.

15 (Video paused)

16 MR. TURNER: No objections.

17 THE COURT: Okay. Pause it.

18 (Video continues)

19 BY MR. MCCULLOUGH:

20 Q. All right. So again, just general --

21 (Video paused)

22 THE COURT: All right. Thanks once again gentleman.
23 Normally folks cannot give opinion testimony from the witness
24 stand, but as I stated earlier, an exception is made when
25 someone is deemed an expert in some science or field.

1 Dr. Frisch will be able to give you opinion testimony
2 in the area of orthopedic spine surgery. You don't have to
3 accept his opinion, it's just information for you to use any
4 way that you see fit, please proceed.

5 (Video continues)

6 BY MR. MCCULLOUGH:

7 Q. -- walk the jury through the treatment that
8 Southeastern Spine provided to BJ Crosby. And just like,
9 I'll call it the 10,000 foot level, just overview.

10 A. Sure. So it looks like he came in initially in
11 November of 2018. As you mentioned, saw Dr. Forrest who
12 began treating him for back and leg pain. It looks like he
13 had multiple injections recommended by Dr. Forrest. And then
14 was referred to me where we did some other testing on him and
15 then subsequently operated on him.

16 Q. Is it fair to say that Southeastern Spine has what
17 I described of -- of a conservative treatment plan, which
18 would include like epidural injections and things of that
19 nature? And if that's unsuccessful, maybe a transition into
20 surgery?

21 A. That -- that can't be the case. Yes. If there is
22 a surgical indication.

23 Q. And is that what happened in this case?

24 A. Yes.

25 Q. All right. And have -- you're flipping through

1 some materials in front of you. Is that packet of the
2 relevant medical records from Southeastern Spine where the
3 care and treatment was provided to BJ Crosby?

4 A. It is.

5 Q. All right. So I inspected to these medical
6 records, Doctor, they're in chronological order with one
7 exception, which is the first page which I'll pull out. Is
8 this a -- a medical questionnaire that Mr. Crosby filled out
9 at -- for, again, for Southeastern Spine in July of 2019?

10 A. Yeah, it looks like, I don't know if this -- I
11 don't actually don't recognize this. I don't know if this is
12 (inaudible) for Dr. Forrest.

13 Q. Okay.

14 A. But -- but that's what it appears to be.

15 Q. Okay. Let me ask you a couple of quick questions.
16 He -- he lists specifically, he's here or has on this day for
17 pain in the lower part of his back, is that right?

18 A. Yes, that's what it says.

19 Q. And he says the onset is October 6, 2018?

20 A. That's what it says.

21 Q. And what does he describe as the cause of his back
22 pain?

23 A. It says here he was run over twice by Eric Bowman
24 with a six-seater golf cart.

25 Q. All right. And he describes the pain as dull,

1 aching, throbbing, stabbing, electric shooting and burning?

2 A. He does.

3 Q. All right. And worst pain of 9 on a 0 to 10
4 scale?

5 A. Correct.

6 Q. All right. And at this point flipping the page,
7 it looks like he had asked, he writes, "Four epidural at
8 (inaudible) of that day." Is that right?

9 A. Did -- yes. That's what it says.

10 Q. And he also mentioned that he's already had a
11 right shoulder surgery and a left shoulder surgery as a
12 result of the injury from the -- the --

13 A. Yes.

14 Q. All right. So let's go through and again starting
15 more back in the chronological order, it looks like first
16 time he came to Southeastern was November 7, 2018 and it was
17 a referral from Dr. David Mahoney, Mr. Crosby's family
18 doctor, is that right?

19 A. Yes.

20 Q. And is that -- is that normal that -- that
21 Southeastern would receive referrals from family doctors?

22 A. Yes.

23 Q. And why is that?

24 A. Because they're seeking spine specialty treatment.

25 Q. Okay. and it looks like Mr. Crosby is already

1 seeking treatment from Dr. Richter for his pain and his
2 shoulders. Is that right?

3 A. Ah, that's what it says.

4 Q. All right. And you can -- we don't need to read
5 it into the record, but Mr. Crosby describes how he was hit
6 by the golf cart on two separate occasions and physically how
7 it impacted his body. Did he describe that information, were
8 you aware of that when you took over treatment from your --
9 Mr. Crosby?

10 A. Yes.

11 Q. All right. And it looks like he's having what he
12 described as significant pain symptoms that have persisted.
13 Is that right?

14 A. Yes.

15 Q. Okay. And again, is this a normal intake
16 information, the Southeastern will put together results of a
17 referral?

18 A. Yes.

19 Q. All right. And then what is the recommendation
20 from Dr. Forrest?

21 A. Dr. Forrest had recommended X-rays. It was on the
22 spine as well as MRI.

23 Q. All right. And then flipping forward what is this
24 next document?

25 A. This looks like an X-ray report.

1 Q. All right. And is this a documentation of what
2 was ordered by Dr. Forrest? The results?

3 A. The results of the --- was -- there was a reading
4 of the -- I'm sorry. It was an MRI reading. My fault.

5 Q. Okay. And what were the results?

6 A. So based on the radiologist reading so they said
7 that -- basically we have the annular tear at L5-S1 with a
8 potential S1 root compression.

9 Q. All right. What is L5-S1? What -- what does that
10 mean?

11 A. L5-S1 is the bottom portion of the spine. It's
12 the last lumbar disc where the lumbar spine meets the sacral.

13 Q. And what is an annular tear?

14 A. Annular tear, the disc has essentially two layers
15 an outer annulus and inter (inaudible). People can develop a
16 fissuring or tears in the outer annulus, which is acute part
17 of a -- a degenerative or acute process.

18 Q. And what is acute process? Tell the jury what it
19 means to have an annular tear.

20 A. So to have an annular tear indicates that you have
21 some degeneration or wearing or fissuring or injury of the
22 disc and if not stopped, particularly in younger people, it
23 could potentially be a source of pain and symptoms for a
24 variety of reasons. It happens acutely. It's thought it
25 could be related to an event, a traumatic event. It can also

1 be a degenerative process where it develops over time.

2 Q. Okay. But in this instance, the MRI showed that
3 there was an annular tear at L5-S1?

4 A. Yes.

5 Q. Okay. And then it looks like he comes back in to
6 see Dr. Forrest 11/14/'08, is that right?

7 A. Yes.

8 Q. And at that point it looks like Dr. Forrest
9 recommends two things, an epidural injection and a back
10 brace. Is that right?

11 A. Yes.

12 Q. What is an epidural injection?

13 A. Epidural injection is typically a steroid
14 injection which goes into the epidural space. The epidural
15 space is the area inside the spinal canal, the bony spinal
16 canal where the nerves run. An epidural injection is
17 intended to run -- is to be placed on top of the nerves that
18 are traveling through that area with the hope of decreasing
19 inflammation and decreasing pain.

20 Q. So my only involvement was epidurals, has been
21 twice in the hospital with my wife during labor. Explain to
22 me the difference between you -- somebody having an epidural
23 for a baby versus an epidural to help back pain.

24 A. Yes. The intentions of those injections are
25 different. The epidural for a childbirth is actually placed

1 in the thecal sac. So what that means is that the nerves run
2 inside the body's spinal canal and fluid called cerebral
3 spinal fluid. That's contained in a sac called the thecal
4 sac.

5 When you're doing an epidural for childbirth, the per
6 -- you put the medicine inside the thecal sac to block the
7 nerves. So essentially the patient's paralyzed for a -- a
8 short period of time. An epidural steroid injection for pain
9 is done -- it doesn't go inside the thecal sac, it's going --
10 goes outside along the nerves to hopefully decrease pain.

11 Q. So it is not fixing the problem so much as
12 decreasing the pain and hopefully reducing some inflammation?

13 A. Correct. It's -- it doesn't fix the problem.
14 It's not dealing with the symptoms caused by the problem.

15 Q. Okay. it looks like that was carried out. I see
16 the next document is 11/14. Mr. Crosby was provided a back
17 brace, is that right?

18 A. Correct.

19 Q. And is that just to support the area you had help
20 with pain?

21 A. Yes, hopefully decreased motion gives some
22 stability, decreased inflammation, decreased pain.

23 Q. All right. And then on 11/16 he had his first
24 epidural. Is that right?

25 A. Here it looks like. Yes.

1 Q. Okay. Now, again, I know you've described it but
2 -- but just very briefly walk the jury through how that
3 procedure actually happens. Tell me what's your -- what --
4 what's going on here?

5 A. Sure. So I do surgery, I don't do injections, but
6 essentially the patient comes in lays down, prone on the
7 table. In this situation their injection site is prepped
8 out, sterilized and then under X-ray guidance a needle is
9 inserted in spinal column (inaudible) is placed through that
10 and looked down on X-ray to make sure the needle's in the
11 correct position and then a steroid is then placed into the
12 epidural space.

13 Q. Okay. And then it looks like he comes back in
14 December. And -- and the information states that the
15 injection is provided to BJ with some partial improvement,
16 maybe 30 percent of his symptoms overall. And there's a
17 recommendation for a -- another injection to hopefully
18 continue with the improvement?

19 A. Correct.

20 Q. All right. And again, is this a pretty normal
21 conservative treatment plan?

22 A. It is.

23 Q,. And then it looks like again on 12/7/'18,
24 Mr. Crosby came into Southeastern for a second epidural
25 injection?

1 A. Correct.

2 Q. All right. And again, that same process you
3 previously described is how that would happen?

4 A. That's what I expect, yes.

5 Q. Okay. And then end of December '18, it looks like
6 he's back into the office for follow up? It looks like,
7 "Mr. Crosby has had the right shoulder surgery done and he is
8 noticed he's having a left shoulder done as well. And then
9 down at the bottom I said he's responded well to the two
10 epidural injections that have been given him to date.
11 However, as Mr. Crosby points out, his activities have been
12 limited and he has been taking pain medication.

13 Mr. Crosby will certainly need further treatment and
14 potentially he may need treatment, treatment intermittently
15 long term, but nothing is needed right now for the back
16 pain." Let me ask you a couple of questions about that. If
17 somebody's on some pretty hot pain medications as a result of
18 shoulder surgery could -- that -- then the pain -- be
19 associated with other areas of your body?

20 A. Yes.

21 Q. And if you're largely incapacitated as a result of
22 having shoulder surgery, don't do much or move around much,
23 could that also help with that fall if you're not going
24 anywhere?

25 A. Sure.

1 Q. All right. So it looked like this was kind of a
2 wait and see visit?

3 A. Yeah, I guess you characterize that, right.

4 Q. Okay. So he comes back a couple of months later
5 in March of '19 looks like BJ is continuing to rehab right
6 shoulder and has now had his left shoulder done. And then
7 going on -- he says, with regard to Mr. Crosby's back and leg
8 symptoms, he states those symptoms continue at a level of 0
9 to 5 on a scale of 10, but he notes he's been having right
10 anterior thigh burning symptoms now in addition to the pain
11 down the leg. Now, what would cause that if you've got back
12 pain. Tell the jury how that would impact lower extremities.

13 A. So there's really a variety of different reasons
14 that happened with different individual situations. I think
15 relevant to here, the thought would be with his annular tear
16 degeneration on that level, the most common reason to have
17 leg pain related to that would be regards to inflammation,
18 irritation of the nerves passing by the disc that is
19 involved.

20 Q. Right. So if you've got a tear just what happens
21 with the -- the -- the fluid or the -- or the matter that's
22 inside the disc?

23 A. So in theory you can have a disc herniation which
24 comes out of the disc and pushes on the nerve. That can
25 happen. You can have, particularly in younger people, a

1 strong inflammatory response now to the disc that is
2 degenerative or has an annular tear. And those will be the
3 two main areas or two main things in this situation.

4 Q. Okay. It looks like at this point Dr. Forrest
5 recommended he discussed getting an updated MRI that he and
6 BJ selected and never had the epidural injection at this
7 point. Is that right?

8 A. It appears that way, yes.

9 Q. All right. And then that same day, it looks like
10 an epidural -- the third epidural injection was -- was
11 provided to BJ similar to the previous ones, is that right?

12 A. Yes.

13 Q. Okay. And then he's back a month later actually
14 three weeks later and it says that, "BJ is still reporting
15 pain in the lower back on a daily basis. And that the -- at
16 this point it looks like he was referred out to physical
17 therapy." Is that correct?

18 A. Yes.

19 Q. All right. What types of, what -- first of all,
20 what is physical therapy and what types of therapy would you
21 expect to happen on somebody with these types of injuries?

22 A. That's through physical therapy for lumbar spine
23 is focused on core strengthening with the thought that
24 essentially what you're doing is trying to strengthen the
25 muscles around the spine so they are absorbing more of the

1 loads that go across the spine as opposed to the injured
2 structures, the degenerative structures.

3 Also with spinal pathology, there's a lot of tightness
4 that happens around the pelvis, the hamstring muscles. And
5 so therapy is also directed at stretching those muscles to
6 try to relieve them.

7 Q. Okay. So at this point we we've done an MRI
8 through the objections and now return. He has both shoulders
9 operated on. So now looking to do physical therapy to try to
10 continue to -- to improve the ongoing back issues.

11 A. Correct.

12 Q. Okay. Then he comes back in, in May and to see
13 somebody at Southeastern Spine and at this point he states
14 that he has noticed an increase with back pain within the
15 last week. It -- it targeted on the lower right side and his
16 current pain is 7 out of 10. And at this point it writes,
17 "I'm concerned that there may be a newer worsening disc
18 herniation, so I'm recommending proceeding with an updated
19 lumbar MRI scan for further evaluation." What is a lumbar
20 MRI scan?

21 A. So MRI scan is a type of imaging that allows you
22 to visualize the soft tissue structure of the spine which you
23 cannot do with X-rays or a CT scan. But it specifically
24 allows you to look at the nerves and the discs, bone, and
25 spinal pathology.

1 Q. Okay. And it looks like that was ordered. And --
2 and a couple days later he's back in the office and it looks
3 like (inaudible) BJ continues to have disc protrusion with
4 annular tear L5-S1 as his significant finding, "The symptoms
5 continue to be significant, particularly the lower back.
6 Mr. Crosby is at maximum medical improvement with regards to
7 both shoulders.

8 Unfortunately, that's not the case with his lower back.
9 Mr. Crosby is gone with physical therapy, as instructed but
10 he's not experiencing any improvement so far." So it looks
11 like at this point there's kind of a -- an update on Mr.
12 Crosby who remains in that same condition. And -- and the
13 treatment plan was continued physical therapy. It's
14 outlined?

15 A. Yes.

16 Q. All right. So now, we've confirmed the issues, we
17 confirmed (inaudible) conservative treatments and -- and
18 continuous physical therapy to see if that provides some
19 relief?

20 A. I would agree.

21 Q. All right. So he comes back in in June and again
22 he's done multiple weeks of physical therapy. He continues
23 to report back pain, current back pain. There's a 4 out of a
24 0 to 10 scale and it reaches up to 6 out of 10 with certain
25 activities. At this point he has prescribed another epidural

1 injection. Is that correct now to the bottom?

2 A. Yes.

3 Q. Okay. And was that performed on 6/21/'19?

4 A. Yes.

5 Q. Again, at your -- at -- at this facility?

6 A. Correct.

7 Q. Okay. And then he's back in on 7/15. And then,
8 and again, this is from Dr. Forrest, I'm just going to read
9 at the top. "He is had very little response from the last
10 two epidural injections. He is currently repaid -- reported
11 pain in low back and legs. They get up to an eight out of
12 10. He notes that symptoms are not consistent, but he
13 estimates that 80 to 90 percent of the time he has low back
14 pain and almost 50 percent of the time has leg pain on his
15 leg, particularly -- particularly the right leg." I read
16 that right?

17 A. Yes.

18 Q. All right. So he had started treatment at -- in
19 November of 2018 and it appears based on these records that
20 he's following the advice of -- of your practice group with
21 regards to the treatment plan. Is that fair?, Dr. Forrest?

22 A. Yes.

23 Q. Yeah. And so but he's still struggling you know,
24 nine months later?

25 A. He's still having symptoms.

1 Q. Okay. So what -- and then he comes back in on
2 7/24. And what is a nerve conduction study?

3 A. So nerve conduction study essentially is to look
4 at the nerves in this case of the lower extremity to see if
5 there's any irritation, compression damage to them.

6 Q. And what is this nerve conduction study -- were
7 the results of the study?

8 A. Basically it says, "No evidence of radiculopathy
9 involving the right lower extremity. Certainly radiculitis
10 can be producing symptoms."

11 Q. Right. Any -- I'm sorry.

12 A. "No evidence of peripheral depressive neuropathy,
13 no evidence of peripheral polyneuropathy, no evidence of
14 myopathy."

15 Q. What does all that mean?

16 A. Essentially, what it's saying is -- is most of it
17 is -- is normal with ruling with the caveat that the nerve
18 could be irritated from inflammation occurring to it.

19 Q. All right. And then on the next page, Dr. Forrest
20 writes, "He -- his most consistent and prominent pain
21 continues to be in his lower back. But at this point it is
22 just returning one month follow up to -- to see what the next
23 steps are?"

24 A. Yes.

25 Q. All right. And then he comes in on 8/12/2019.

1 Who is Dr. Nobles?

2 A. Dr. Nobles is a physician in our practice, he's a
3 pain management specialist.

4 Q. All right. And it looks like he met with BJ on
5 August of '19, is that right?

6 A. It is.

7 Q. And what was the -- what was his treatment plan?

8 A. His treatment plan was to proceed with what are
9 called medial bundle branch blocks and then potentially
10 (inaudible) but those are a different type of injection than
11 an epidural. Now, whereas the epidural is inside the spinal
12 column along the nerves, with the medial bundle branch blocks
13 and subsequent (inaudible) are outside of the spinal canal
14 that focus on the joints of the spine to try to approach the
15 pain from a different angle.

16 Q. All right. So I mean, your practice group, Dr.
17 Frisch, are trying every tool in their arsenal pre-surgery to
18 see if they can fix this?

19 A. That's correct.

20 Q. All right. And on 10/8/2019 is that -- what is
21 this procedure?

22 A. So this is the medial branch block. And again, I
23 -- I do surgery, I'll do injections. But essentially the
24 purpose of that is to numb the sensory nerve or numb the
25 sensory nerves around the joints of the spine to see if that

1 can help the pain improve.

2 Q. And is this again, do -- do you need X-rays and to
3 -- to -- to guide the needles?

4 A. That's correct. It's done in a similar process as
5 the epidural earlier, just with the medicine being directed
6 to a different anatomical part of the spine.

7 Q. I mean, this isn't a flu shot. They don't -- they
8 don't just wipe the skin with an alcohol swab and cram a
9 needle in there?

10 A. This is -- this is -- that's correct, yes. You
11 want to be precise with where you're placing the needle.

12 Q. Okay. All right. And then a week later,
13 10/17/'19 received another epidural steroid injection.

14 A. It is.

15 Q. All right. So this would be his fourth steroid
16 injection plus the injection we just described?

17 A. Yeah, I lost track of count, but I'll take your
18 word for it.

19 Q. Okay. All right. So at 10/25/19, this looks like
20 another visit with Dr. Forrest and at this point it looks
21 like he's kind of summarizing everything that he's done today
22 and his practice that has done today. And then he writes,
23 "He" -- talking about BJ Crosby that, "He has received 30
24 percent improvement from the procedures.

25 He states that recently his leg symptoms are worse than

1 his lower back. BJ is now experiencing some left leg
2 symptoms in addition to right leg symptoms. He also states
3 that he is always having symptoms at least at a level of
4 two."

5 On a scale of 0 to 10. He states that, "His symptoms
6 are never zero. Now, his maximum symptoms get up to an eight
7 on a scale of 10. Many days. Unfortunately, Mr. Crosby did
8 not respond to a medial branch block test procedure that he
9 has done. Also, he is having worsening of his symptoms
10 despite his treatment today, including a recent lumbar
11 epidural injection. Although in the most recent lumbar MRI
12 was just done in May to question whether he has some
13 structural worsening, which certainly can occur after an
14 injury such he had.

15 I talked to her about -- him about this using an
16 agreement to proceed in the fashion that I'm not admitted.
17 So he will make an arrangement for a new MRI." And it looks
18 like a new MRI was ordered. Is it fair to say that this is
19 almost a year from when you first came in and although the
20 conservative treatment said it provided some short-term
21 relief that Mr. Crosby's condition appears to be worsening?

22 A. Based on their evaluation? Yes.

23 Q. Okay. And then the next page is another document
24 from a visit on November 1, 2019. And the MRI done -- MRI
25 had been performed. And then it now looks like he and BJ are

1 discussing surgery and taking everything into consideration.
2 Dr. Forrest arranged the surgery consult with one of my
3 surgical partners. And is that where you come in?

4 A. Yes.

5 Q. All right. So we are now, I think to the first
6 document of on 11/7/'19. And these are your materials. So
7 if you would walk the jury through your handling of Mr.
8 Crosby's treatment once you took over. And again, this is
9 11/7/'19, the a year -- the day they first came in to see
10 somebody to help with the surgery.

11 A. And so, I saw Mr. Crosby, evaluated and reviewed
12 his history. We discussed, you know, how his symptoms began,
13 the treatment that he had had since then and what options we
14 had moving forward.

15 Q. And you provided -- you do a (inaudible) physical
16 exam?

17 A. Correct.

18 Q. And you talked to BJ?

19 A. Yes.

20 Q. And you reviewed the medical records?

21 A. Correct.

22 Q. And were you -- did you agree with the -- the
23 treatment that had been provided to BJ at that point?

24 A. Yes.

25 Q. And did you all discuss the surgical options?

1 A. We did.

2 Q. And what was the ultimate decision?

3 A. So, you know, obviously with him having continued
4 pain not having long-term relief with injections or
5 non-operative treatment we discussed potential surgical
6 options. One of those options was potentially to remove the
7 disc, the L5-S1 disc. And one of the questions when
8 evaluating that particular pathology is -- is the disc truly
9 the source of the pain -- can be a difficult thing to
10 determine. And while not a perfect test, probably the most
11 helpful test we have to determine that is something called
12 the discogram.

13 And so we recommended a proceeding with that.
14 Essentially what a discogram is -- is a procedure where one
15 of our pain doctors will insert a needle into two discs, one
16 to the L5-S1 disc, the other into the one above the L4-5
17 disc. In this particular case, once the needles are inserted
18 saline is typically injected, I believe. I don't do these
19 tests.

20 So I could be wrong about that exact (inaudible) I
21 apologize. But such as a fluid is inserted in the disc to
22 pressurize the disc, the purpose of that is unfortunately to
23 reproduce pain. And the thought is -- is that if you have a
24 test that is considered concordant with pain, meaning that if
25 you would inject the concerned disc in this case, the L5-S1

1 disc, and it produced the pain, and then you injected the
2 L4-5 disc and it did not reproduce the pain, the thought
3 would be that this is considered a positive test for
4 dicogenic pain originating from the L5-S1 disc.

5 Q. All right. And you do that to -- to determine, to
6 make sure before you cut a disc or test a disc out
7 (inaudible) cost?

8 A. Yes, it is -- it is the best, it really is the
9 best tool we have available to us to help diagnose discogenic
10 pain.

11 Q. All right. And then the -- in the records, you
12 note that Mr. Crosby was involved in a significant accident
13 where he was run down by a golf cart as the cause of his back
14 pain. Is that right?

15 A. Well, he -- that's what he relayed to us as -- as
16 the cause of his back pain and we reviewed that.

17 Q. Okay. And are the findings from, based on your
18 physical exam, the information that you had at that point, is
19 it consistent, his injury consistent with a trauma that could
20 have occurred as a result of a -- a basically a motor vehicle
21 accident?

22 A. Sure. Based on the physical exam and his history
23 certainly I think that is a -- a reasonable possibility.

24 Q. Okay. Walk the jury through -- well, first of
25 all, who is Dr. Mark Netherton.

1 A. Dr. Mark Netherton, that is another one of our
2 pain management specialist. He typically is who does the
3 (inaudible) test here. And so that's -- that's who he is.

4 Q. All right. And on the second page, it looks like
5 that the, the test was performed on November the 13th, 2019.
6 And on that second page it kind of spells out the finding.
7 What were the findings of -- of Dr. Mark Netherton?

8 A. Essentially that in his finding -- excuse me.
9 L4-5 was negative without (inaudible) tear. L5-S1 was
10 positive with a (inaudible) for an annular tear.

11 Q. And he states that the patient noted pain 9 out of
12 10 and the lower back area with radiation in the lower
13 extremities.

14 A. Yes.

15 Q. That's a pretty clear indication that, that --
16 that's a problem disc?

17 A. It's -- it is the best, again, the best test we
18 have in that situation to localized pain related to the disc.

19 Q. All right. Sometimes you got to cause pain to --
20 to stop pain.

21 A. Yeah, it is -- it is not my favorite test to order
22 for patients to have, but in this situation it is the best
23 tool we have to help diagnose it.

24 Q. Okay. And then it looks like you saw BJ on
25 11/20/'19. Walk the jury through this visit and the ultimate

1 decision?

2 A. Sure. So we reviewed his symptoms in anatomy
3 where again he discussed that he did have desiccation annular
4 tear at the L5-S1 level anatomically from a symptomatic point
5 of view. He had back pain -- pain traveling down his legs
6 basically on the back and the outside of the legs, which are
7 where the nerves that are involved around the L5-S1 disc run.

8 He reported to us that he did not have these symptoms
9 prior to the accident that he was involved with. We reviewed
10 his treatment and, obviously, got a fairly extensive
11 non-operative treatment at this point with injections and
12 therapy without lasting relief.

13 We reviewed his discogram, which was concordant for
14 pain at the 5, 1 level. We discussed the possibility of
15 proceeding with surgery to remove the disc at the five one
16 level, infuse that level of the spine. We also discussed
17 expected outcomes from this procedure. While at this point I
18 believe it was reasonable to consider with this particular
19 pathology, we really go out of our way to try to avoid
20 surgery if possible.

21 One of the reasons for that is that historical outcomes
22 from this are not the best, we wouldn't call it a home run
23 predictive surgery. But in patients who have really
24 exhausted all non-operative treatments, obviously had
25 multiple injections, multiple courses of physical therapy it

1 is a reasonable out procedure to consider if that's the way
2 the patient wants to go.

3 Q. You mentioned that it is not necessarily the best
4 outcome. Tell me what are some of the down thoughts of risks
5 associated with this type of procedure?

6 A. So whenever doing this procedure for this
7 particular pathology, I always, we always go over all risks
8 involved with surgery. But oftentimes I tell patients that
9 -- that the biggest risk of the surgery is they can have the
10 surgery and not have relief of symptoms. So, you know, we
11 try to maximize a predictive outcome by again, trying in
12 epidural injections, trying injections related to the joints.
13 Those are unsuccessful, physical therapy is unsuccessful and
14 then we have a positive discogram that really helps stack the
15 argument in favor that there is a chance for a good outcome.
16 But if you look at historical data, you have to be, you know,
17 honest to be certain when making that decision with the
18 patient.

19 Q. And before the side of surgery. Would you agree
20 -- looks like BJ did everything possible to try to avoid
21 surgery? What -- doing what his doctor -- from epidural
22 injections, tests, MRI, physical therapy?

23 A. Yeah. I think he was -- got a pretty thorough,
24 you know, attempt to try to get him better without surgery.

25 Q. All right. And so ultimately did you two decide

1 that that was the best option to perform that surgery?

2 A. We did.

3 Q. All right. And -- first of all, where does that
4 surgery occur?

5 A. This would've happened I believe at East Cooper
6 Hospital.

7 Q. And is this an operative or is this information
8 from East Cooper? It looks like on December '19 -- excuse
9 me, 12/20/2019 he was admitted into the hospital for the
10 surgery?

11 A. December 16th or 16th, sorry. No -- no. I think
12 the date of surgery was December 20th.

13 Q. Okay. Got it. And at this point, yeah, it looks
14 like the risk and benefits of the procedure have been
15 explained to him and he wishes to proceed, which is scheduled
16 for 12/20/2019, is that correct?

17 A. Yes.

18 Q. And then this next document is an operative report
19 dated 12/20/2019.

20 A. Correct.

21 Q. And describe for me -- first of all, (inaudible)
22 operative report and -- and -- and what exactly happened?

23 A. Sure. So an operative report is just an
24 accounting of what happened technically during the surgery.
25 The surgery was before the consultation with doctor,

1 Dr. Appleby, who is a vascular surgeon.

2 The reason he's involved is because he does the
3 approach down to the front of the spine when we do an
4 anterior surgery of going through the -- the abdomen. He
5 does this approach because in front of the spine are some of
6 the major blood vessels, and ideally if you're going to do
7 the surgery and you would have an issue with the blood
8 vessels, you would want someone there and that's their
9 specialty. So Dr. Appleby has done these approaches with us
10 for many, many years. He's extremely proficient in them.
11 And that's his role in the surgery. Once he's exposed the --
12 the disc, then in this case myself, I would remove the disc
13 and then place the implant and perform the fusion.

14 Q. All right. So when you say expose the disc,
15 you're talking about basically cutting through tissue and
16 (inaudible) to be able to get to the spine?

17 A. Correct. So we get to the front of the spine and
18 the incision needs to be made in -- in the abdomen. And then
19 the dissection is carried down -- to you move -- you move the
20 peritoneum, which is what holds the bowel.

21 You don't -- you don't cut into that and he will move
22 that to the side. Underneath that, then you see the major
23 blood vessels, the ureters, the spine, and so that he
24 isolates the five one discs, puts her tractors in so it's
25 exposed. And then we do the removal of the disc.

1 Q. Fine. And so the disc we're talking about is
2 basically the bottom of the spine right above the -- where?
3 Like the buttocks basically?

4 A. So again, it's the L5-S1 level. So it's the
5 bottom disc of the spine where the lumbar spine meets the
6 sacrum. So if you're going to relate it to the posterior
7 portion, you would say it's if you feel on your sides, your
8 -- your (inaudible) iliac rest, your hips. It's just one
9 level below that.

10 Q. Okay. I've never understood those, my dad had
11 back surgery and I could never even then figure this out.
12 Why do you go through the front and not the back?

13 A. So you can -- you can approach the spine both
14 ways. There's pros and cons in both of them for this
15 particular pathology and when the patient's having back pain
16 going through the front allows you to get a larger graft in
17 number one, which is more surface area for fusion, which is
18 the goal of the surgery.

19 Number two, it allows you to avoid going through the
20 back muscles at all, for the patient with back pain, less
21 tissue dissection trauma to the muscles that you can avoid.
22 We do think it helps to optimize outcomes.

23 Q. So -- and when you say you are taking this out of
24 the?

25 A. So in this case, he has a spacer, which is made of

1 a, in this particular case, material called PEEK, which is a
2 very strong plastic and that spacer has a hole in it where we
3 put a bone graft. Once the spacer and the bone graft are
4 inside the disc space, a small titanium plate's placed on top
5 of this. And that plate is then -- has screws which go
6 through it and are then anchored into the L5 and the S1
7 vertebral bodies to help fixate the device.

8 Q. And I think there are three screws, is that right?

9 A. Yes. Typically there's two screws that go into
10 the bottom level, the sacrum, one screw that goes into the
11 L5 vertebral body.

12 Q. And does that, the plate and the screws and the
13 hardware you described, is that in for -- for the -- for the
14 rest of his life?

15 A. Unless there's an extreme outlier reason to remove
16 it. Yes, it is.

17 Q. Okay. Now. And -- and so it looks like that he
18 was admitted to the hospital on the 20th, surgery took place
19 on the 20th. He was discharged on the 21st. That's right?

20 A. I -- I don't -- I don't have those records in
21 front of me. That is the typical course.

22 Q. All right. And is there -- from -- from your
23 perspective, was -- was BJ's back surgery successful?

24 A. Technically it was a successful surgery, yes.

25 Q. All right. And based on your experience, what is

1 -- what's the next day feel like for your patients in the
2 next week of this type of procedure?

3 A. Sure. Surgically the first day is always a tough
4 day. It's first day after surgery, getting out with physical
5 therapies, particularly the first time is never the most
6 pleasant experience but generally people surgically from the
7 actual procedure itself improved fairly quickly in regards to
8 the -- the actual surgical event. And gradually increase
9 walking gradually increase activities. Typically, we will
10 try to limit what they do for about six weeks. Then we'll
11 start the physical therapy.

12 Q. It looks like he came in early -- in 2020 and --
13 and basically put at checkout that they were going well.
14 Then there were some return visits a couple weeks later. But
15 is it fair to say that -- that after the surgery, BJ
16 continued to follow up with you but ultimately was -- was
17 discharged from the -- because the -- the back surgery was
18 successful?

19 A. So I just want to look at -- my apologies. I
20 don't have the further follow up in here. So I -- I
21 apologize, I don't have those notes here either. But what I
22 recall is that in the surgery, again -- again went well
23 postoperatively. He did fairly well. He did have a
24 continuous -- some back (inaudible) which as we had discussed
25 preoperatively was not unexpected, but did report that he was

1 better than he was before surgery.

2 Q. All right. So there was some relief as a result
3 of the surgery. But as you described, you know, there's not
4 100 percent for these outcomes with these types of
5 procedures?

6 A. No. And then I say in general, we talked about
7 expected outcomes, we explained that 50 percent of people
8 have what's considered actually good outcomes; about half the
9 people get about half relief in their pain.

10 Q. Okay.

11 A. Never do we expect it to be a hundred percent pain
12 free.

13 Q. Okay. And I think that's important, you know he'd
14 gone through a lot of conservative treatments and this was
15 the last best option. Is that right?

16 A. Yeah, you could make the argument for, if you
17 could continue on long-term narcotics, which I'm not sure is
18 a great thing, you could make the argument for potentially
19 considering spinal cord stimulation, which I think is
20 somewhat as young as him with -- with a -- a true anatomic
21 issue I don't think is a -- is an ideal thing. So I think it
22 was considering all the attempts and non-operative treatment
23 and I think it was a -- a reasonable next step.

24 Q. Okay. And again, BJ did (inaudible) what doctors
25 asked him to do; showed up, he did physical therapy. He --

1 he did the treatment suggested --

2 A. Yeah, he did.

3 Q. -- the patient?

4 A. Yeah, he agreed with the recommendations and --
5 and followed through with them.

6 Q. Okay. And -- and again, you're not -- you would
7 not be surprised or it is not even to say that there was
8 anything other than a successful outcome of the surgery, but
9 that BJ could still have lifelong lower back pain and -- and
10 leg pain as a result of the injury?

11 A. He could.

12 Q. Doctor, is the -- is the packet that I marked as
13 Exhibit 1 a fair and accurate representation of the -- the
14 medical records associated with Southeastern Spine
15 Institute's treatment of BJ Crosby.

16 A. It is.

17 Q. At this time I move this packet into evidence.

18 MR. TURNER: No objection.

19 (Defendant's Exhibit 1 admitted into evidence.)

20 BY MR. MCCULLOUGH:

21 Q. All right. I've got some questions for you.

22 First, as his treating physician and to use some degree of
23 medical accuracy and probability in the field of orthopedic
24 surgery and spine surgery, were the injuries to BJ Crosby's
25 lower back, most probably caused by the incident that

1 occurred or about October 5, 2018 where BJ was struck by a
2 golf cart?

3 A. Based upon his history to a physical exam, as I
4 believe, that is reasonable.

5 Q. Okay. And again, to reading the greater medical,
6 certainly most probably in your medical field with the
7 medical treatments to his back to include all of the
8 treatments we just went through conservative treatments, the
9 surgery and treatments, any sort of physical therapy and
10 things that he's still doing would those be necessary as a
11 result of the incident described above?

12 A. Yes.

13 Q. And this would include all of the costs associated
14 with treatment to his lower back?

15 A. Yes.

16 Q. All right. Doctor, again, everything that you've
17 described here in the opinions that you provided as to your
18 care treatment, treatment of Mr. Crosby has all of those
19 opinions been to a reasonable degree of medical certainty,
20 most probably?

21 A. Yes.

22 MR. MCCULLOUGH: All right, thank you. I've got no
23 further questions. Please answer any questions (inaudible)
24 may have.

25 CROSS-EXAMINATION

1 BY MR. TURNER:

2 Q. Doctor, I'll try to brief. Ray Turner here for
3 Mr. Bowman, just a few questions for you. Doctor,
4 Mr. Crosby, and most patients - the history of what got him
5 there, what caused him to have the pain or injury is based on
6 what he told you all -- told Dr. Forrest at the time,
7 correct?

8 A. The history? Yes.

9 Q. Okay. And -- and in your practice, well you said
10 that (inaudible) that he had at I believe L5-S1, that -- that
11 could be -- you said it could be a zero, it could be the 10.
12 Right?

13 A. It could be, yes.

14 Q. All right. Tell the jury what degeneration is or
15 what you (inaudible).

16 A. So generally degeneration for sort or generalized
17 explanation is something that is, you could say somewhat
18 arthritic in nature. It happens over time to all of us.
19 Unfortunately, wear and tear, whether it's arthritis of our
20 knees, our hips, arthritis of our spine it's a process that
21 evolves slowly which would be the opposite of something that
22 happened acutely being a certain onset after a specific
23 event.

24 Q. Okay. And I'm assuming your office treats
25 patients that had the exact same injury as Mr. Crosby, had

1 been involved in any type of trauma, it looks like a motor
2 vehicle accident or maybe get back off, correct?

3 A. Yes.

4 Q. Okay. All right. Doctor, I want to take a look
5 at some of the records that you've already went through.
6 Let's you know, we all talk about the records from November
7 7, 2018, regarding the -- the Mr. Crosby's treatment with
8 Dr. Forrest.

9 I can share the screen and -- and go (inaudible) the
10 particular part I'm -- want to discuss as it relates to what
11 he told you all in your office. But by November 7, 2019, it
12 looks like he wrote a letter, Dr. Forrest sent a letter to --
13 to Dr. (Inaudible), his family's physician. And it's the
14 third paragraph of that letter (inaudible) you find that
15 letter?

16 A. I see.

17 Q. Okay. And then the third paragraph says, "Mr.
18 Crosby (inaudible) to an incident that occurred approximately
19 a month ago (inaudible). Mr. (Inaudible) describes that he
20 was at Dunleavy's where his girlfriend is a bartender and an
21 individual didn't pay. Mr. Crosby states that his girlfriend
22 would need to make up a difference compared to receipts at
23 the end of her shift with Mr. Crosby. Mr. Crosby followed
24 the individual outside. He recalls the other individual was
25 in an LSV golf cart type vehicle.

1 Mr. Crosby stood in front of the vehicle telling the
2 individual he needed to come back and pay. However, the
3 person in the golf cart stepped on the gas and hit Mr.
4 Crosby. Mr. Crosby (inaudible) recalled that he held out his
5 hands to prevent the golf cart from knocking him down, Mr.
6 (inaudible).

7 And it did (inaudible) him back several feet as he came
8 at him on the golf cart. This time there's more of an impact
9 and it was to his -- he did knock him back that also broke
10 the windshield of the golf cart." That's what that record
11 says, correct?

12 A. Yes.

13 Q. Okay. And I'll scroll down that letter to the
14 bottom of -- to the bottom of where it talks about -- where
15 everybody was cc'd on it. Says cc: Dr. Mahoney. And then
16 it says, cc: Dr. Daniel Schwerin, correct? That's what it
17 says?

18 A. It does.

19 Q. Okay. All right. And listen -- and I want also
20 to take a look at the record of November 14, 2018, and motion
21 (inaudible), if you're looking at my screen, I want to zoom
22 in on this area right here, it says, "With regard to
23 causation." Can you see that?

24 A. I can, yes.

25 Q. Okay. And that we recall (inaudible) causation,

1 the degenerative changes, certainly assuming that have
2 predated that incident that occurred on 10/6, correct?

3 A. That's what it says. Yes.

4 Q. Okay. And that's what Dr. Forrest recorded in,
5 correct?

6 A. Yes.

7 Q. I (inaudible). It goes on to say, "Mostly
8 aggravated condition of things like that involved." Correct?

9 A. It does.

10 Q. Okay. And, Doctor, just to clarify, there's no
11 test of pain, correct? Based on what the patient is telling
12 you and I don't know what -- what he's telling you, is how
13 you treat or would be treated, correct?

14 A. Well, certainly when the patient's the description
15 of pain, you're relying on how they interpret it for you. In
16 this particular case, the, the discogram that we did is -- is
17 a test for pain.

18 Q. Okay -- okay. But to be clear, Doctor, just so
19 I'm clear, I think (inaudible) you alluded to it. There is a
20 possibility that -- that Mr. Crosby's condition, lumber tear,
21 could be degenerative of that nature, correct?

22 A. Meaning it -- it could be just off actually here
23 in his body, correct? In theory, yes, an annular tear can't
24 be a result of the degenerative process.

25 Q. Okay. And the only difference between static,

1 whether it be acute or, you know, being degenerative was
2 based on what he told, he told you he was in that wreck and
3 you testified today that that was reasonable to assume it was
4 from that big incident, correct? Based on his history of his
5 symptoms and -- and prior lack of symptoms?

6 A. Yes. Correct.

7 Q. Based on what he told you. Correct?

8 A. Correct.

9 MR. TURNER: Okay. That's all the questions I have
10 about that. Thank you for your time.

11 RE-DIRECT EXAMINATION

12 BY MR. MCCULLOUGH:

13 Q. Okay. Very, very brief follow up. Only the same
14 records. First of all, with being run over, not once but
15 twice with a -- a -- a golf cart. Could that cause annular
16 tear in the lower back?

17 A. Theoretically, yes. It's -- it is. You know, for
18 this particular instance, it's very difficult without having
19 been there or seeing the accident to give you a hundred
20 percent, you know, yes or no, but in theory, is that a
21 possibility? Yes.

22 Q. Okay. And -- and in fact counsel didn't read all
23 of it -- but -- but Dr. Forrest stated too, they had a varied
24 minimum to a reasonable degree of medical certainty. The
25 incident aggravated an under -- underlying spine condition,

1 MR. MCCULLOUGH: Thank you. We call Samantha Crosby.

2 THE COURT: All right.

3 THE CLERK: Please raise your right hand and place your
4 left on the Bible.

5 SAMANTHA ALBERT CROSBY,

6 having been duly sworn, testified as follows:

7 THE CLERK: Please be seated. Please state your full
8 name, spelling your last name loudly and clearly into the
9 microphone.

10 THE WITNESS: Samantha Albert Crosby, C-R-O-S-B-Y.

11 DIRECT EXAMINATION

12 BY MR. MCCULLOUGH:

13 Q. Good afternoon. Please introduce yourself to the
14 jury.

15 A. I'm Samantha Crosby used to be Albert, got married
16 Crosby. I'm 49 years old, live in Somerville.

17 Q. Have you ever testified in jury trial before?

18 A. I have not.

19 Q. Nervous?

20 A. Little bit.

21 Q. Where are you from originally?

22 A. Fort Lauderdale, Florida.

23 Q. And when did you move to Charleston area?

24 A. 2012.

25 Q. And we've seen some videos of you reporting that

1 you were the Samantha Albert that was working as bartender at
2 Dunleavy's on that day in question?

3 A. That's correct.

4 Q. Tell the jury a little bit on your relationship
5 with BJ. When did you meet?

6 A. I met BJ on March 31, 2017. He had come into the
7 bar. I had never seen him before. Seemed nice, started
8 talking to him continued. I wasn't really dating anybody.
9 My mom was sick with glioblastoma. So I started -- he was
10 very nice and I started, needed some companionship and
11 talking and continued to date him.

12 Q. And so that you met him and you all started
13 dating?

14 A. Correct.

15 Q. And you eventually moved in together?

16 A. We moved in together in August of 2017 after my
17 mother had passed away in July of 2017.

18 Q. And you have since gotten married?

19 A. We did. We got married in December of 2019.

20 Q. And he -- does BJ have a daughter?

21 A. He does.

22 Q. And what's your relationship and interaction with
23 Zoe?

24 A. I'm very close with Zoe. When I met him, she was
25 four. Her mom was going or had begun nursing school and so

1 BJ and I had taken on a majority of the responsibility was
2 Zoe at the time. I was bartending two nights a week and BJ
3 was working full time, so it was her and I most of the time.

4 Q. And what do you do for the living company?

5 A. Currently, I own a business called Garage Floor
6 Express. We do epoxy-type flooring and BJ and I are out
7 selling.

8 Q. And how long have you all been doing that?

9 A. We have been doing that almost three years now.
10 Both of us were working other jobs when we started this
11 company before we were able to detach from those jobs and do
12 this full-time.

13 Q. But when this incident happened October of 2018,
14 you and BJ were dating?

15 A. We were dating.

16 Q. What was his physical health at that point?

17 A. So I'm nine years older than him. He was 33 at
18 the time, young, in shape, up at the crack of dawn on
19 Saturday mornings. Very active. It was hard for me to keep
20 up.

21 Q. Do you have -- I mean, again, you have daily
22 observations (inaudible)?

23 A. He was constantly either working on his
24 motorcycle, working on cars, working in the yard, doing
25 things around the house. Again, it was hard for me to keep

1 up with him.

2 Q. Did you ever hear a complaint about right or left
3 shoulder pain?

4 A. He didn't have any ailments when I met him. He,
5 like I said, was 33 young, in great shape. Much more
6 muscular than he is now. Just constantly active.

7 Q. Any back issues?

8 A. None.

9 Q. All right. At the time, you were working at
10 Dunleavy's a couple nights a week?

11 A. Yes.

12 Q. What was your job at Dunleavy's?

13 A. So I was a bartender there.

14 Q. And we've heard a lot about it that you filed
15 (inaudible). Tell the jury about Dunleavy's.

16 A. So Dunleavy's is just this very small
17 hole-in-the-wall, Irish pub, family oriented, the customers
18 that come in daily, in fact, ones that were regulars and
19 passed away, they have name plates of their names on the bar.
20 People that were just very -- you got to know them. When my
21 mom was sick, they were very caring to me, always checking on
22 me. I just developed a lot of good relationships there.

23 Q. Pretty chill environment?

24 A. Very chill.

25 Q. Okay. And describe -- I said this has been talked

1 about. Describe the -- the entrance there to Dunleavy's.

2 A. So there's a front entrance, which is right on the
3 main road and then there's a side entrance that runs down the
4 side of a one-way street. So it's got a side door, parallel
5 parking, and then a one-way street headed towards the ocean.

6 Q. And I can use the word old school. Would you
7 describe Dunleavy's as old school?

8 A. Very old school. Everything is handwritten.
9 There's no computers. Old fashioned cash register.

10 Q. And marked as an exhibit, Exhibit 1, but jury has
11 this back there. Is this what we're dealing with? You've
12 got a -- a old top, notepad and like a waiter register?

13 A. Old -- old checks. Correct.

14 MR. MCCULLOUGH: Your Honor, can I publish (inaudible).

15 THE COURT: Yes, please.

16 BY MR. MCCULLOUGH:

17 Q. And this is the -- the receipt from Mr. Bowman
18 that night?

19 A. That is the receipt from the cash register after
20 the check was rung up.

21 Q. All right. So it looks like there's a receipt
22 from the cash register behind that --

23 A. Is the handwritten check. Correct.

24 Q. (Inaudible).

25 A. Sorry.

1 Q. What is it? What's behind that?

2 A. The handwritten check.

3 Q. Okay. And that -- that's what was happening that
4 -- on October 5, 2018, that's how you were keeping tabs on
5 that?

6 A. Yes.

7 Q. Okay. All right. Let's get back to that night.
8 Do you remember what night was or that -- that day?

9 A. It was a Friday night.

10 Q. And what were your -- your job that night?

11 A. I was bartending our restaurant the owner or
12 general manager Jamie Maher. He would leave once our kitchen
13 closed at 10:00 at night and the bartender is left to
14 basically handle all situations until closing.

15 Q. So what time did you have gotten there?

16 A. That, I can't recall our shift either started at
17 5:00 or 6:00.

18 Q. Who was there when you got there?

19 A. When I got there, Savannah Rippy was working
20 serving for that night. Rhonda Clemens, who was another
21 server, she had been working the day shift that day, so she
22 would've been preparing to go home.

23 Q. So Savannah, the nursing student -- I mean the
24 dental student as we saw on video, she was a server that
25 night?

1 A. Correct.

2 Q. And then Rhonda had worked during the day shift
3 was basically going home?

4 A. Correct.

5 Q. All right. And Jamie would've worked in
6 (inaudible)?

7 A. Correct.

8 Q. Describe -- well, how many bartenders were
9 working?

10 A. One.

11 Q. You?

12 A. Yes.

13 Q. And that's the totality of the people that were
14 working that night?

15 A. Correct.

16 Q. All right. So describe to the jury that night.
17 Tell, you know, starting at -- at 7:00, 8:00, 9:00, what was
18 the environment at Dunleavy's Pub?

19 A. So one of Danny McBride, who lives on the island,
20 Danny was having a birthday party for his wife there. And we
21 knew. We -- my boss told me when I got there that they would
22 be having this birthday party. It was packed wall-to-wall
23 packed. Savannah was serving, Rhonda was getting ready to
24 get off work from her serving shift, but noticed how many
25 people were there and didn't want to leave me. So she stayed

1 and helped me out bartending. Between her and I, we were so
2 busy that I couldn't even get to refill or restock my
3 supplies. My beer coolers had run out of beer. I had no
4 more cold beer. I had boxes built up that I had never got to
5 take out from when I had first got there. There was just a
6 lot going on.

7 Q. So kind of like barback you -- you needed somebody
8 to -- to -- to help you kind of keep the back of bar --

9 A. Terribly. Yes.

10 Q. All right. So as a result, did you reach out to
11 the BJ and ask for help?

12 A. I did.

13 Q. All right. Tell the jury about that.

14 A. I called him and I said, "I'm in a bind. I have
15 no cold beer. I have a full house. Luckily I have Savannah
16 serving and Rhonda has stayed to help, but I need help
17 getting -- restocking my supplies. Can you please come and
18 just help me out for a bit?"

19 Q. And did he and his brother who he happened to be
20 with, showed up?

21 A. Yes.

22 Q. All right. And what did they do? What did -- did
23 his brother help?

24 A. No.

25 Q. What did BJ do?

1 A. So he asked me when he got there what he could do.
2 And if you go in Dunleavy's, there's -- there's not a lot of
3 space, there's no storage or anything. So all of our beers
4 lined up against a wall leading into the bar. He went over
5 there and I had said to him, I need this, this, and this.
6 And he got all those beer cases, brought them to the back of
7 the bar, restocked my bar, took out my boxes. And at that
8 point I was -- felt better.

9 Q. Okay. What time approximately did he and his
10 brother (inaudible)?

11 A. Somewhere between 10:00 and 10:30.

12 Q. And was he drinking or was he helping you -- BJ?

13 A. When he got there?

14 Q. Yes.

15 A. He was not drinking when he got there because as
16 soon as he got there I needed immediate assistance. When he
17 finished he ordered a beer.

18 Q. All right. And did you get him the beer?

19 A. I did.

20 Q. All right. And then walk the jury through the
21 jury. So around 10:00, 10:30 bar's still kind of chaotic?

22 A. Very.

23 Q. And BJ comes, helps your barback stuff?

24 A. Yes.

25 Q. All right. Walk the jury kind of going forward

1 time wise, up until 11:30, 11:45. Does the bar eventually
2 start to slow down?

3 A. Not really.

4 Q. Okay. And are you -- tell -- walk the jury
5 through, not chronologically what happened?

6 A. So after he finished and stocked my beer and took
7 out my boxes there seemed to be a little bit of a hiatus for
8 a minute. So I said to Rhonda, I'm going to go run our
9 towels out to the laundry and kind of just try to get caught
10 up. So I walked out back to throw those in the laundry and I
11 saw BJ smoking a cigarette. So I walked over to him and was
12 talking to him for a minute. At that point, Mr. Bowman and
13 his wife were on -- okay.

14 Q. I'm going to stop you there.

15 A. Okay.

16 Q. So this is around what time?

17 A. 11:30.

18 Q. Okay. So let's pretend this is Dunleavy's. Okay?

19 A. Yes.

20 Q. Beach is that way. And the front door. That door
21 right there.

22 A. Okay.

23 Q. Okay. So the bar, Dunleavy's will the be back of
24 your counter?

25 A. Correct.

1 Q. So you walk into the front door, there's a long
2 side table on the right, directly to the front?

3 A. Right.

4 Q. And then there's a side entrance out on my left.

5 A. Correct.

6 Q. I would walk out and there's a one-way street
7 right here heading to the beach?

8 A. Correct.

9 Q. All right. So where -- how did you get the
10 laundry? Where's the laundry?

11 A. So I went -- the laundry is behind the building.

12 Q. Towards the beach?

13 A. Towards the beach.

14 Q. Behind you?

15 A. Correct.

16 Q. All right.

17 A. I took my stuff from inside the restaurant through
18 the back door, out the back to the laundry.

19 Q. And then did you walk around that one-way street
20 back towards the side entrance?

21 A. I did walk that way.

22 Q. Okay. And you saw BJ (inaudible) said that --
23 that's exactly?

24 A. Correct.

25 Q. 11:30, 11:45?

1 A. Yes.

2 Q. All right. Let's stop there.

3 A. Okay.

4 Q. Let's rewind to earlier that evening. Did
5 Mr. Bowman and his wife Melissa Britton come to Dunleavy's?

6 A. They did.

7 Q. Walk the jury through the recollection of their
8 arrival and what transpired.

9 A. So they got there and came in through the side
10 door on the one-way street and he came to the bar.

11 Q. Who is he?

12 A. Mr. Bowman came to the bar, he came to the corner
13 of the bar, which would be right where the side door is. And
14 he walked up with a girl named Katie who was a bartender over
15 at Home Team and he ordered a shot of tequila for him and
16 her. And then he did get a couple other drinks. I -- I
17 don't recall exactly what drink that was.

18 Q. Now, we've seen Exhibit 1. How did -- walk the
19 jury through the process of you starting the tab?

20 A. So you just get one of the tickets and at the top
21 left hand corner, typically if you knew the person, you would
22 write their name up there and you would just start a tab with
23 like, what beer they drank and you'd do the old-fashioned
24 system, the four lines cross through it, five, keeping up
25 with how many drinks they had.

1 Q. So when they arrived, Mr. Bowman, did two shots
2 with one -- three and one beer down the street and two other
3 drinks?

4 A. Yes.

5 Q. All right. And then thereafter this Mr. Bowman
6 continued to stay in Dunleavy's and continued to continue to
7 order alcohol, put drinks from (inaudible)?

8 A. Correct.

9 Q. All right. Did you -- at that time, that night,
10 did you know Mr. Bowman?

11 A. I did not know his name. I had only interacted
12 with him one other time prior to that.

13 Q. All right. Describe to the jury one prior
14 interaction with Eric Bowman prior to that night.

15 A. It had been probably six or seven months prior to
16 this happening. So Dunleavy's is very old school. People
17 have been coming there for years. I had a guy in there who
18 lived out on the island and I saw him daily. Every day that
19 I worked I would see him and he was older, he was in his 70s
20 and he had at one point in time worked for the Steve Miller
21 Band and he was very proud of that and made sure everybody
22 knew who he was.

23 He was sitting at the bar one night and we were slow
24 and he was sitting right in front of where my sink was. I
25 was washing dishes. Mr. Bowman and one of his friends had

1 come in to the bar and I had served them and they were
2 talking and somehow or another started interacting with this
3 local, well they were talking about on Daniel Island, a music
4 venue. And somehow got into the discussion of him working
5 for the Steve Miller Band. Well, Mr. Bowman, and his friend
6 started needling him, I guess is the right way to say and
7 kind of just agitating him. And at one point I said to them,
8 "You -- you have to stop."

9 So they did for a second, but the conversation
10 continued and you could see them both kind of moving in
11 closer on him, kind of just agitating him and egging him on.
12 And he was getting angry. The old man was. And I finally
13 told them, "If you don't stop, you have to go, you have to
14 leave." And it didn't stop. I said, "It's just best that
15 you go now at this point." I -- I didn't know him. I didn't
16 know his name. I just asked him to leave and he did.

17 Q. That's the only prior time that you recall seeing
18 Eric Bowman and the only time you ever recall him being at
19 Dunleavy's?

20 A. Ever.

21 Q. There's been a lot of talk about it. First of
22 all, the tab was \$124. Right?

23 A. Correct.

24 Q. And -- and you served Mr. Bowman his first couple
25 of drinks and continued to serve them drinks and mark it

1 down?

2 A. Correct.

3 Q. What happened? What was your understanding what
4 happened when somebody just walked out on their tab without
5 paying?

6 A. So if somebody left on a tab, if it was somebody
7 that came in daily, as I said, we had customers that came in
8 every single day. If it was somebody that I knew by name and
9 I saw them every day, they have forgotten to pay before or
10 forgotten their wallet and they would come back the next day
11 and pay me. For people that I didn't know, it was always my
12 understanding that if they didn't pay and you didn't know who
13 they were, that you were responsible for the tab.

14 Q. All right. Fast forward, we're back now 11:30,
15 11:45 (inaudible) BJ (inaudible) we came back that time.
16 Walk the jury through what happened.

17 A. So I'm standing on the side of the building, BJ's
18 smoking a cigarette standing next to me. And Mr. Bowman and
19 his wife were going to leave. They were on their golf cart
20 getting ready to leave or inching their way to leave. And I
21 said, "You got to go back and pay your tab before you go."
22 He said, "I'm going to Home Team, I'll pay it later." And I
23 said, "No, no, no, I need you to come back and pay your tab
24 before you leave."

25 So he told me at that point that he was going to call

1 the police. And I said, "I -- I think that would be great
2 because they're going to tell you to come pay your tab before
3 you leave." At that point, Mr. Crosby, my husband, boyfriend
4 at the time, kind of stepped over in front of the golf cart
5 and said -- and it was actually kind of comical, was like,
6 "You can't go get a steak dinner and pay later. You got to
7 go in and pay your tab."

8 That was the extent of any conversation. At that
9 point, Mr. Bowman told his wife to get off the golf cart and
10 ran into BJ. He kind of went backwards, lost his footing.
11 As he was coming to up on his feet, Mr. Bowman slammed on his
12 gas and ran into him at full speed a second time. I couldn't
13 believe what I was watching. I -- I've never witnessed
14 anything like this before, let alone I had just lost my mom a
15 year prior. This was the person in my life and here I'm
16 watching him get run over like, I'm going to lose him too. I
17 just couldn't believe what I was -- it was in -- it -- you
18 just can't believe what you're seeing is really what it is.
19 You are in shock.

20 Q. (Inaudible) idea. This is the side entrance. You
21 asked him to pay his tab?

22 A. Yes.

23 Q. He says he's calling the cops. He's calling the
24 cops?

25 A. Yes.

1 Q. And then he tells Ms. Britton to exit the golf
2 cart?

3 A. Correct.

4 Q. And she exits (inaudible) walks into the pub?

5 A. Yes.

6 Q. Did you threaten Mr. Bowman? Did you threaten
7 Mr. Bowman?

8 A. No.

9 Q. Did you assault Mr. Bowman?

10 A. No.

11 Q. Did you arrest Mr. Bowman?

12 A. No.

13 Q. Did you falsely imprison Mr. Bowman?

14 A. No.

15 Q. Was he a heck of a lot bigger than you and
16 BJ Crosby.

17 A. Put together? Yes.

18 Q. Did BJ threaten Eric Bowman?

19 A. No.

20 Q. Did BJ assault Eric Bowman?

21 A. No.

22 Q. Did BJ lay a finger on Eric Bowman?

23 A. No.

24 Q. Did BJ have a citizen arrest or falsely imprisoned
25 Eric Bowman?

1 A. No.

2 Q. Did Eric Bowman back his golf cart up?

3 A. Yes.

4 Q. Could Eric Bowman have driven around BJ Crosby
5 after he backed his golf cart?

6 A. Yes.

7 Q. Is there an entire roadway there to avoid
8 BJ Crosby?

9 A. There was and there were no cars parked on the
10 parallel parking spots either.

11 Q. Could he have called on 911 to get assistance?

12 A. Yes.

13 Q. Could he have exited the golf cart and walked in
14 after his wife to Dunleavy's?

15 A. Yes.

16 Q. Could he have said, "Hey, my name is Eric Bowman.
17 I live right down the street. I don't have a credit card
18 right now, but here's my cell phone number. Please tell Bill
19 Dunleavy, I'll come back tomorrow and pay?"

20 A. Absolutely.

21 Q. And what would you have done?

22 A. Said okay.

23 Q. Instead -- walk the jury through exactly what
24 happened, what he did instead, Eric Bowman.

25 A. Instead he told his wife to get off the golf cart,

1 hit BJ once, as BJ came to, he floored it and hit him at full
2 speed a second time.

3 Q. And then what happened to BJ's body on the second
4 run time?

5 A. His hands were all bloody from where he had put
6 his hands up to block the brake of the glass in his face. He
7 went backwards, his elbow hit the back, the asphalt. His
8 left leg, I believe it was, was all scraped up from where the
9 bumper had hit him. It was just very shocking. A lot of
10 adrenaline, like -- like I said, you just can't believe what
11 you've just seen happen.

12 Q. Did several bystanders try to stop them from
13 fleeing the scene?

14 A. They did.

15 Q. And what happened?

16 A. Two of my regulars that came in ran after him.

17 Q. Did Mr. Bowman get away?

18 A. They got to the end of the street and I obviously
19 don't know what happened down there because it was dark. I
20 couldn't see. But yes, he did leave and get away.

21 Q. Who was the aggressor in this circumstance?

22 A. Mr. Bowman.

23 Q. Did BJ do anything that can take (inaudible)?

24 A. Mr. -- or, I'm sorry, BJ doesn't even raise his
25 voice. No.

1 Q. Is he a violent guy?

2 A. Not at all. Not even close.

3 Q. In your experience, has he been -- is he an
4 aggressive guy?

5 A. No.

6 Q. Did the second impact of the golf cart after
7 Mr. Bowman slammed into BJ for a second time, would that
8 shatter the windshield from BJ's body hitting the golf cart?

9 A. Yes.

10 Q. And again, at that point, did BJ ever lay a finger
11 on Mr. Bowman?

12 A. No.

13 Q. Did BJ ever punch the golf cart?

14 A. No.

15 Q. Did BJ kick the golf cart?

16 A. No.

17 Q. Did BJ wear any flip flops at the time?

18 A. He was.

19 Q. Did BJ climb on top of the golf cart?

20 A. No.

21 Q. Was there any impact or (inaudible) that golf cart
22 other than the two times Eric Bowman ran into him
23 intentionally, and violently into BJ Crosby?

24 A. No.

25 Q. All right. You listened to the 911 call earlier.

1 Right?

2 A. Yes -- yes.

3 Q. You seem extremely spun up.

4 A. Yes.

5 Q. All right. Why?

6 A. As I said, I couldn't believe what I just saw, let
7 alone the person I loved run over full speed twice with a
8 golf cart, with a low speed vehicle. I had never witnessed
9 that. I couldn't believe what I was seeing.

10 Q. Did the police arrive?

11 A. They did.

12 Q. And were they there for over an hour?

13 A. They were.

14 Q. And did you provide (inaudible) information you
15 could?

16 A. I did.

17 Q. Did anybody talking -- did you observe them
18 talking to Ms. Britton?

19 A. I did.

20 Q. Was she helping with that?

21 A. No.

22 Q. In what way?

23 A. They kept asking her what her husband's name was
24 and she would not give them that information. They kept
25 asking her, "Take us to your house so we can talk to them."

1 And she wouldn't. At one point they actually put her in the
2 police car and had considered arresting her for not giving
3 the information and impending on what was going on. That was
4 all I witnessed.

5 Q. And again, did Mr. Bowman -- you heard him say
6 that he was concerned that Ms. Britton had been kidnaped, in
7 fact, Ms. Britton was wandering around the bar when the
8 police arrived?

9 A. She was.

10 Q. And again, did he ever reappear to check on his
11 wife?

12 A. Never saw him again.

13 Q. All right. Let's go back to the scene. What was
14 happening with BJ?

15 A. At that point?

16 Q. Yes, ma'am.

17 A. He had all these scrapes and was bleeding and when
18 the police came -- a first responder came and his blood
19 pressure was ridiculously high. So of course we were worried
20 of any kind of stroke, heart attack. So he went with the
21 ambulance and went to the hospital.

22 Q. And you believe that they -- they digged glass out
23 of his palms to examine?

24 A. They did.

25 Q. And ultimately, early morning the next day was he

1 discharged?

2 A. He was.

3 Q. And you all made a witness statement?

4 A. I'm sorry?

5 Q. You went to the police and provided a witness
6 statement?

7 A. We did.

8 Q. Walk the jury through BJ's physically, which you
9 observed physically, other than the next day you --

10 A. So the next day he could still feel glass in his
11 hands. So he went to like an express doctor and they pulled
12 out some more glass. Once he was relaxed, after this
13 happened and the adrenaline had kind of wore off, he started
14 realizing he was hurt. And at that point is when we started
15 investigating how bad are we -- how bad are you hurt?

16 Q. And where was he complaining? What was hurting?

17 A. Say it?

18 Q. What -- what was hurting?

19 A. His shoulders and his back.

20 Q. And did those - those -- both shoulders?

21 A. Both shoulders.

22 Q. And his lower back?

23 A. And lower back.

24 Q. And, again, had complained about shoulder issues,
25 the back issues in the time period that you had ever known

1 him?

2 A. Never.

3 Q. And did his condition continue to worsen?

4 A. It did.

5 Q. All right. You heard two lengthy video depositions, I'm
6 sure were stimulating.

7 A. Yes.

8 Q. Did you participate in BJ's -- in the doctor
9 visits and the two terms and all that kind of stuff?

10 A. I did. I went to every doctor visit.

11 Q. And it looked like it was about year and a half of
12 frankly being an active patient?

13 A. Correct.

14 Q. Three injuries, multiple rounds of physical
15 therapy. Is that -- that right?

16 A. Correct.

17 Q. So when (inaudible) are pulling bicep out of BJ
18 and (inaudible) up here, describe what that's like for
19 somebody which he lives with.

20 A. Basically doing everything. He had to go by
21 whatever the rules were with lifting. He could only lift so
22 much. Obviously, after he had the surgery, he couldn't lift
23 at all. So I was having to do everything we lived at the
24 time in a two-story house. Anything that had to be carried
25 from upstairs, downstairs, I had to take care of yard stuff

1 that he typically would do. I would do it.

2 If it wasn't something I could do, then I would have to
3 hire somebody to come and do it. Groceries -- bringing
4 groceries in, couldn't help me do that. Our daughter was
5 young at the time. She couldn't really assist that much. So
6 everything was kind of left for me to do.

7 Q. And as we're sitting here today, is BJ Crosby the
8 same physical person as he was prior to being ran over?

9 A. Not at all.

10 Q. (Inaudible).

11 A. As I said before, he was just always very, very
12 active. He loved to ride motorcycles. We ended up selling
13 it because he couldn't ride anymore. Always working on the
14 car, loved working in the yard, couldn't do any of that. One
15 of the big things was being on the riding lawnmower with Zoe,
16 with our daughter. She loved that he couldn't do that
17 anymore.

18 Q. How has this impacted your -- and again, this is
19 only your observation, what has this done to him emotionally?

20 A. So when this happened, Zoe was six years old and
21 her and her dad were very close. As I said, she was with us
22 most of the time. We-- all three of us were very close and
23 very bonded. And the biggest part is him not being able to
24 do things with her, which upsets him. And he's not one to
25 cry in front of -- especially in front of Zoe.

1 So numerous times after she would go to bed, I would
2 spend time with him while he just unloaded and cried. "And
3 I'm -- I'm sorry, I'm not the man I used to be. I'm sorry, I
4 can't do this to help you. I'm sorry that you're having to
5 take care of me. I'm -- I'm sorry that I can't help my
6 child." Just things that he had not ever experienced. And
7 neither had I.

8 Q. Has it impacted his relationship with the
9 (inaudible)?

10 A. Absolutely. So one of the things that we all used
11 to do is they did it prior to me coming along, but we
12 continued until this happened is we would go to the fair
13 every year. We would pick one day and BJ and Zoe and I would
14 go to the fair from the time it opened till the time it
15 closed. And once this happened, he could no longer ride
16 rides with her. And like I said, she was six, she didn't
17 understand.

18 So I would ride rides with her. I would have to do
19 everything with her. When she was six years old on her
20 birthday, prior to this happening, her birthday was in May
21 and this happened in October. She got a hover board for her
22 birthday and BJ had bought a hover board as well so that he
23 could go out and ride with her and teach her how to ride it.
24 And that was no more.

25 So she kind of lost interest in that because that was

1 something that they would do together. She was in karate at
2 seven years old. She had been in it for a couple years and
3 once she -- he couldn't practice with her and stuff, she lost
4 interest in it. She didn't want to do it anymore. When she
5 was eight, she got a trampoline for Christmas from her
6 grandmother. BJ couldn't put it together, so I had to get my
7 nephew to come over and put that together.

8 BJ was really upset over it because it's a big gift for
9 an 8-year-old. When she was nine, she got a basketball goal.
10 Again, he couldn't put it together. We didn't want to deny
11 her these things. We had to figure out a way to put these
12 things together and get somebody to help us. When she was
13 eight, she had a roller-skating party. He couldn't roller
14 skate with her when she was nine, she had a bowling party.
15 He couldn't bowl with her. She -- the earlier times, 6, 7, 8
16 years old, she would get very emotional.

17 She wanted her dad to do these things with her. But as
18 she's gotten older and she's 12 now. Now, her biggest
19 question is why would somebody do this to my dad? She
20 understands. She still gets frustrated. We took her to the
21 water park last week. "Dad, please ride a slide with me."
22 "I can't." She knows that, but she's never going to stop
23 asking him to do it with her because she wants her dad to
24 participate.

25 Q. Has it impacted your relationship with BJ?

1 A. It has. It's hard to watch the person you love
2 hurt and cry and be in his 30s and not be able to do the
3 things he loves to do. It's -- it -- it hurts me to see
4 that.

5 Q. All right. You are a Plaintiff in this case as
6 well, is that right?

7 A. Yes.

8 Q. And you are suing Mr. Bowman for intentional
9 infliction of emotional distress?

10 A. Correct.

11 Q. All right. Let's start with that 911 call.

12 A. Yes.

13 Q. And the immediate aftermath -- first of all, were
14 you standing right there on this mountain?

15 A. I was.

16 Q. What was your initial reaction to seeing BJ
17 violently struck not once, but twice?

18 A. Oh, my God. I just watched a human being get run
19 over. I can't believe what I'm seeing.

20 Q. Is there any way to consider anything that
21 happened other than the fact that Mr. Bowman intentionally
22 ran into BJ or not?

23 A. No.

24 Q. Did it cause you severe emotional distress?

25 A. It did.

1 Q. How so?

2 A. Still don't like golf carts. Don't look at it
3 like a golf cart. Watched it run over somebody. I feel like
4 whenever I see somebody get too close to me or too close to
5 somebody else, I'm -- with a vehicle or a -- a golf cart or
6 I'm afraid they're going to run over them, I don't think
7 they're going to stop. I just still sit there and think
8 about this happening and still cannot believe where we're at
9 now. And his limitations at his age and limitations with our
10 daughter, I -- I can't believe that somebody intentionally
11 ran a low speed vehicle into him.

12 Q. Do you consider his actions to be extremely
13 elevated?

14 A. Whose?

15 Q. Mr. Bowman's.

16 A. Yes, I do.

17 MR. MCCULLOUGH: Thank you. That's all I got. Answer
18 any questions (inaudible).

19 CROSS-EXAMINATION

20 BY MR. TURNER:

21 Q. Samantha, do you remember us taking your
22 deposition back in May of 2022?

23 A. I do.

24 Q. Okay. At the time of this incident, you -- and
25 just be clear, you were not married to BJ, correct?

1 A. Correct.

2 Q. You all got married like a couple months after
3 this incident, correct?

4 A. No, we got married a year later or a year -- year
5 and a half. Yeah.

6 Q. Okay. And you were not struck by the golf cart.
7 Correct?

8 A. I was not.

9 Q. You didn't suffer from any type of physical
10 injury. Correct?

11 A. Not physical.

12 Q. Mr. Bowman never threatened you in any way,
13 correct?

14 A. Not me.

15 Q. And not you, right?

16 A. Correct.

17 Q. All right. And you were never in fear of physical
18 harm for yourself. Correct?

19 A. I was not.

20 Q. Thank you. And you never sought any type of
21 medical treatment for mental anguish or emotional stress.
22 Correct?

23 A. I did not.

24 Q. Okay. You didn't charge BJ for any drinks while
25 he was at Dunleavy's, did you?

1 A. That particular night?

2 Q. That particular night. Yes. Right.

3 A. He had just opened -- I had just opened his first
4 beer.

5 Q. Would you normally charge him for -- if he had a
6 -- a drink at Dunleavy's?

7 A. If I did not charge him, I always had my own tab
8 behind the bar for drinks that I would get for customers
9 appreciation.

10 Q. And on that subject of tab, if you didn't know
11 Eric, how did you open the tab? You didn't know his name.
12 How did you open the tab for him? If you didn't know his
13 name, you just put on their question mark and the tab. How
14 did you identify him? You allowed him to open the tab.
15 How'd you identify him?

16 A. So at the top of that slip it says, "T-bag." And
17 I referred to him as a tool bag because he had already been
18 in and accosted one of my other customers.

19 Q. You don't even know what you gave him?

20 A. That was it.

21 Q. T-bags?

22 A. Correct.

23 Q. Okay. And individuals that would walk out on the
24 bill, they -- this what -- people would walk out to their
25 vehicle while you work that (inaudible). Correct?

1 A. They had.

2 Q. Okay. And individuals that were on the island
3 that had lived on the island had (inaudible). Correct?

4 A. People that I knew.

5 Q. Okay. But people you know less that lived on the
6 Island had (inaudible). Correct?

7 A. There were some that I knew that had walked out
8 that did live on the island.

9 Q. Okay. And some come back on the next day and pay
10 their tab?

11 A. Correct.

12 Q. All right. Did we talk (inaudible), if somebody
13 drove a golf cart up there, you'd probably assume that that
14 person likely to live on Sullivan's Island (inaudible)?

15 A. I don't assume that. How would I know that?

16 MR. TURNER: Well, we can -- we can go ahead to that
17 (inaudible).

18 THE COURT: Okay. We'll just mark it as Court Exhibit.

19 BY MR. TURNER:

20 Q. Okay. Ms. Samantha, I'm going to hand you your
21 deposition and I realize you don't recall it (inaudible).

22 A. I'm sorry, I didn't hear it.

23 Q. No, it's okay. Flip to -- I think it's page --
24 page number -- right -- the top right hand corner, you'll
25 flip to page 31. And if you'll look at -- starting at line

1 15, you see (inaudible). Yeah. I realize maybe confusing.

2 A. Line 15. Yes.

3 Q. Yes. Okay. And that says. "Okay. And generally
4 when somebody takes a golf cart, probably be correct to live
5 there, they stay local?" And your answer was, "Correct." Is
6 that -- is that right?

7 A. Yes. But you --

8 Q. Does that help refresh your recollection about
9 what you stated during your deposition?

10 A. It does.

11 Q. Okay. So you acknowledged that an individual that
12 drove the golf cart up there likely to live on the island
13 (inaudible)?

14 A. Could have been Isle of Palms.

15 Q. Okay. For that particular question was about
16 Dunleavy's and living on the Island. Oh, you're saying
17 living (inaudible).

18 A. Correct.

19 Q. Give a photo away.

20 A. Correct.

21 Q. (Inaudible). And you testified that you only
22 served Mr. Crosby one (inaudible) I'm going right here. You
23 -- you testified he only served BJ one beer, right?

24 A. Correct.

25 Q. All right. And the tab for Eric was \$124?

1 A. Correct.

2 Q. And drinks are about four to six a piece?

3 A. Correct.

4 Q. And there were multiple people on Eric's -- or you
5 call him T-bag's tab, correct?

6 A. He was the only one ordering drinks.

7 Q. Okay. But there was multiple people getting
8 drinks all there?

9 A. No, I wouldn't know how to find the tab for him.

10 Q. I could be totally missing, but you said a female
11 walked to the bar earlier and had a drink and got a tequila
12 drink with him.

13 A. Mr. Bowman said to put it on his tab.

14 Q. Okay. All right. So there were multiple people
15 on his tab.

16 A. That was the only person that he said, "Put that
17 drink on my tab."

18 Q. But you testified also to that (inaudible) and
19 Melissa were both drinking there that night. Correct?

20 A. Okay. So Melissa. Yes.

21 Q. Okay. All right. And you testified Melissa and
22 Eric were both intoxicated too, correct?

23 A. They were.

24 Q. Okay. But you continued to serve them anyway,
25 correct?

1 A. I did.

2 Q. Okay. And you got training on serving intoxicated
3 people, right?

4 A. I do.

5 Q. All right. And you broke that protocol serving
6 them anyway, right?

7 A. They were not falling over drunk. They were not
8 at a -- at a point that I didn't serve them. I did serve
9 them.

10 Q. Okay. And if you flip to page (inaudible) refresh
11 your recollection on that issue? If you look at line 12 to
12 17. I'll give you a chance to read it over.

13 A. Okay.

14 Q. All right. Does that do -- does that say that you
15 served them on protocol based on your training?

16 A. It does.

17 Q. Okay. So you'll get them drinks based on your
18 training program?

19 A. I did.

20 Q. Okay. And -- and you testified again at the
21 deposition that BJ did step in front of the golf cart,
22 correct?

23 A. He did.

24 Q. Okay. And he'd done that of his own accord.
25 Correct?

1 A. He did.

2 Q. And you were able to actually talk to Melissa and
3 Eric from the side of the golf cart. Correct?

4 A. Correct.

5 Q. And I believe you testified that is the only way
6 the golf cart could move forward was -- if he moved forward,
7 the only way for it go was to go forward, correct? That if
8 it went back could strike somebody else (inaudible)?

9 A. There was nobody behind him.

10 Q. Okay. There were people in that area behind him,
11 correct?

12 A. There were people in the area not behind him.

13 Q. Okay. At -- but you testified here that would put
14 in reversal the (inaudible), right?

15 A. I don't recall.

16 Q. Okay. Let's refresh your recollection. Look at
17 page 46, you look at line 21 to 24.

18 A. Okay.

19 Q. Okay. And that states that Eric would've --

20 A. It does.

21 Q. -- (inaudible) warrant, right?

22 A. It says that I said that. Yes.

23 Q. Okay. And I thought -- I believe you testified
24 there were two men who actually chased Eric down the road,
25 right?

1 A. They did.

2 Q. Okay. And I think you heard Eric actually called
3 911 at the time did you?

4 A. He did.

5 Q. Okay. When you first called 911, you -- you
6 referred to BJ as somebody, correct?

7 A. Correct.

8 Q. BJ wasn't an employee at Dunleavy's. Correct?

9 A. He was not.

10 Q. Okay. He didn't have any type of authority from
11 anyone from other than yourself to stop or stop -- tell
12 anybody to pay a tab. Is that correct?

13 A. Correct.

14 Q. And I believe you testified -- actually BJ had
15 been in multiple -- he had been in other -- he had been in a '
16 motorcycle wreck before?

17 A. He had been in two motorcycle accidents prior.

18 Q. And one of them, you were actually (inaudible)?

19 A. Correct

20 Q. And you suffered some minor injuries?

21 A. Minor injuries.

22 MR. TURNER: Okay. That's all the question I have.
23 Thank you.

24 THE WITNESS: Thank you.

25 THE COURT: Any re-direct to this witness?

1 the courtroom. And we will see you back here in the morning.
2 And we are -- we will be in the home stretch at that point in
3 time. Have a good afternoon.

4 (Jury exits courtroom.)

5 THE COURT: All right. You all want to take a quick
6 break and come back or about five minutes? Let's do that.
7 Take a quick break and come back with motions and lots things
8 at that point in time. Okay?

9 MR. MCCULLOUGH: Thank you.

10 MR. TURNER: Thank you.

11 (Off the record.)

12 THE COURT: All right. Happy to hear -- entertain
13 motions at this state of the trial and (inaudible).

14 MR. MCCULLOUGH: Thank you, Your Honor. At this time
15 we would renew our motions related to directed verdict of
16 Mr. Bowman's claims. And I'll be brief, I know we talked a
17 lot about this, but just a couple of points with your -- with
18 Your Honor's permission.

19 THE COURT: Okay.

20 MR. MCCULLOUGH: First, obviously under rule 50 every
21 inference is given to the non-moving party. However, if the
22 evidence does not yield more than one inference or directed
23 verdict in favor of the moving party is proper here. The
24 combo platter of what actually has transpired in this
25 courtroom, plus the guilty plea and the collateral estoppel

1 thereof within bars, the Plaintiff's claims, I'm just going
2 to briefly read from two cases.

3 The first is Doby Doe which was the predecessor case to
4 the Zurcher case that we talked about previously. And this
5 is the case that actually was first in South Carolina -- and
6 I'm just going to read from it with the Court's permission,
7 "We now adopt the rule that once a person has been criminally
8 convicted, he is bound by that adjudication of a subsequent
9 civil proceeding based on the same facts underlying the
10 criminal conviction."

11 Goes on. "As a practical matter, to allow a party to
12 offensively invoke the collateral estoppel doctrine in this
13 situation, it must be shown the identical issue must have
14 necessarily been decided in the prior criminal action and be
15 decisive in the present civil action. And must also be shown
16 that the party precluded from relitigating the issue
17 appellant here must have had a full and fair opportunity to
18 contest the prior determination."

19 And then the case that we had talked about previously,
20 Zurcher takes that to expound upon. Your Honor, in this
21 case, obviously you took the guilty plea and so you were well
22 aware of the fact that he was well represented, had an
23 opportunity for a full and fair you know, proceeding and pled
24 guilty. So that together with what was the evidence, we
25 believe justifies a directed verdict on all of his causes of

1 action.

2 And just very briefly on the assault, he has to show
3 reasonable fear of bodily harm. He pled guilty to an
4 unlawful intentional violent act by running BJ over two
5 times. And so there can't be a reasonable fear of bodily
6 harm, if there is, and his actions wouldn't have been
7 unlawful. The battery he's already admitted that he
8 intentionally an unlawfully battered BJ Crosby and there's
9 been zero evidence in the record even Mr. Bowman never said
10 that BJ touched him in any manner. There is no battery.

11 Defamation, as I mentioned the other day he admitted in
12 the guilty plea that he walked out on the bar tab. And the
13 only testimony is that that was the defamatory comment, "Hey,
14 you hadn't paid your bar tab." Well, he admitted that's
15 true. And he's presented no damages associated with that.

16 On false imprisonment, there's been again, much like
17 the assault, there's no evidence that the -- the Defendant
18 was restrained. And if it was an unlawful restraint, then he
19 would've been justified in running BJ over and he said it was
20 unlawful when he ran him over. So he can't be justified, so
21 he can't have it both ways there. And on the applied --
22 excuse me, intentional infliction of emotional distress,
23 again, the conduct has to be extreme and outrageous.

24 And there's been no evidence of anything extreme and
25 outrageous that BJ did on that evening. And there again, if

1 it was, it would've allowed Mr. Bowman to act in a manner
2 that would not have then been unlawful. And he's admitted
3 unlawful contact -- conduct. And then finally, on the
4 malicious destruction of property, it's my understanding the
5 testimony is that all the -- the property destruction
6 occurred down the road.

7 The windshield shattered after he testified he hit his
8 forehead when he was throwing the second guy off. There's
9 been no evidence of any damage directly associated with
10 anything Mr. Crosby -- BJ Crosby did. So that's that. I'm
11 -- I would like to move affirmatively. On our causes of
12 action for assault and battery under the collateral estoppel
13 principles he can't have it both ways. He's already admitted
14 to the assault and battery, so we think we're entitled to a
15 directed verdict on our claims for assault and battery as
16 well.

17 THE COURT: Okay. Thank you.

18 MR. MCCULLOUGH: And -- and last thing, and I'll sit
19 down, Your Honor, based upon all that, it's our plan to
20 streamline our case significantly.

21 THE COURT: Okay.

22 MR. MCCULLOUGH: And -- and -- and --

23 THE COURT: Let's talk, is anybody going to give way to
24 any of these causes of action? Because I've heard we didn't
25 hear a couple come out, at least from the third party

1 Plaintiff. I don't know what we're left with there, and
2 let's talk about that too.

3 MR. COOK: Sure.

4 THE COURT: Anybody willingly withdrawing any of these
5 claims at this point in time? Not yet?

6 MR. COOK: Not yet for us.

7 THE COURT: All right. All right, well let's just let
8 Mr. Cook respond first before you go into that. Okay. Yes,
9 sir.

10 MR. COOK: Thank you. And, Your Honor, so we would
11 oppose, as the Plaintiff, we oppose motions for directed
12 verdict, and for the record, we would cross move for directed
13 verdict on our -- on our claims. Just to preserve the record
14 for appeal, the argument will be the same on both.

15 THE COURT: Okay.

16 MR. COOK: So let me start with the false imprisonment
17 claim. And as I said in the earlier argument against the
18 motion for directed verdict we don't dispute the -- what the
19 -- the holding of the Zurcher case, which is that a guilty
20 plea is the same thing as the conviction.

21 And in the previous no case, it said that a conviction
22 is -- has collateral estoppel effect. Neither of those cases
23 discuss the scope of what is precluded, but we have a
24 well-developed body of law on collateral estoppel. And it's
25 different than res judicata. Res judicata is claim

1 preclusion.

2 The whole claim as precluded collateral estoppel is
3 only binding as to those elements that were necessarily
4 decided in the previous adjudication. So the question of
5 whether Mr. Crosby falsely arrested or imprisoned Mr. Bowman
6 was never decided. It was not an element of the charge to
7 which he pleaded guilty. And -- and was not even -- was not
8 even discussed in the colloquy from the solicitor. And the
9 elements -- the elements of -- of false imprisonment are
10 clear.

11 You don't have to physically restrain somebody to
12 imprison them if you restrict their movement. And clearly
13 planting yourself deliberate -- deliberately in front of the
14 route of egress is restraining his -- restricting his -- his
15 access. There is no common law right to make a warrantless
16 citizen's arrest in South Carolina. The statute that we
17 cited previously, 17-13-10 and 17-13-20 says that he could
18 have been arrested only if -- if -- if a felony had occurred.

19 And the larceny statute and the innkeeper statute,
20 which is 45-1-50, and the larceny statute is 16-13-30, both
21 make it clear that at worst this would've been a misdemeanor
22 even if he had deliberately run out on the tab. And we now
23 have testimony of -- of Ms. Albert that Mr. Bowman did tell
24 her that he was going to come back and pay the tab later.
25 And so there's no evidence that they violated any of those

1 laws, let alone committed a felony.

2 So for that reason we would -- we would pose the motion
3 for directed verdict on false imprisonment and we move for
4 directed verdict on false imprisonment. Malicious
5 destruction of property. Again, that was not an element of
6 what occurred. What he pleaded guilty to. The -- the
7 testimony from Mr. Bowman was that -- was that Mr. Crosby did
8 punch at the windshield, did climb on top, did damage the
9 fender as he was coming off of the -- off of the -- the golf
10 cart.

11 So there's sufficient evidence to establish malicious
12 destruction of property, intentional infliction of emotional
13 distress. As I had argued previously, this is almost exactly
14 what Ford versus Hutson found, was intentional infliction of
15 emotional distress. And that is accosting somebody in public
16 and berating them in public that -- that is intentional
17 infliction of emotional distress.

18 Defamation, slander, loudly accusing them of stealing.
19 His -- his own admission was that he said, "You can't go
20 order a steak in a restaurant and leave without paying."
21 Clearly the implication to anybody listening was that -- that
22 they were breaking the law. And so that's slander. Now,
23 assault and battery.

24 He did plead guilty to assault and battery in the third
25 degree. But that does not negate the possibility that

1 Mr. Crosby also committed an assault. Just because he was
2 not charged with one doesn't mean that he wasn't civilly
3 guilty of assault and battery.

4 As you have heard numerous times, it has been a claim
5 -- it has been claimed that there were two assaults, the
6 first bumping with the golf cart, and then the second higher
7 speed sideswiping with the golf cart. It -- it wasn't
8 specified which of those he was pleading guilty to. And so
9 we actually have -- the jury can still consider whether the
10 first or the second assault was an assault on -- on
11 Mr. Bowman's part.

12 And correspondingly the jury -- the jury could find
13 both exist. They could find that -- that Mr. Crosby
14 assaulted Mr. Bowman and then that Mr. Bowman assaulted
15 Mr. Crosby. And that's within the realm of the facts that
16 were decided by the solicitor. So for those reasons, we
17 oppose the motion for directed verdict and we move for
18 directed verdict.

19 THE COURT: Okay.

20 MR. MCCULLOUGH: Very briefly. First of all, on the
21 false imprisonment, there's no evidence that any restraint
22 happened much less that it was unlawful. The police officer
23 testified that no, they didn't consider anything BJ had done
24 was unlawful.

25 As far as any sort of restraint, and I'll circle back

1 to it in the guilty plea, it is an unlawful intentional act
2 of battery on BJ on two separate occasions. And if his, if
3 Bowman's conduct was unlawful, then it bleeds away all of his
4 claims because if he's acted unlawfully, then these things
5 can't happen. So you can't have it both ways.

6 THE COURT: All right. Well, I think on Crosby's
7 claims of assault and battery, I do think collateral estoppel
8 prevents Mr. Bowman from chalking assault up to those claims.
9 So I grant your motion as to those claims, and I believe the
10 jury will be objective that, you know, he is liable to Mr.
11 Crosby on the assault and battery. The only issues left to
12 decide on those particular claims would be what amount of
13 damages, if any, are attributable to Mr. Bowman for the cause
14 of assault (inaudible) that these -- as to Crosby.

15 The rest of them, I think there's enough to survive.
16 Honestly, I think it's a jury issue. I think it's a
17 credibility issue. Doesn't take much. I appreciate you
18 quoting the rule and I -- I agree with the rule. I agree
19 with our case law. I don't get to have an opinion and I
20 don't have an opinion about the facts. I make the point not
21 to, and I know that sometimes we think things are ridiculous
22 however ridiculous we think they are.

23 Nonetheless, it's a jury question of how they see
24 things and ultimately even if testimony is untimed,
25 predictive you know doesn't render as credible to the jury

1 and they have every right to, you know, negate testimony.
2 Okay. In terms of the false imprisonment claim, which go
3 buddy, just for the record, you -- thorough, we got time
4 (inaudible).

5 On the false imprisonment claim, it's enough the jury
6 has a ballpark. I think it's subjective. I think once
7 again, it's a jury issue on whether or not in false
8 imprisonment the perspective that you take is the person who
9 felt falsely imprisoned and from the course of that
10 perspective we must take. And he felt he could -- he was not
11 free to go. And that's what -- what -- what we have to deal
12 with and what we live with. That's ridiculous. As it may
13 sound. Even though there were alternatives, again, that
14 becomes a jury question on reasonableness ultimately and what
15 was reasonable to do, if a reasonable person had felt that
16 they couldn't leave.

17 And that's a jury question. It's not come from direct
18 verdict form to the assault and battery again. There's some
19 testimony that in the record not only from Mr. Bowman and his
20 former (inaudible) written that there was some assault
21 certainly, and then on the battery got Mr. Bowman's testimony
22 about Mr. Crosby and hitting the golf cart, punching the area
23 around the golf cart, kicking it, I guess at some point in
24 time enough to (inaudible). I think that will make a jury
25 question.

1 The malicious destruction of property they got me
2 scratching my head on. Obviously, I deal with this in the
3 criminal court a lot. Yet you didn't set a proposed charge
4 on that particular cause of action. I noticed in your
5 request charges from the first party Plaintiff that quoted
6 the law on malicious destruction of real property. I assume
7 it's relatively similar to that. I know Mr. Bowman testified
8 3,000 or 4,000, he wasn't really sure, maybe it was just
9 2,000.

10 We're not really sure what it cost him to repair it or
11 whatever that testimony was. I guess that's (inaudible)
12 directed verdict at this point on the property damage.
13 That's something you all are going to have to (inaudible) on
14 tonight about. I'm not sure if you're really a good court on
15 that or not. But regardless, I guess it -- not to make it a
16 jury question at this point in time.

17 MR. COOK: I -- I'll study -- I'll study that.

18 THE COURT: (Inaudible) leave the batteries and then I
19 think get malicious destruction of property. So we'll see
20 what happens there. The intentional infliction of emotional
21 distress, as we all know, is pretty subjective and within the
22 eyes a reasonable person.

23 And again, that becomes a jury question. And then the
24 slander even though no damages of course were testified to
25 regarding the slander, they don't have to be because, you

1 know, it was alleged criminal act allegedly spoken out in
2 public.

3 So they don't have to present any evidence of damages
4 for particular damages as to that particular type of slander.
5 Going -- switching sides now. I guess, and then we kind of
6 got to deal with Mrs. Crosby's claims too in here in a
7 minute. I want to make sure we don't neglect that. But as
8 -- as I stated, I granted your directed verdict on the
9 assault and battery liability from Mr. Bowman.

10 The remainder of the claims I do believe also survive
11 directed verdict. I think there's evidence in the record to
12 support to be a jury question on the negligence, gross
13 negligence, intentional infliction of emotion distress,
14 malicious prosecution -- we'll talk about that in a minute,
15 abuse of process and then the defamation. Talk to me about
16 malicious prosecution and adhesive process claims and where
17 that sort of comment of the testimony and evidence
18 (inaudible).

19 MR. MCCULLOUGH: Your Honor, it was our intent,
20 especially in light of the fact that you've granted a
21 directed verdict on assault and battery to streamline the
22 jury charges of verdict form in our file. So I need to talk
23 to the clients about the negligence claim.

24 THE COURT: Okay.

25 MR. MCCULLOUGH: But it's our intent -- I don't think

1 there are additional damages in malicious prosecution and
2 abuse of process. I think we frankly can satisfy the claim,
3 but I don't think there are additional damages. We're not
4 going to proceed on either of those. We're not going to
5 proceed on defamation.

6 THE COURT: Okay.

7 MR. MCCULLOUGH: And so we can take those off the
8 board. And with regards to Samantha's claims, we are only
9 proceeding on the intentional infliction.

10 THE COURT: Okay.

11 MR. MCCULLOUGH: So that'll knock out those other two
12 claims.

13 THE COURT: I thought maybe that was the case. In my
14 mind I want to be clear.

15 MR. SLOTCHIVER: We just want --

16 MR. MCCULLOUGH: And -- and so the -- I guess just
17 really quickly just in -- in that if you would give us --
18 we'll let you know on negligence and then what our plan had
19 been. And again, not to jump, but just while we're talking
20 about this on the assault and battery of BJ's claims,
21 Mr. Cook and I have agreed, I believe especially if we
22 eliminate negligence to have a simple line item for damages
23 on assault and battery. And -- and I think that's by
24 agreement.

25 MR. COOK: That is by agreement.

1 MR. MCCULLOUGH: Okay. So that should simplify that
2 piece of the verdict, especially if we get rid of negligence
3 is basically just a line item.

4 THE COURT: You're going to withdraw negligence claim?

5 MR. MCCULLOUGH: I need to complete --

6 THE COURT: Not holding you to it right now. I'm just
7 -- I'm just -- we're talking out loud. You think that will
8 be your -- that was the case then that would automatically
9 withdraw or compare it then to defense of course then that
10 was the club which would be, you know, fine. I just want to
11 make sure we're all on the same page, obviously. Is that
12 correct?

13 MR. MCCULLOUGH: You -- yes, ma'am. Yes.

14 THE COURT: Okay.

15 MR. MCCULLOUGH: Yeah. And so we're going to try to
16 shrink this greatly. So I suspect we're going to proceed
17 under the already granted agreed to assault and battery for
18 BJ and then the intentional infliction for Samantha and then
19 circling back two points.

20 Not to argue with Your Honor, but on the -- on the
21 Bowman's claim for defamation, I would circle back to he's
22 agreed that he walked out, left on the tab. So I do believe
23 truth would kick that out. And -- and I just want to
24 reiterate that.

25 THE COURT: Okay.

1 MR. MCCULLOUGH: And -- and even at this point, I don't
2 believe there's any testimony of a physical touching and I
3 think that's a -- an element of battery. So I don't know
4 even, even taking everything they say as true. He's -- he's
5 admitted BJ never touched him and so on those two, I don't
6 know how they proceed.

7 THE COURT: Yeah, we talked about this a little, but
8 yesterday, at the right stage just sort of person-to-person
9 contact and if that requires it or not, the golf cart
10 (inaudible) probably (inaudible).

11 MR. SLOTCHIVER: (Inaudible) malicious injury.

12 MR. MCCULLOUGH: And that's the -- that's an assault
13 and the malicious injury. And so I -- I -- I totally
14 understand the denial of the DV on those, but on the battery,
15 and this is just going back to my law school days, I always,
16 I mean, I thought we had to actually physically tell --

17 THE COURT: (Inaudible) touching another.

18 MR. COOK: Yeah -- yeah. Let -- let me -- can I just
19 -- can I research that a little bit and let everybody know?

20 THE COURT: Let's -- that's fine.

21 MR. SLOTCHIVER: And, Judge, one more thing.

22 THE COURT: Yes, sir.

23 MR. SLOTCHIVER: To the extent that -- that we withdraw
24 any causes of actions or that you strike my causes of action,
25 my understanding is that you will instruct the jury. That's

1 not something to consider, that's just part of the process
2 that goes forward.

3 THE COURT: They just wouldn't be instructed on that
4 process.

5 MR. SLOTCHIVER: Right. As opposed to the lawyers
6 banging on their heads saying they filed this and now they're
7 going forward.

8 THE COURT: I -- I don't think anybody's going to do
9 that. I can't imagine you all would argue the other side to
10 the jury. The causes are court instructed.

11 MR. COOK: No.

12 THE COURT: I don't think that would be appropriate.

13 MR. SLOTCHIVER: We don't plan (inaudible).

14 THE COURT: No. But thank you for raising that up.
15 No. They'll just be in -- they're just going to get
16 instructions on the causes of action from either side
17 (inaudible) period and that's it. Because that's what's
18 going to be on the verdict form for them to decide. I'm not
19 -- we're not going to get into -- we worried about this the
20 other thing, but we're not doing that anymore.

21 I mean, we're not going to do that. That won't be how
22 it's presented to them. Okay. All right. And I know -- I
23 believe you all sent Madeline a verdict form.

24 MR. MCCULLOUGH: So what -- what I -- we spoke, so I
25 think we are -- we can confirm we're pulling negligence.

1 It's just too complicated. So as soon as I hear from
2 (inaudible) on if they're withdrawing any, if to save work,
3 I've got about 90 percent of it done and I can finish it and
4 then email everybody what I think is a -- a much different
5 verdict form than Ray submitted, but I think it's going to
6 get close.

7 THE COURT: Okay. Listen that's fine. What, let's do
8 this then let's make good use of this afternoon because you
9 all got a lot of work to do, obviously. So you all talk to
10 your clients, talk to each other, determine what causes of
11 action we desire are going to remain given my rulings this
12 afternoon.

13 Please once you have agreed upon a verdict form send it
14 to Madeline and me, J. McCoy J. Okay? (Inaudible). No
15 matter what time it is. I mean hopefully (inaudible).

16 MR. COOK: Be careful.

17 THE COURT: I've got three kids, another two. But
18 anyway so once you, you know, have done that and once you've
19 informed us of whatever causes of action will remain, then
20 I'll -- you know, deal with the jury charge at that point. I
21 do want to charge you all if you're going to go forward with
22 malicious destruction of property on that. Even Ralph
23 doesn't have it. So, you know, I've been at a loss here.

24 MR. COOK: It sounded good when we put it.

25 THE COURT: But -- listen, we deal with (inaudible) all

1 the time (inaudible) I just never had.

2 MR. COOK: I haven't either.

3 THE COURT: (Inaudible) I guess. So --

4 MR. MCCULLOUGH: I -- I'll let you know about that.

5 THE COURT: And I'm all here on the criminal guys, you
6 have to do the civil charge on that one, but. All right.
7 Well, what else can I do for you all right now?

8 MR. COOK: Your Honor, can we -- can we address the one
9 claim for the third party Plaintiff, I guess I think the only
10 one is the intentional infliction motion.

11 THE COURT: Yeah, we probably --

12 MR. COOK: And our motion -- our motion for directed
13 verdict.

14 THE COURT: (Inaudible) direct on that.

15 MR. COOK: Yeah, that's correct.

16 THE COURT: Thank you. Mr. Turner.

17 MR. TURNER: Your Honor, we'd move for directed
18 verdict. And I know we've said the law's been sitting in
19 here by two or three different people, but with (inaudible)
20 to conduct has to be directed towards the Plaintiff. She
21 clearly says this conduct, she said it herself. She said
22 nothing was directed towards her at all. It was all -- all
23 at her husband. She was never threatened or anything like
24 that.

25 So, and I believe the other part of it says that, "The

1 emotional distress as suffered by the Plaintiff, was so bad,
2 no reasonable person could be -- could be expected to endure.
3 She never suffered any type -- got any type of treatment or
4 anything like that." So we just don't believe it falls on
5 those grounds, Your Honor.

6 MR. MCCULLOUGH: Yeah, I think that much like you
7 testified, I think all those are great questions and I
8 actually went through, I had the elements in front of me and
9 then I asked her all those questions at the end of her
10 testimony to check every box on every element and the -- for
11 that cause of action.

12 THE COURT: I think she did state that threats were not
13 made toward her. And I might have to have the court reporter
14 replay some of that to me.

15 MR. TURNER: Yeah, Your Honor. And I think it also,
16 that case cited is 421 SC 140 and I believe it clearly states
17 that the conduct must be toward the Plaintiff to -- for
18 intentional infliction of emotional distress. This conduct
19 clearly just was towards him.

20 MR. MCCULLOUGH: I don't think there's anything clear
21 about any of the conduct. I think everybody described it as
22 chaos, violence, people jumping and thrown, getting thrown
23 off the golf cart. So I don't think it's clear in any
24 manner. I think that's up to a jury.

25 THE COURT: Well, I think there'd have to be something

1 that would make her be able to bring that claim as opposed to
2 say that (inaudible) to testify (inaudible). I mean in other
3 words like, there's got to be some special damage or -- or,
4 you know, some -- something that she personally suffered by.
5 I don't think, you know, all the witnesses that were hanging
6 out at (inaudible) that night could bring an IIED claim both.
7 But do you disagree?

8 MR. MCCULLOUGH: Well, just because I mean that's why I
9 had her testify about her mental anguish and the impact that
10 it had on her watching all this happen inches from her. And
11 I thought she testified very specifically about that very
12 point. And candidly I had the element in front of me to get
13 her to testify on that very point too, to survive directly
14 with her.

15 THE COURT: Well, I'll look at that a little more
16 closely and I'll have to -- I'll pull you a case, Mr. Turner
17 and I'll allow, get the court reporter replaying some of the
18 testimony, just for my notification and I'll let you all know
19 in the morning, you know. For now prepare, I'm going forward
20 on it. But (inaudible) I'll let you know in the morning.
21 Okay.

22 MR. TURNER: Thank you.

23 MR. MCCULLOUGH: Thank you, Judge.

24 THE COURT: All right. Thanks for (inaudible) me.

25 Circle up a note. I meant you and I've always forgot. All

1 right. Anything else? See you all in the morning.

2 MR. MCCULLOUGH: Thank you.

3 THE COURT: All right.

4 MR. MCCULLOUGH: Oh, last thing. I'm sorry. How will
5 -- will --

6 THE COURT: (Inaudible)?

7 MR. MCCULLOUGH: Yeah. How does it (inaudible)?

8 THE COURT: (Inaudible) question? I just, you know,
9 read refresh, I mean the rules really basic, but they'll in
10 and then (inaudible) and then they'll (inaudible) and then
11 you'll (inaudible).

12 MR. MCCULLOUGH: Okay. That'll be it.

13 THE COURT: Okay. (Inaudible) you're Plaintiff.

14 MR. MCCULLOUGH: Okay. Cool. Thank you.

15 THE COURT: Yep. All right.

16 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT
17 3:10 P.M.)

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CERTIFICATE OF TRANSCRIBER

I, NATASHA BARRIENTOS, a Court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 9 of Charleston County, South Carolina, on the 12th Day of June, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 28, 2024



Natasha Barrientos

Transcriber

1 CONTINUATION OF PROCEEDINGS - JUNE 13, 2024

2 THE CLERK: Thursday, June 13, 2024. Charleston
3 County, Judge McCoy.

4 THE COURT: So let's talk a little bit about these
5 things. We sort of left to discuss this morning, yesterday
6 afternoon, and we broke. One thing we were discussing was
7 sort of this malicious injury to property that was pled in
8 the first party complaint by Mr. Bowman against Mr. Crosby.

9 And as I've, you know, really been thinking about it
10 overnight and entertaining these interesting positions that
11 you've all taken on the matter, it's really the same injury,
12 sort of pled twice.

13 There is no -- there is no malicious injury to
14 property. You know, that's a civil tort in South Carolina.
15 And while we might be trying to sort of squeeze it into this
16 other, you know, chattel cause of action from the common law
17 to me that's trying to fit a square peg in a round hole and
18 at a very, very late hour

19 So while normally, you know, amendments are allowed
20 freely and all that good stuff, this would be certainly an --
21 an area where I'm not inclined to allow such an amendment to
22 take place right before closing -- closing argument. So I
23 certainly think that would prejudice them. But also, I don't
24 find your client would suffer any prejudice from me
25 dismissing that particular cause of action at this point,

1 because I think the same injuries, he's claiming would -- are
2 the same ones that he can claim under the battery charge.

3 And I'll get to that because the other issue was can
4 you have a battery that's not an actual touching of a person.
5 I have included, out of an abundance, of caution in the
6 assault and battery charge.

7 Let's find that language that Mr. Cook sent last night,
8 that sort of, that phrase from our phone book here in South
9 Carolina. And let's see. I'm going to pull it up right now.
10 Give me one minute. "Unwanted touching to a person or
11 property within the person's immediate custody or
12 possession."

13 And I added that phrase, and I think that will adequate
14 -- adequately cover the interests of all parties. The reason
15 I'm -- I am inclined to include that phrase. I think it
16 ultimately will be a jury question. Okay. On if they think
17 this is a true battery or not.

18 And, you know, we can sit here and go back and forth
19 and pontificate all day on what a battery is. You know, if I
20 didn't actually touch you, but I knock not the hat off your
21 head. Is that a battery? Probably, you know, arguably, I
22 don't know. We'll see.

23 But I think it's an elusive enough question to give the
24 jury. So that's what I'm going to do. Basically. Directed
25 verdict as to the malicious injury to property, I don't think

1 that's an appropriate cause of action. And I think that the
2 -- the damages contemplated would be incorporated under the
3 battery claim.

4 So that's where I am with that. So therefore, on the
5 verdict form, Mr. McCullough sent, I thought that was -- I
6 didn't have a problem with that. We'll obviously take out
7 that cause of action for malicious injury to property. Do
8 you all have any other issues with his verdict form as
9 proposed? Thought it was relatively clear.

10 MR. MCCULLOUGH: When I emailed to (inaudible)
11 yesterday. I -- I think we were fine with that.

12 THE COURT: Okay.

13 MR. COOK: And not to relitigate from yesterday, and --

14 THE COURT: That's okay.

15 MR. COOK: I respect your position on the battery. I
16 just wanted to make clear on one thing. On the slander cause
17 of action.

18 THE COURT: Yes.

19 MR. COOK: In the guilty plea. I just want to read,
20 "Defendant opened a tab with Albert at the bar ordering
21 several drinks and shots after midnight. Both Albert and the
22 victim were outside the bar when Albert observed the
23 Defendant and his wife attempting to leave the premises on a
24 golf cart without paying their tab."

25 I mean obviously he admitted or agreed with the rest

1 of, you know, the facts laid out. And so I -- I feel like
2 for clarity and to avoid confusion, I do think he's
3 collaterally estopped from saying he was defamed because
4 that's what he's saying. He was defaming by saying, Hey, pay
5 your bar tab.

6 THE COURT: Right.

7 MR. COOK: And so I just, and again, to try to get
8 what's really at issue before this jury, I would just ask
9 that we -- at least reconsider that position.

10 THE COURT: Well -- and so the jury will be charged on
11 that. And ultimately that's a jury question as well. So
12 they'll be charged on that. The truth would negate that.

13 MR. MCCULLOUGH: But wasn't he collaterally estopped
14 from saying otherwise?

15 THE COURT: Their argument, and this gets us back to
16 this whole, you know, did he accept all the facts as read
17 from the solicitor or did he accept the guilty plea to
18 assault and battery?

19 At this point in time, I'm not willing to -- to direct
20 the verdict on that. I think it's kind of an open-ended gray
21 area of -- frankly, that hasn't been squarely dealt with. So
22 for that reason to try to prevent possible problems down the
23 road, I'd rather just leave it as such.

24 MR. MCCULLOUGH: Fair enough.

25 THE COURT: But I have considered all of these things.

1 MR. MCCULLOUGH: Thank you.

2 THE COURT: And I understand your argument, so.

3 MR. MCCULLOUGH: And -- and of a request, I guess if I
4 assume you all are going to revise the verdict form, would it
5 be possible for us to get a copy of that too from you --

6 THE COURT: Prior to close? Yeah.

7 MR. MCCULLOUGH: Yes, please.

8 THE COURT: Yeah, let's do that right now. You want
9 the verdict form? Okay. Take out that whole question number
10 seven. All right.

11 MR. TURNER: Your Honor, can we address the attention?

12 THE COURT: Yep.

13 MR. TURNER: Okay.

14 THE COURT: Did you hear me? You have good hearing.
15 Yes. We are -- let's talk about the IIED claim from
16 Ms. Albert Crosby.

17 MR. TURNER: Yes, Your Honor. We -- I just -- same as
18 we said yesterday, we don't --

19 THE COURT: Do you have any case law you would like to
20 particularly rely on in support of your position?

21 MR. TURNER: I gave you a case yesterday. It was Doe
22 versus Citadel, I believe.

23 THE COURT: Yeah.

24 MR. TURNER: I don't have the citation on me.

25 THE COURT: 421 SC 140.

1 MR. TURNER: It just talks about the conduct being
2 towards the Plaintiff. And it was towards our arguments
3 towards the other Plaintiff in this case.

4 THE COURT: Okay. Turn them on -- log on Webex. This
5 one is -- get this together. All right. So 421 SC 140 and
6 if you all have any other cases too likewise that you'd like
7 to point to that.

8 So, you know, shows it doesn't have to be necessarily
9 directed at the Plaintiff. Just that merely witnessing this
10 outrageous conduct is enough to have risen to a claim. I'm
11 happy to entertain that as well.

12 MR. MCCULLOUGH: Just tracking the elements, Your
13 Honor. I mean it talks about the possibility of having a
14 personal injury, but it doesn't require a personal injury.
15 And she's obviously standing right there when all this
16 transpired. And I think that we checked the boxes to put
17 this in front of the jury. And this is the jury issue,
18 basically what we said.

19 THE COURT: Yeah.

20 MR. TURNER: Your Honor, kind of same argument
21 Mr. McCullough makes that -- my first 10 questions to her
22 were exactly on that issue. because I knew that would come
23 up in his about what did he do to you? Nothing. He didn't
24 take you, he didn't threaten you anything toward basically
25 every one of them. It was no, no, no, no, no.

1 MR. MCCULLOUGH: I don't think there was anything about
2 that evening that was precise. I think the entire ordeal was
3 chaotic. And I think that these are all questions of fact at
4 least ---

5 THE COURT: Well, I mean it does -- it does say under
6 that Doe case, while it does say, "Under South Carolina law,
7 outrage claims are limited to a Defendant's egregious conduct
8 toward a Plaintiff. It is not enough that the conduct is
9 intentional, outrageous.

10 It must be directed at the Plaintiff or occur in the
11 presence of a Plaintiff of whom the Defendant is aware."
12 That answer is enough to survive directed verdict, so. All
13 right. So we will leave it on. All right, anything else?
14 You all ready?

15 MR. MCCULLOUGH: We're ready.

16 THE COURT: Got you. Do you have any technology needs?
17 Let's figure all that out now, if we do we need to get hooked
18 up with computers or anything?

19 MR. MCCULLOUGH: I'll -- we'll use the Elmo at some
20 point. I don't -- I'm going to go last so I don't need the
21 verdict form until at that point.

22 THE COURT: Oh yeah, I'm sorry. Can you -- do I have
23 it over? Yes. We'll print really quick. That's no problem.

24 MR. MCCULLOUGH: Okay.

25 THE COURT: You all need a break or anything? I know,

1 you were waiting on me a long time. Do you want to take a
2 quick break?

3 MR. MCCULLOUGH: Come -- I'm going to break.

4 THE COURT: Mr. Cook, anything else for you?

5 MR. COOK: I was just going to ask you -- you allow the
6 lawyers to show the verdict form to the jury in closing?

7 THE COURT: Sure. Yeah. She's going to get printed
8 off right now, so.

9 MR. COOK: Thank you.

10 THE COURT: We'll be all set. You can go ahead and
11 have the jury start coming this way too. Okay. Thank you.

12 (Jury enters courtroom.)

13 THE BAILIFF: Jury ready, Your Honor.

14 THE COURT: Thank you so much. Everybody, have a seat.
15 All right. Ladies and gentlemen, as I indicated yesterday
16 afternoon, the parties have now presented their evidence in
17 this case and no further witnesses will be testifying. We
18 have reached the end stages of the trial and it's time for
19 these attorneys to make their closing arguments to you.

20 Now, unlike those opening statements, these will be
21 true arguments that is each side will try to convince you to
22 see the facts the way that you would -- that they would like
23 you to see them.

24 I want you to keep in mind that what the attorneys say
25 is not evidence in this case. But nonetheless, please give

1 numbers were incorrect. And then there will only be one line
2 where the juror signs. There -- there were two. I don't
3 want to be confused. Thank you.

4 MR. MCCULLOUGH: Thank you.

5 THE COURT: Second, then we've allowed them to fill out
6 menus during that break as well so that we don't starve the
7 jury to death today. And so they were doing that during the
8 break as well. So that's why I gave them a little bit more
9 time. All right. Thank you so much. You can be seated. We
10 will conclude with the arguments and then I will go into the
11 law.

12 Mr. McCullough?

13 MR. MCCULLOUGH: Thank you. May it please the Court?
14 I know going back there, you would say, "Gosh, I have one
15 more way to stand up." I know you (inaudible) I will be
16 super quick.

17 This is last time any of us will speak and I think we
18 are all informed. Thank you for being here. It sounds
19 (inaudible). Again, my name is Clay McCullough. I'm here
20 (inaudible). I'm going to touch on a couple things and we'll
21 talk about damages (inaudible), okay?

22 If you listen to nothing else, just listen to
23 (inaudible) he says a long-haired guy (inaudible) makes no
24 mention of BJ Crosby. And he's talking about his
25 (inaudible). Nothing about any of the things that you've

1 heard today and this week and in this case are mentioned in
2 (inaudible). And the fact that he never showed back up that
3 night to check on his wife (inaudible) kidnaped (inaudible)
4 itself is really the only thing you need to know about his
5 (inaudible).

6 Go listen (inaudible) witness state. There were five
7 people out there that actually showed up (inaudible) Melissa
8 Britton refused to be (inaudible). None of them said
9 anything about BJ Crosby hitting or kicking or doing anything
10 to the golf cart. All of them said the same thing. He was a
11 victim. He was struck twice violently by the golf cart.

12 The second impact, violent enough that it shattered the
13 windshield. That's undisputed from everybody that was at the
14 scene. If you listen to one person's testimony (inaudible)
15 employee that night (inaudible) and they describe accurately
16 what happened, it's consistent with why we're here today.

17 BJ Crosby, not confrontational, standing three feet in
18 front of the golf cart, slammed without warning, pushed back
19 8 to 10 feet, slammed without warning until the glass
20 shattered.

21 Savannah is a credible witness and was clear
22 (inaudible) as to what happened. Listen to the 911 call from
23 Samantha. She's panicked, she's angry, she's outraged. She
24 did not believe what she had just observed. Their whole case
25 seems to be based on the fact that they have a witness. He

1 was hammered that night and will give a statement later. He
2 was too drunk. He said, "I'm going to count to 1, 2, 3."
3 Where is he? Where is Mr. Gleason?

4 Savannah was going to be out of town, took her
5 deposition, it happened six years ago. (Inaudible) if it's
6 so important, call the guy, get him here with my subpoena.
7 If he's not available, take a video deposition for trial.
8 Like we did to three people, it's all about credibility.

9 Is that credible? They hired a private investigator
10 and have had six years to follow BJ Crosby around. Let's get
11 past the fact they hired some dude to stand in a bush and
12 videotape while BJ's out there trying to do yard work with a
13 blower.

14 Let's get past that. Six years later, the best thing
15 they have is after having a shoulder surgery and
16 rehabilitating the right shoulder and getting out of rehab,
17 he tries to start a blower. That's the best they've got.
18 After six years of following this guy around.

19 The medical timeline that (inaudible) we put up and
20 went through, BJ showed a consistent one shoulder, second
21 shoulder, getting back treatments throughout. The timeline
22 and chronology is consistent with exactly what happened. He
23 got hammered twice. He hurt both shoulders, hurt his lower
24 back. It's highly credible, it's consistent and it just
25 makes sense.

1 All right. The judge is going to do a very good job
2 with this pile of information getting thrown in that chair,
3 right? Called the jury charge. And she's going to tell you
4 what the law is. They put this up earlier, very quickly.
5 Your job is to do this and it is a hard job. You got to put
6 in money. The only way to fix this is money. That makes no
7 sense to me. But we can't go back in time and put BJ back in
8 the condition he was that night before he got run over twice.

9 Actual damage is -- the purpose of actual damage is to
10 compensate a party for injury, suffer or loss they sustain.
11 The goal is to restore the injured party as nearly as
12 possible through the payment of money to the same position he
13 or she was in before the wrongful injury occurred.

14 So nobody in their right mind would choose to be run
15 over like a dog in the street two times, three, through a
16 year and a half for painful surgeries, an operation that
17 leaves you with severe impairment for the rest of your life.
18 But he didn't get to choose that. So where are we left with
19 money? It's not great, but that's all we got.

20 The Court is going to tell you it is proper for you to
21 consider past in six years, present, today, and future. So
22 what does that mean? South Carolina (inaudible), there's a
23 statute. BJ is 41 years old. He was expected to live 78.39
24 years. He's got 37.39 years left. He's little over halfway.
25 So he's got -- let's call it 37 years remaining. So what

1 you're supposed to do is go through this list looking at past
2 today and through these next 37 years and how do we
3 compensate this man for what happened to him?

4 Well, first you got to look through this, that's a
5 no-brainer. Basically \$400,000. We've got two very
6 confident physicians who have testified about his treatment.
7 They said it was caused by misconduct (inaudible) conduct.
8 That's the first thing (inaudible) out of the way.

9 Next, on the list of things -- and again, you're
10 supposed to go through this one by one by one. I know you're
11 going to get back there and say it's a pretty day, it's
12 Thursday. I have to get out here. I am begging you. Follow
13 this list. Go through it one by one by one. Mental anguish.
14 Mental anguish and again, this is what -- what I tell
15 (inaudible).

16 "An injured party may recover for mental anguish
17 brought about by bodily injury and suffering. Where a
18 party's negligence is directly responsible for physical
19 injury to another, the injured party may recover both for
20 actual physical injury sustained and for mental and emotional
21 suffering which flow as a natural consequence of the wrongful
22 act?"

23 BJ Cosby is less than he looked. And I'm going to say
24 one thing that I disagreed with about Mr. Cook, I have a lot
25 of respect for him, but I'm going to disagree.

1 BJ Crosby's life is not very (inaudible). BJ Cosby is
2 not wallowing in the puddle there. BJ Crosby is happily
3 married, he's a father, he works hard. He's not -- his
4 life's not over. But he sure as heck is not as physically
5 fit and sound as he was before this -- when this gentleman
6 ran him over. Not once but twice.

7 He's been traumatized. It's emotional, it's mental
8 anguish. And you're supposed to look at this and say,
9 "Okay." Then what did he say? "I remember like I had a
10 vivid memory of him coming and the glass shattering."

11 What is that worth? What's the value of that? What's
12 the value of that for to happen that day, the next day and
13 the next day we wake up in a cold (inaudible) 20 years later
14 thinking about it. What's the value of that? And I
15 understand it's an impossible task to put value on that, but
16 that is the task that we're asking you to do and the task
17 that the judge is going to charge you to the past, present,
18 future. Loss of enjoyment of life.

19 She's going to tell you that loss of enjoyment of life
20 is where we prove Plaintiff proximately suffered loss of
21 enjoyment of life as a result of the Defendant's (inaudible).
22 Damages to loss of enjoyment of life are separate from an
23 (inaudible) to damage for the pain and suffering. An award
24 for pain and suffering compensates the injured party for
25 physical discomfort and the emotional response to the

1 sensation of pain caused by the injury itself.

2 Separate damage may also be given from the mental
3 anguish where the evidence shows, for example, that the
4 injured person suffered shock, right? Emotional upset,
5 anxiety humiliation. Sometimes it's not the pain itself,
6 it's the fear of pain.

7 He had to have one shoulder surgery, have his bicep cut
8 out, try to fix that and then go have a second surgery, have
9 his bicep cut out, try to fix that and then go have
10 (inaudible) these procedures, it sounds awful. The fear, the
11 anxiety associated with not only (inaudible) fear and
12 anxiety, you're tortured with that.

13 Don't you think of that if you're going to pick this
14 up. What if you have three surgeries, you're in your
15 (inaudible) and you are significantly diminished as a human
16 being, as a father, as a -- as a husband, as an employee,
17 doing stuff around the house. He's entitled to a significant
18 number past, present, and future. Pain and suffering, which
19 sounds pretty simple, right? You get busted up with that
20 word. The judgment (inaudible) read to you.

21 It says, "Pain and suffering is that material element
22 of damage in which a recovery may be based. The Plaintiff is
23 entitled to compensation for pain and suffering directly
24 resulting from the wrongful act of the Defendant. Pain and
25 suffering have no market price.

1 They are not capable of exact (inaudible) and there's
2 no fixed rule or standard for damages (inaudible) may be
3 measured. Future pain suffered on the part of the Plaintiff
4 and consequence of the injury (inaudible) element against you
5 which may be valid provided that there is a requisite certain
6 reason and suffer (inaudible).

7 We know (inaudible), we know he is not. The doctor has
8 testified that one shoulder of 18 percent impaired the other
9 shoulder of 20 percent impaired and the back is 50 percent
10 impaired, meaning basically for the rest of his life, half
11 his back is shot and basically 20 percent of his shoulder is
12 shot.

13 He testified he can't have a good night's sleep, can't
14 sleep on his side. What's the value of that? How do you --
15 you are walking down the street and someone says, "Hey, what
16 if I took half your back and 20 percent of your shoulder and
17 you get pain all the time?"

18 What amount of money can you ask for in return for that
19 (inaudible)? Folks, I've done numbers here. I'm not a
20 juror. I'm not a judge. I am -- I'm telling you legal
21 things and what that means based just on the math. I don't
22 want to over share, but I got my first C in the second grade
23 in English for handwriting in (inaudible). BJ Crosby is a
24 young man, he's 41 years old today. As I said, life
25 expectancy of 78 years. He's got 37 years left.

1 The first 18 months after this accident happened. He
2 was an active patient, but I don't mean active like he was
3 (inaudible). I mean he was going in the hospital and going
4 into physical therapy for 18 straight months. Three
5 surgeries, three anesthetics, two biceps ripped out, being in
6 a sling for six months on each arm going in and having the
7 procedures, the painful procedures that they prescribed. How
8 do you value that?

9 I put up two numbers. Would you pay \$1000 a day to do
10 that? Would you pay \$1000 a day for the day that you have to
11 go under anesthesia, have your bicep ripped out? Would you
12 pay \$1000 a day to have your back (inaudible) on?

13 If you got -- if you take \$1000 a day or if you think
14 that's worth 2000 a day, there's 18 months, that's \$547,500.
15 If you think it's worth \$2,000 a dollar -- a day, even for
16 those 18 months, that's \$1,095,000.

17 We know the first 18 months were different than he is
18 today because you said it's a month. So we've got four and a
19 half more years up until to today. Is it (inaudible) state
20 as I described? Is it worth \$500 a day of not having a
21 decent life (inaudible) not being able to do the things with
22 your daughter?

23 That's \$821,250. Is it \$1000 a day? That's
24 \$1,642,500. Those two numbers, whatever that math would be,
25 have to be added together and that gives us today and that's

1 where the payment starts.

2 Again, if you put any number that you want, but it's
3 got to be significant because of the injuries, the pain and
4 the lifestyle, everything that was checked (inaudible). So
5 that gets us to today. He's got another 37 years of living
6 with us. So what is it worth for the rest of this young
7 man's life? He's got 37 years to go. That's 100 bucks a
8 day, to have a stiff back and busted up shoulders. That's
9 1,364,000.

10 If it's \$200. \$200 a day for the rest of his life is
11 \$2,728,000; \$500 a day, \$6,823,675. \$1000 a day. If they're
12 worth a thousand dollars a day not to have to go through what
13 he goes through every morning, every afternoon and every
14 night. That's 13,627,350.

15 Folks, I don't know what number it is. I'm not
16 suggesting you (inaudible) number, I'm just telling you the
17 math would be (inaudible) to one figure that the judge will
18 tell you read calculated based on the charges. I want to
19 make clear (inaudible).

20 I want to make sure you understand what's transpiring.
21 The judge has ruled that a matter of law, if Eric Bowman has
22 been found responsible for assault and battery, he has said
23 he assaulted and battered BJ Crosby. So that issue is not
24 recorded.

25 The only issue recorded is whether or not the now

1 (inaudible) is possibly caused by assault and battery to
2 Mr. Crosby. I'm going to ask (inaudible) put this up here.
3 And I promise, I'm almost done. The first page, you got to
4 (inaudible) everything Mr. Bowman's claimed (inaudible) we're
5 going to pop up here the damages.

6 But the fact that after everything that's transpired
7 that Eric Bowman has sued BJ Crosby and is asking you for
8 damages associated with misconduct that might be (inaudible).
9 You have to determine whether Mr. Bowman has proven that he
10 was falsely imprisoned.

11 And then if you ask what (inaudible) approved
12 (inaudible) best I can tell, the false imprisonment is Mr. BJ
13 standing 3 feet in front of the golf cart (inaudible).
14 Melissa Britton testified he didn't back up, she admitted
15 that he could have walked into Dunleavy's, he could have
16 called the cops, he could've been there (inaudible). That's
17 not false imprisonment (inaudible).

18 More importantly, he had 8 to 10 feet after he ran him
19 over the first time. All you really have to think about is
20 the second (inaudible).

21 At that point it's undisputed that BJ was crawling
22 back. You got witness, after witness, after witness
23 (inaudible). Why didn't he (inaudible)? I get maybe 3 feet,
24 I don't want to back up whatever -- whatever -- whatever.
25 But (inaudible) around here the golf cart, right?

1 (Inaudible) at all (inaudible) that's what you (inaudible)
2 that up.

3 You've got a claim for assault. I don't -- I don't
4 know what the assault does. I mean, BJ (inaudible), "Man,
5 you got to pay your bill." I don't know -- that's not
6 assault. I don't know what that is, but he certainly wasn't
7 injured as a result of it.

8 He asks for damages; he asks for punitive damages.
9 Neither of those is entitled to (inaudible). And battery
10 requires a physical touching. The only physical touching is
11 him getting run over by a golf cart. He didn't touch Eric
12 Bowman. Eric Bowman didn't say he touched him. Eric Bowman
13 says he come up here and not touched him. That they're now
14 relying their entire case on. Eric Bowman admitted
15 (inaudible) can't be a battery without a touching motion.

16 Intentional infliction of emotional distress. I guess
17 Mr. Bowman is upset that the golf cart (inaudible) there's no
18 emotional -- there's no -- there's nothing there. All he did
19 is, say "Please pay your tab." That's a slander?

20 We admitted in charge (inaudible) that in this
21 courtroom the guilty plea that he didn't pay a tab, truth is
22 an absolute (inaudible). And so when he said, "Hey man,
23 please pay your tab." Well, Eric Bowman in this courtroom
24 admitted he didn't pay his tab. So there can't be any
25 slander under (inaudible).

1 So the fact that he's (inaudible) and asking for money
2 is (inaudible) champ. I don't know what the victim -- but he
3 needs to disregard (inaudible). We all know the victim
4 knows, (inaudible) spend time. You got to go through this
5 verdict form.

6 No, no, no, no, no. (Inaudible) his plans get serious
7 about this case (inaudible). In the case of without
8 (inaudible) or you -- you are instructed that Eric Bowman has
9 been found legally liable for the civil charge of assault and
10 battery as (inaudible) to be able to suffer this proximate.
11 (inaudible).

12 And now you got to go through that evidence. Now, you
13 got to go through (inaudible) that and I beg you to take your
14 time. I beg you to go line by line by line, past, present,
15 future, on every single life, mental, emotional, no change,
16 of lifestyle, physical pain and suffering, all of it line by
17 line by line.

18 Next, punitive damages. We have to prove by clear and
19 convincing evidence that Bowman's conduct was unlawful,
20 (inaudible). He admitted it to intention. He admitted it
21 was unlawful. He admitted -- admitted he ran into him twice.

22 So he absolutely has shown that he been -- these
23 records (inaudible) and he should be entitled to punitive
24 damages. All right. So -- so what does that mean? How do
25 you punish a rich guy (inaudible)?

1 You make every mistake (inaudible) huge household, sold
2 Battery the Charleston (inaudible) for a pile of money, sold
3 his company for a pile of money. How do you punish someone
4 like that? Well, you got to make him hurt. You got to put a
5 number on there that makes him think twice the next time
6 (inaudible).

7 You got to put a number out there that lets other
8 people know (inaudible) that you can't do this. Not even
9 tell (inaudible) all I want you to really think about and
10 agree on is number one, his lawyer said he took
11 responsibility, (inaudible) responsibility.

12 Cross-examination about his prior agreement with all
13 the facts. He did everything humanly possible not to admit
14 where he had already admitted (inaudible) criminal trial.
15 The Court had to tell him to stop. He continues to try to
16 change the statement of that 911 call, his wife had been
17 kidnaped. He sues Mr. Crosby to try to gain some sort of
18 legal advantage.

19 He's a bully, he's an absolute bully. He thinks he can
20 do whatever he wants. If you think about nothing else, think
21 about the second hit. Folks, if he had hit BJ once and
22 stopped, drove around him, maybe this would be a very
23 different situation.

24 BJ really (inaudible) think it was hurt in that first
25 hit to the extent of the second hit. But whatever possessed

1 him in his intoxicated state to handle an accelerator and hit
2 him a second time has to be punished. And the only way you
3 can punish him is through money.

4 And the idea that a coerced reduced guilty plea to a
5 misdemeanor for community service is appropriate punishment
6 -- punishment for misconduct is outrageous punishment, and
7 the only way to punish him is to put a punitive number of
8 damages, a big one, an excess of any actual damages and a
9 number that gets his attention.

10 A number that gets everybody's attention that this is
11 not allowed. And then the last thing we're going to ask you
12 to do is to go through Samantha's claim. So attention
13 (inaudible) watching somebody you love (inaudible) twice
14 (inaudible) 911 call (inaudible).

15 We would ask you to go through slowly, methodically the
16 evidence, go through the information that's going to be back
17 there with you, run numbers with math. You don't have to
18 decide who is responsible for this. The Court has already
19 done that. (Inaudible) take your time (inaudible) past,
20 present, and the future (inaudible) substantial number
21 (inaudible) this factor (inaudible). I'm asking you to
22 punish him. Financially, punish him for his conduct. We're
23 absolutely entitled to send the message. Thanks so much for
24 your time, your consideration and the interest (inaudible).

25 THE COURT: All right. Thank you very much.

1 punishment and to this end, the Defendant's ability to pay
2 any punitive damage award should be considered.

3 Ladies and gentlemen, all 12 of you must agree on the
4 verdict. Your verdict cannot be based on sympathy, passion,
5 prejudice, emotion, or any other consideration not in
6 evidence in this case. Madam Foreperson, when the jury
7 agrees on the verdict, you'll sign your name as foreperson on
8 the line underneath the jury verdict. You will then knock on
9 the jury room door and inform the bailiff that you have
10 reached a verdict.

11 At that time, we will receive you all back into the
12 courtroom. I will now ask that you return to your jury room,
13 but do not begin deliberations until you are told to do so by
14 the Court or the bailiff. There are a few matters I must
15 discuss with these attorneys before you begin. Thank you.
16 Any exceptions or objections to the charges read from first
17 party Plaintiff?

18 MR. COOK: Your Honor, the -- the Court did not charge
19 our request to charge on citizen's arrest. That is that
20 there's no right to make a warrant with citizen's arrest in
21 South Carolina except as provided by statute. The Court did
22 not charge the statute on citizen's arrest, which is 15-13-10
23 -- 17-13-20.

24 The Court did not charge the jury on the right to
25 resist unlawful arrest which we contend that even with the

1 directed verdict it's still -- still relevant on the issue of
2 punitive damages and causation, and on the question of how
3 many assaults and batteries were committed since it was
4 alleged that there were more than one. And so we would ask
5 that those be charged and see if Mr. Turner has anything
6 else.

7 MR. TURNER: No.

8 THE COURT: Anything?

9 MR. TURNER: That's all. Thanks.

10 THE COURT: Okay. You can respond first to their
11 request.

12 MR. MCCULLOUGH: They -- I mean, they sued for false
13 imprisonment and then we charged them on false imprisonment.
14 They didn't --

15 THE COURT: Yeah. I mean they didn't assert citizen's
16 arrest.

17 MR. MCCULLOUGH: Correct.

18 THE COURT: They never made that affirmative defense.
19 In fact, the first question I believe they asked him was,
20 "Were you trying to make a citizen's arrest?" He clearly
21 said no. So I don't think that we go back to that. I think
22 that would result in jury confusion of the issues, frankly.
23 They were fully charged on the false imprisonment statute.
24 So I -- I simply don't think it applied in this case,
25 respectfully. So over your objection, I'm not going to

1 recharge that. All right.

2 MR. MCCULLOUGH: I'm sure --

3 THE COURT: Any objections or exceptions from you? Go
4 ahead.

5 MR. MCCULLOUGH: I'm not questioning whether you did
6 it, I'm just asking, like, I say I'm questioning -- I'm
7 asking, did you say something about that you had directed a
8 verdict against -- I just -- I -- I'm not --

9 THE COURT: I didn't obviously say that I directed a
10 verdict.

11 MR. MCCULLOUGH: Did you --

12 THE COURT: Yes.

13 MR. MCCULLOUGH: Did you say something along --

14 THE COURT: I did. Let me get to this all.

15 MR. MCCULLOUGH: I just missed it.

16 THE COURT: Tell you exactly what I wrote.

17 MR. MCCULLOUGH: I know I said it. I know Dan said it.
18 I just wanted to make sure she said it.

19 MR. COOK: I promise you she said it.

20 MR. MCCULLOUGH: Okay. That's fine. I'll take -- I'll
21 take all --

22 MR. SLOTCHIVER: Judge, one -- one more issue I wanted
23 to bring up. I know that as -- as lawyers, we all understand
24 the differences and, but this case is a little bit different
25 and I'm worried about the jury being confused on the issue --

1 of we've got -- there's one reference to Plaintiff, the
2 Plaintiff versus Defendant and I was thinking it might be
3 helpful to give them a clarity that in this particular unique
4 case, I'm not saying unique case, but we've got three
5 separate Plaintiffs.

6 THE COURT: Okay.

7 MR. SLOTCHIVER: So because -- because all the
8 documents referenced Bowman being the Plaintiff and us being
9 the Defendant, but in this case we're also the Plaintiff and
10 I don't know if they're really going to get it. We get it,
11 but I don't know if they're going to understand it when they
12 go back and then Samantha's the Plaintiff.

13 And even though the jury form references as Plaintiffs,
14 I think that if you would instruct them that there are three
15 separate actions, three separate Plaintiffs, see three
16 separate Defendants in it and you got to look at each action
17 separately and that might be helpful and avoid confusion down
18 the road.

19 THE COURT: Okay. I did state for the record, "Members
20 of the jury, there are several Plaintiffs in this case, each
21 having initiated and brought various claims and each has a
22 burden of proving his or her claims by preponderance of the
23 evidence." Now, as you will note throughout the course of
24 the entirety of my charge, I did make special effort to
25 specify which Plaintiff is claiming against which Defendant.

1 So respectfully, I think I've covered your concerns. I
2 think you'll be surprised at how smart juries are. I'm also
3 really happy about the verdict form that was submitted.
4 Because I do find it to be very clear. It's got headings to
5 specify. So rest assured if they have a question they'll
6 ask.

7 MR. SLOTCHIVER: Thank you.

8 THE COURT: Okay. All right. You all can
9 review the evidence, it's going to go back and then we'll
10 let them -- them begin their deliberations. We'll give this
11 verdict -- verdict form. And that'll be that.

12 MR. MCCULLOUGH: Yeah, I will --

13 THE COURT: What? The verdict form?

14 UNIDENTIFIED SPEAKER: Yeah.

15 THE COURT: It's not -- it's not an exhibit.

16 (Off the record.)

17 THE COURT: So we've got a note that's been marked
18 Court's 6. It says, "Can we have the list of items that
19 apply to actual damages?" And it's signed by the foreperson.
20 I can bring them back in and tell them no. Or I can write no
21 on the form and give it back to them. You all have a
22 preference?

23 (Court's Exhibit 6 marked for identification.)

24 MR. MCCULLOUGH: Just write it. Just --

25 MR. COOK: I think that's fine. Just -- just write it.

1 THE COURT: I'm going to write the word. No. And I'm
2 going to sign it. Okay?

3 MR. SLOTCHIVER: Does that make sense to recharge them
4 on?

5 THE COURT: I can offer to recharge if you want me to.
6 But it's a pretty clear question. It says, "Can we have the
7 list of items?" They're talking about that thing you threw
8 on them.

9 MR. SLOTCHIVER: I know --

10 THE COURT: That's the problem with throwing out these
11 extra things and then they're confused as to why they don't
12 have that and all.

13 MR. SLOTCHIVER: It's so hard because there's so much
14 to take in for them. But it seems like they want -- if -- if
15 they want a list, I guess, can you offer to recharge if they
16 want or otherwise say no?

17 THE COURT: I can -- I mean, I can -- I can say no or I
18 can recharge you on that portion of the jury charge.

19 MR. SLOTCHIVER: Okay. I think that --

20 THE COURT: And just see what they say.

21 MR. SLOTCHIVER: -- makes sense.

22 MR. COOK: I think that'd be fine because they -- they
23 may not understand that they can be recharged.

24 THE COURT: I'm sure they don't. Yeah. Innocent
25 question but okay, well I'll do that. I'll let you all look

1 at it and then I'll give it back to them.

2 MR. COOK: Okay. Thank you.

3 THE COURT: All right. I'll charge you on the law in
4 that area if you want, but that list itself is not an
5 exhibit. You all go with that. Okay. So we'll give this
6 back to you and the clerk. I have a note there is a question
7 of damages really quick. This won't take but a minute. It
8 -- just this will be Court's 7. It just says, "Can we please
9 have a calculator?" So I'll just have the clerks give them a
10 calculator. Okay? Okay.

11 (Court's Exhibit 7 marked for identification.)

12 (Off the record.)

13 THE COURT: We're back off the record. Okay. You can
14 bring him in. Thank you. Your client, he's gone?

15 MR. COOK: It would take too long to get him back, so.

16 THE COURT: Sure?

17 MR. COOK: Yeah, he --

18 THE COURT: Okay. Oh. All right. Shelby, you want to
19 read this first or do you want me to do it? It's up to you.
20 It's a long one. You want me to do it? I'll go -- I'll do
21 it. I don't want to put you on the spot. I know you're
22 still -- still learning. All right. Thank you so much.
23 Please be seated. All right. Madam Foreperson, I think the
24 jury reached a verdict, is that correct?

25 JUROR NUMBER 129: Correct.

1 THE COURT: All right. If you'll just pass the form to
2 the bailiff, he will then pass it up to me. Thank you, sir.
3 I'm going to view it for completeness. All right. I'll
4 publish the verdict. Ladies and gentlemen, listen carefully
5 to make sure that what I read is in accordance of with the
6 verdict you reached.

7 State of South Carolina, Charleston County 9th Judicial
8 Circuit case number 2020-CP-10-3043. As to the claims of
9 Eric Bowman versus Wallace Crosby. Question number one. "Do
10 you find Plaintiff Bowman proved by the preponderance of the
11 evidence, his claim for false imprisonment?" Jury checked,
12 "No." Thereby skipping question number two.

13 Question number three. "Do you find Plaintiff Bowman
14 proved by the preponderance of the evidence his claim for
15 assault?" Jury checked, "No." Thereby skipping question
16 four. Number five. "Do you find Plaintiff Bowman proved by
17 the preponderance of the evidence his claim for battery?"
18 Jury checked, "No." Thereby skipping question six.

19 Number seven. "Do you find Plaintiff Bowman proved by
20 the preponderance of the evidence in this claim for
21 intentional infliction of emotional distress?" Jury checked,
22 "No." Thereby skipping question eight.

23 Question nine. "Do you find Plaintiff Bowman proved by
24 the preponderance of the evidence, his claim for slander?"
25 Jury checked, "No." Thereby skipping question 10. As to the

1 cross claim -- Plaintiff Wallace Crosby versus Eric Bowman.

2 Question 11. "You are instructed that Eric Bowman has
3 been found legally liable for the civil charges of assault
4 and battery. As such, what, if any, are the damages Mr.
5 Crosby suffered as a proximate result?" Jury verdict is
6 \$1,865,483.20 actual damages.

7 Question 12, "If you awarded actual damages to BJ
8 Crosby, do you also find Crosby has proven by clear and
9 convincing evidence that Bowman's conduct was willful, wanton
10 and reckless? If yes, then answer this question. If no,
11 skip to the next question." Jury answered the question and
12 the verdict is \$2,798,224.80 in punitive damages as to third
13 party Plaintiff, Samantha Albert's claim against Eric Bowman.

14 Question 13, "Do you find Plaintiff Samantha Albert
15 Crosby proved by the preponderance of the evidence, her claim
16 of intentional infliction of emotional distress?" Jury
17 checked, "No." Thereby skipping questions 14 and 15. Signed
18 by the foreperson, this 13th day of June, 2024. Madam
19 Foreman, is that an accurate recitation of the jury's
20 verdict?

21 JUROR NUMBER 129: Yes.

22 THE COURT: All right. Thank you very much. Any
23 post-verdict motions before I release the jury from either
24 side?

25 MR. MCCULLOUGH: None from us, Your Honor.

1 THE COURT: Okay.

2 MR. COOK: No. Nothing from us.

3 THE COURT: Okay.

4 MR. COOK: Thank you.

5 THE COURT: All right. Ladies and gentlemen, thank you
6 very much for your jury service this week. I know everybody
7 in here echoes me in that sentiment. I make it a point never
8 to comment on a jury's verdict. But I will tell you that we
9 appreciate your attentiveness, your punctuality this week.

10 You have certainly gone above and beyond your civil
11 duties with us this week, joining us for four days. And we
12 appreciate your time and consideration. You are now free to
13 go and you do -- do not have to serve on a jury again in this
14 courthouse, at least for the next three years.

15 But thank you again for your time and your
16 consideration. We can't resolve disputes without pulling
17 strangers off the street sometimes, and I know it's not ever
18 a fun thing to have to disrupt your life, but I hope that
19 this has at least been insightful to you in some aspects.

20 And of course, if you have any constructive feedback
21 for how we could make the process better for the next awards,
22 we always welcome that. So please let the bailiff know. And
23 thank you all again. You're free to leave.

24 (Jury exits courtroom.)

25 THE COURT: Okay. Happy to entertain any post-verdict

1 motions as the jury has left or I can give the parties 10
2 days to file those. It's up to you. Happy to do it either
3 way.

4 MR. COOK: I think we -- we'd like the 10 days if we
5 could.

6 THE COURT: Sure.

7 MR. COOK: Which will include the punitive damage
8 review as --

9 THE COURT: Correct. Yeah, the Court will have to --
10 you know, that's mandatory to conduct a punitive review. And
11 I'm happy to -- to do that as well. And we'll incorporate
12 that, those findings into the -- those required by your
13 motions filed within the 10 days.

14 I do just ask when you file those, if you don't mind
15 emailing my office a -- a courtesy copy because we don't
16 automatically get that filing. It doesn't come to me unless
17 you send me a copy. So thank you all for your
18 professionalism.

19 It really makes my job so much easier when I've got a
20 great cast of attorneys in front of me all week. So thank
21 you for that and good luck to all the parties.

22 MR. COOK: Thank you as well. Enjoyed being with you.

23 THE COURT: Court is adjourned.

24 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT
25 3:12 P.M.)

CERTIFICATE OF TRANSCRIBER

I, NATASHA BARRIENTOS, a Court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 9 of Charleston County, South Carolina, on the 13th Day of June, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 28, 2024



Natasha Barrientos

Transcriber

STATE OF SOUTH CAROLINA) IN THE SOUTH CAROLINA CIRCUIT COURT
COUNTY OF CHARLESTON) C.A. NO. 2018-A1-01-0205727

STATE OF SOUTH CAROLINA	)
Plaintiff,	)
versus	)
ERIC BERNARD BOWMAN	)
Defendant.	)

H E A R I N G

DATE: November 30, 2023
TIME: 2.25 p.m. to 2:47 p.m.
LOCATION: South Carolina Circuit Court 9
JUDGE: Jennifer McCoy

TRANSCRIBED BY: Lynda Monroe

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APPEARANCES:

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Attorney for the Defendant.

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IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 PROCEEDING

2 THE CLERK: This is the State versus Eric Bowman.

3 THE COURT: Okay. So I call State v Eric Bowman. Good
4 afternoon. I see Mr. Condon has joined us, Mr. Crosby, are
5 you still there?

6 MR. CROSBY: Yes, ma'am.

7 THE COURT: Okay. Thank you so much. What I'm going
8 to do is just turn my computer around here so you will be
9 facing the other attorneys and hopefully you'll be able to
10 hear a little bit better. Okay? Here we go.

11 All right. You all feel free to move about the
12 courtroom as you see fit and we'll get started.

13 Eric Bernard Bowman, is that your name?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Good afternoon. How are you?

16 THE DEFENDANT: Excellent. Thank you, Your Honor.

17 THE COURT: All right. I understand you are going to
18 plea today to assault and battery in the third degree; is
19 that correct?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: That's a misdemeanor. It could carry up to
22 30 days in the county jail. Do you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: All right.

25 Does the State have a recommendation on this charge?

1 MS. HALIENA: No, Your Honor. This is in the Court's
2 discretion. Straight up. No recommendation from the State.

3 THE COURT: Okay. And victim's present online; is that
4 right?

5 MS. HALIENA: That is correct. His attorney is here,
6 in person, as well as his wife and it's my understanding that
7 the victim would like to make a statement through his
8 attorney after the State reads the facts.

9 THE COURT: Okay. Will certainly give them that
10 opportunity.

11 All right. Mr. Bowman, have you had enough time
12 to discuss your decision to plea today with your attorney,
13 Mr. Theos?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Are you satisfied with his representation
16 of you so far?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Excellent.

19 Mr. Theos, do you believe he understands what he's
20 doing today?

21 MR. THEOS: I do, Your Honor, and I also want to make
22 sure Mr. Condon is included. We both are his counsel of
23 record.

24 THE COURT: Oh, I see. Thank you for that.

25 All right, Mr. Condon, you also represent Mr. Bowman;

1 is that correct?

2 MR. CONDON: I do, Your Honor.

3 THE COURT: Okay. And based on your conversations with
4 him, do you believe he understands what he's doing today?

5 MR. CONDON: I do.

6 THE COURT: Excellent. All right.

7 Mr. Bowman, when you plead guilty you give up several
8 constitutional rights. You are giving up your right to a
9 jury trial, your right to confront the State's witnesses at
10 trial and you're giving up your right to remain silent. You
11 want to give up these rights and plea today?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Okay. Are you under the influence of any
14 drugs or alcohol or anything right now that would keep you
15 from understanding what's going on?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: All right. Has anybody promised you
18 anything or threatened you or forced you to plea today?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: All right. If you will, please, sir,
21 listen to the solicitor at this time. She's going to tell me
22 more about the facts underlying your arrest on this charge
23 and then we'll come back to you. Okay?

24 Yes, ma'am.

25 MS. HALIENA: Thank you, Judge. Mallory Haliena for

1 the State.

2 In the late night hours of October 5th of 2018,
3 Samantha Albert was working as a bartender at Dunleavy's Pub
4 on Sullivan's Island in Charleston County. Dunleavy's had
5 been exceptionally busy that night and had not been
6 sufficiently staffed for the number of customers visiting the
7 establishment.

8 Albert's boyfriend, victim Wallace Crosby, came to
9 Dunleavy's to assist her in performing some barback duties
10 before deciding to wait at the bar for her shift to end.
11 Around that same time, this Defendant arrived at Dunleavy's
12 with his wife and friends. The Defendant opened a tab with
13 Albert at the bar, ordering several drinks and shots.

14 After midnight, both Albert and the victim were outside
15 the bar when Albert observed the Defendant and his wife
16 attempting to leave the premise on a golf cart without paying
17 their tab. Albert told the Defendant that he needed to pay
18 his tab before exiting but the Defendant refused to comply.

19 The victim, who was several feet away at the time, away
20 from the stationary golf cart, spoke up at this time and
21 reiterated that the Defendant needed to go back and pay his
22 tab before leaving. In response, this Defendant hit the gas
23 and intentionally ran his vehicle into the victim.

24 The Defendant's wife extracted herself from the
25 situation and exited the golf cart, walking back into the bar

1 at this time. Then, as the victim was attempting to regain
2 his footing, the Defendant, again, intentionally swiped his
3 vehicle into the victim, hitting him to the point where the
4 windshield shattered and the victim hit the ground.

5 The Defendant then sped away on his golf cart. At
6 least one witness attempted to chase after the golf car to
7 stop the Defendant from fleeing but was unsuccessful.

8 THE COURT: Um-hum.

9 MS. HALIENA: Law enforcement and EMS responded to the
10 scene. Multiple witnesses were interviewed and all those
11 witnesses, aside from the Defendant's wife who was not there
12 for the entire incident, had consistent accounts of what had
13 occurred and everybody said that the victim had intentionally
14 been hit twice by the golf cart.

15 The victim had windshield glass lodged in the palms of
16 his hands, abrasions, and high blood pressure, so he went to
17 the hospital for treatment.

18 However, over the course of the next several months he
19 had multiple follow-ups with a couple of different doctors.
20 He was diagnosed with flap tears in his shoulder and a right
21 rotator cuff tear. He had two surgeries for those. He also
22 had spinal fusion surgery to reduce some nerve pain that was
23 exacerbated or caused by this gold cart incident.

24 This is the first take on the upcoming December 11th
25 trial docket.

1 THE COURT: Um-hum.

2 MS. HALIENA: It has been pending for about five years
3 at this point. I am the second prosecutor on the case. This
4 Defendant was originally charged with assault and battery,
5 second degree, and leaving the scene and that was what was
6 being prepared for trial.

7 THE COURT: Um-hum.

8 MS. HALIENA: Just before Thanksgiving, the Defendant's
9 attorney has asked for another meeting. That is when this
10 auction was presented. So this final offer of assault and
11 battery, third degree, guilty, was an agreement for a future
12 restitution hearing. That was what was extended by our
13 office.

14 THE COURT: Um-hum.

15 MS. HALIENA: There is a related civil trial that is
16 still pending and that is what Mr. Slotchiver represents the
17 victim on.

18 THE COURT: Okay.

19 MS. HALIENA: To my knowledge, that will be scheduled
20 sometime next year. So we think that the restitution hearing
21 would be most appropriately scheduled after that. As stated
22 before, this is a straight-up plea. We do believe that the
23 Court, as a reduced charge, does have the discretion and the
24 ability to be creative at sentencing. Whether it is weekend
25 time or alcohol process or whatever the Court may deem

1 appropriate in this case.

2 THE COURT: Okay.

3 MS. HALIENA: This Defendant has prior arrests. No
4 prior convictions.

5 THE COURT: No prior convictions, okay.

6 MS. HALIENA: And at this time I would ask if the
7 victim or victim's (indiscernible) would like to say
8 something to the Court.

9 THE COURT: Sure.

10 MS. HALIENA: Thank you.

11 THE COURT: The victim's online --

12 MR. SLOTCHIVER: Yes, Your Honor.

13 THE COURT: -- and Mr. Slotchiver's in court. Welcome.
14 How are you?

15 MR. SLOTCHIVER: I'm doing well. How are you?

16 THE COURT: Fine. I'm happy to hear from you.

17 MR. SLOTCHIVER: Thank you.

18 THE COURT: I think I have some familiarity with the
19 civil part of the -- I think I've heard motions or something
20 at some point in time. I know this case, yeah.

21 MR. SLOTCHIVER: (Indiscernible) or not. My client is
22 on the screen.

23 THE COURT: Okay.

24 MR. SLOTCHIVER: He was unable to be here today. It
25 all happened last minute and he went up for his nephew's

1 graduation from the Army boot camp. So that's why he is
2 attending online.

3 THE COURT: Okay.

4 MR. SLOTCHIVER: And his wife's in the courtroom.

5 THE COURT: Good.

6 MR. SLOTCHIVER: Your Honor, this has been a long
7 journey and my client is certainly delighted that Mr.
8 Bowman's finally going to accept the ultimate responsibility
9 for his actions.

10 THE COURT: Okay.

11 MR. SLOTCHIVER: By way of background, though, I'm
12 going to go through a little more information and, obviously,
13 a few issues (indiscernible) I think are important --

14 THE COURT: Um-hum.

15 MR. SLOTCHIVER: -- and it will help to explain my
16 client's concern and frustration with the deal that's been
17 offered although that's within the prosecutor's providence to
18 do it. He's going to ask you not to settle and if you do,
19 it's certainly within your providence. We both trust in Your
20 Honor to make the decision as you see -- make a proper
21 decision.

22 THE COURT: Uh-huh.

23 MR. SLOTCHIVER: What I wanted to add to it is that not
24 only was he charged with A and B (indiscernible) but he also
25 was directly indicted by the grand jury (indiscernible) which

1 is 0 to 20 per sentence.

2 THE COURT: Okay.

3 MR. SLOTCHIVER: And despite that, here we are today
4 looking at a 30-day maximum sentence. My client's bills are
5 extensive. He's had multiple surgeries and so the Court
6 understands, his medical bills are in excess of \$358,000.

7 THE COURT: Um-hum.

8 MR. SLOTCHIVER: Medical doctors have already testified
9 that deposition testimony from them relating to injuries he
10 has directly to the golf cart incident or the (indiscernible)
11 incident --

12 THE COURT: Um-hum.

13 MR. SLOTCHIVER: -- where he was struck not once but
14 twice.

15 So, accordingly, my client is asking that -- and we're
16 (indiscernible) of the civil case (indiscernible). Up until
17 now this is the first time he's ever accepted responsibility.
18 He's denied it at every point and every juncture.

19 THE COURT: Um-hum.

20 MR. SLOTCHIVER: In fact, he actually sued my client on
21 the action and my client countersued him. So this is a whole
22 different position that we're in right now --

23 THE COURT: Um-hum.

24 MR. SLOTCHIVER: -- (indiscernible).

25 We would ask Your Honor, on behalf of my client, that

1 you not accept the plea but if you do accept the plea, that
2 you would impose a full 30-day sentence for it. If Your
3 Honor wants a little bit more information in order to make a
4 decision we would ask that you accept the plea, assuming your
5 client would do that, but hold, in abeyance, your decision
6 and let us send to you --

7 THE COURT: On what? On sentencing or on restitution?

8 MR. SLOTCHIVER: On sentencing.

9 THE COURT: Um-hum.

10 MR. SLOTCHIVER: And let us send -- so separate plea of
11 guilt, if you're inclined to do, that but hold in abeyance
12 your decision and let us send to you a copy of all of the
13 affidavits from the witnesses and the depositions
14 (indiscernible) testify and the Facebook postings he put up
15 and all of the documents that came with (indiscernible) so
16 Your Honor will get the full understanding, including the
17 injuries that my client sustained.

18 Separate from that, Your Honor, the other issue is that
19 of the restitution and just so for what it's worth I
20 understand (indiscernible) restitution hearing
21 (indiscernible). Just so the Court is aware, the restitution
22 is -- the restitution we'd be seeking would be significant.

23 THE COURT: Um-hum.

24 MR. SLOTCHIVER: The medical bills (indiscernible)
25 \$358,000 and the liens that he has against him are now a

1 little over \$200,000. So to the extent that that's going to
2 be held, we have no opposition to holding the restitution
3 hearing over till after the civil trial is concluded.

4 THE COURT: Um-hum.

5 MR. SLOTCHIVER: (Indiscernible) to that point but I
6 wanted to just go over those issues. He's here today with
7 his wife, Samantha, who's in the back of the courtroom. She
8 was also present at the time this took place. He does have
9 an 11-year-old child who we thought was probably best not to
10 bring her here.

11 THE COURT: Um-hum.

12 MR. SLOTCHIVER: Her concern, quite frankly, was how
13 does this happen where (indiscernible) and lives in a big
14 house on Sullivan's Island. He'd sold the company for \$26
15 million. How does he get to (indiscernible) these incidents
16 and he's had other problems in the past and not had
17 consequences for it.

18 But, once again, we have all the faith and confidence
19 in Your Honor to do what you believe is right and just.
20 (Indiscernible). So we thank you for listening to us.

21 THE COURT: I appreciate that. And, of course, you
22 know, (indiscernible) you indicated, at the outset, that's
23 really who controls these things more than anybody and they
24 made a decision to come and bring this charge as an A and B
25 third today with his acceptance of guilt.

1 So I have, frankly, when I give him an opportunity to
2 tell me if the facts and all have been correct momentarily,
3 here, I have every intention of accepting that guilty plea
4 that they have extended today and not interfering in that
5 process. Okay.

6 MR. SLOTCHIVER: I understand.

7 THE COURT: It would be highly unusual for a Court to
8 not accept the plea, as you know.

9 MR. SLOTCHIVER: I understand. But I had to speak to
10 my (indiscernible).

11 THE COURT: I appreciate that but I just wanted to put
12 that on the record, as well.

13 MR. SLOTCHIVER: Thank you.

14 THE COURT: That would be highly, highly unusual --

15 MR. SLOTCHIVER: I understand.

16 THE COURT: -- for me to interfere in that much of a
17 way.

18 All right. So Mr. Bowman, you heard the facts or the
19 allegations stated from the solicitor. Those that were
20 stated from the solicitor regarding the events that took
21 place back in October of 2018. Are those correct to the best
22 of your recollection?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Okay. I'll accept your plea then.

25 I find that you're entering into this plea willingly

1 and voluntarily. With the advice of excellent attorneys
2 you've indicated to me you've had enough time to talk to them
3 before today's hearing about all of these events and I'll
4 accept the plea.

5 At this time, I'm happy to hear from Mr. Fios* or Mr.
6 Condon or anyone else you'd like me to hear from.

7 MR. CONDON: Thank you, Judge.

8 THE COURT: Let me -- before I do that, did his wife
9 want to speak or say anything today, Mr. Slotchiver?

10 MR. SLOTCHIVER: No, she -- she's --

11 THE COURT: Just want to make sure I give everybody the
12 opportunity.

13 MR. SLOTCHIVER: Thank you.

14 THE COURT: Sure, yeah.

15 Okay. Now Mr. Theos, happy to hear from you.

16 MR. THEOS: Thank you.

17 THE COURT: Yes, sir.

18 MR. THEOS: If it please the Court, Your Honor.

19 THE COURT: Uh-huh.

20 MR. THEOS: I might remind the Court that, as you said,
21 this is a guilty plea pursuant to an agreement and that
22 agreement is that Mr. Bowman would plead guilty to assault
23 and battery, third degree, which carries the maximum sentence
24 of up to 300, I'm sorry, up to \$500 and not more than 30 days
25 or both. Of course, as you know, under the statute

1 (indiscernible) 600(e)(1).

2 I appreciate the position that Mr. Slotchiver is in.
3 This is -- and he'll have an opportunity to go into all of
4 that in the civil trial which, I believe, will take place in
5 January.

6 This has been pending for over five years. I will say
7 that it's been a long process, both to the State, the victim,
8 as well as Mr. Bowman. Much has gone into the determination
9 as to what's fair, reasonable and appropriate related to the
10 disposition of the criminal case. And I -- whatever happens
11 in the civil trial happens. Whatever Mr. Slotchiver is able
12 to convince a jury related to injuries, related to expenses,
13 et cetera, you know, we will see at that point.

14 THE COURT: Um-hum.

15 MR. THEOS: I am also counsel of record in the civil
16 case and we look forward to that opportunity to address the
17 jury, as well.

18 As you see, Mr. Bowman is, and I've handed you a -- his
19 biography. That's been provided to the Slotchiver's office,
20 as well. Your Honor, he is 43 years old. He has no prior
21 convictions as you noted. His other arrest that Selena
22 (phonetically) pointed out were dismissed, charges dismissed,
23 record expunged and I would urge the Court not to consider
24 that in any fashion, whatsoever.

25 He's married. He has five children ages 12, 14, two

1 children age 15, one at age 17.

2 I would also ask the Court to not pay any attention to
3 where he lives other than the fact that he lives on Sullivan's
4 Island. Whether it's in a big house, small house, whether he
5 earns \$10 million a year or \$10,000 a year is irrelevant to
6 this proceeding today.

7 As you can see, from his biography, he is -- first of
8 all, he's a veteran, he's a college graduate, he has
9 contributed significantly and extraordinarily to this
10 community both by way of financial and monetary contributions
11 and donations as well as to just beneficial things for the
12 city, in particular the College at Charleston.

13 I would ask the Court, given the duration of time
14 that's past between October 5th, 6th of 2018 and this -- the
15 entering of this plea, I would ask the Court to consider the
16 fact that there have been -- that he has not had any arrests
17 during that time period, that he has been a very productive,
18 very constructive law-abiding citizen, and he was before this
19 and he has been since this incident.

20 It is an unusual situation. It is unfortunate. We
21 believe that a monetary fine is certainly appropriate. We
22 don't believe that anything else would be -- is necessary or
23 appropriate in this case.

24 I just ask you to impose a sentence allowing him to
25 make that \$500 payment. He's here, prepared to do that.

1 THE COURT: All right.

2 MR. THEOS: I would ask that you hear from Mr. Condon.

3 THE COURT: Sure. Yes, sir, Mr. Condon. I'm here.

4 Happy to turn this some way that you don't feel
5 (indiscernible).

6 MR. CONDON: Well, thank you, Your Honor.

7 THE COURT: You good?

8 MR. CONDON: I just wanted to really echo Attorney
9 Theos's comments. You've got somebody here who has no prior
10 record, 43 years of age with a record of accomplishment and
11 he is, as the Court noted, pleading to assault and battery
12 third degree and I'm sure the Court's well aware of the
13 statutory requirements of that charge.

14 In light of that fact, I do firmly believe that a fine
15 is most appropriate for a first-time offender in such
16 situation.

17 Thank you, Your Honor.

18 THE COURT: Okay. All right.

19 MR. CROSBY: Your Honor, may --

20 THE COURT: I'm sorry. Mr. Crosby, what did you say?
21 You wanted to speak?

22 MR. CROSBY: Yes, please.

23 THE COURT: Okay. Your attorney spoke. Is that okay
24 with you? He, after all, decided he would like to speak.

25 MR. THEOS: Absolutely.

1 THE COURT: All right. Go ahead. Yes, sir.

2 MR. CROSBY: Judge McCoy, I must say, like, it is very
3 disheartening that, yes, this took place. This man has plead
4 guilty. This man hid his golf cart and lied from police and
5 evaded police for a week and people go to jail for much
6 longer, for a lot less of a crime.

7 The only big thing is here I didn't die. I could have
8 easily died when I went backwards and my head went flying
9 back.

10 THE COURT: Um-hum.

11 MR. CROSBY: Thankfully, I didn't and I'm here. But
12 the past five years of my life have been permanently changed.
13 The rest of my life -- he's looking at maybe 30 days of an
14 inconvenience but the rest of my life, every day for my life,
15 I have to sit and suffer and so does my family, so does my
16 11-year-old daughter. I couldn't teach her to ride a bike.

17 My 66-year-old father has to come to my house to help
18 with things that I can't do that I always took care of. And
19 just because this man wants to run somebody over not once but
20 twice and admits that he actually did that and might get 30
21 days in jail, that's not okay. That's not okay.

22 THE COURT: I understand your frustration and I
23 appreciate your willingness to talk to me about that on the
24 record today. And, obviously, it goes without saying that
25 I'm sorry this happened to you and that you've had to go

1 through everything that you have gone through the past
2 several years. So thank you for talking to me more about
3 that. Okay?

4 MR. CROSBY: Yes, ma'am.

5 THE COURT: All right. I'm going to turn this back
6 around so the attorneys can see.

7 All right. Anybody else wishing to be heard has not
8 been heard?

9 Last, but not least, I'd like to hear from Mr. Bowman.
10 Anything else you'd like to add? You don't have to, of
11 course. If you want to you can. I have to give you the
12 opportunity.

13 MR. BOWMAN: No. Just that I accept responsibility for
14 the charge that was presented.

15 THE COURT: Okay.

16 All right. You know, this is certainly an aberration
17 that's, you know, unfortunately caused a dramatic series of
18 events for this gentleman and his family and, you know, it's
19 tragic all around and, you know, Mr. Theos, you're right.

20 I don't treat a case any differently, regardless of a
21 Defendant's wealth or lack of wealth or where they live or
22 anything like that. I'd be a terrible judge if I did that
23 kind of thing. So I can't take that into consideration today
24 for our purposes. I know that might come into play a little
25 bit later, potentially, down the line but certainly for

1 today's purposes, that really has no bearing on today's
2 proceeding.

3 Did he serve a day? I assume he was, ultimately,
4 arrested and bonded out the next day?

5 MR. CONDON: He bonded out. He was bonded out that
6 same day, Your Honor.

7 MS. HALIENA: He was in for about two hours.

8 THE COURT: So it's -- okay. Well, he took the day for
9 that. We don't do hours (indiscernible).

10 All right. The sentence will be 30 days, but I'll
11 suspend that for the service of the days served and require
12 Mr. Bowman that you serve some community service. I don't
13 think a \$500 fine's really something that's going to affect
14 you one way or the other too much but I think having to
15 actually serve hours in the community, not giving money, but
16 actually community service hours would be more appropriate in
17 this case.

18 Does the victim have any certain area they'd like to
19 see him serve his service hours in, Mr. Slotchiver, that
20 you're aware of or is it okay with you to --

21 MR. SLOTCHIVER: I haven't had a chance to talk with
22 him about that but I'm not aware of any.

23 THE COURT: Okay. All right. Well, I'm going to ask
24 that you do 100 hours of public service employment. If you
25 don't complete that within six months then you'll have to

1 serve the remainder of the 30-day sentence. All right?

2 MR. CONDON: Your Honor, we'll provide that notice to
3 Ms. Haliena of where that service will be performed and then
4 --

5 THE COURT: And the updates of that.

6 MR. CONDON: -- documentation once it's been completed.

7 THE COURT: That will be satisfactory. Okay. And then
8 the restitution matter, I've indicated that the restitution
9 hearing will be deferred at this time pending, potentially,
10 outcome of the civil litigation. I'm just going to leave it,
11 right now, marked as just deferred and we'll leave it on the
12 attorneys to notify the Court if we need that --

13 UNKNOWN MALE: Do you want to retain -- do you want to
14 retain (indiscernible) restitution hearing just because
15 you've heard the underlying matter or does that not matter?

16 THE COURT: I'm happy to. I don't think it's
17 necessary. I'm happy to, you know, if it'll work out but I
18 don't want to bind you like that either in case something
19 strange happens to me.

20 So, anyway, with that I'll just indicate restitution's
21 deferred for now. Okay?

22 UNKNOWN MALE: Thank you.

23 THE COURT: How's that? All right. Thank you very
24 much.

25 UNKNOWN MALE: Thank you, Judge.

1 MS. HALIENA: Thank you.

2 THE COURT: Sure.

3 UNKNOWN MALE: Thank you, Your Honor.

4 THE COURT: All right. Thank you.

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24 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING IS CONCLUDED

25 AT 2:47 p.m.)

CERTIFICATE OF TRANSCRIBER

I, Lynda Monroe, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 9, Charleston County, South Carolina, on the 30th day of November, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 5, 2023

Lynda Monroe, Transcriber

Wallace Crosby (DOB: 10/17/1983)
Date of Incident: 10/06/2018

DAMAGES SUMMARY

Date	Provider / Expense	Amount	Notes
10/6/2018	Charleston County EMS	\$ 375.00	A0429SH BLS emergency
10/6/2018	Charleston County EMS	\$ 45.00	A0425SH Mileage
10/6/2018	East Cooper Medical Center	\$ 45.54	Pharmacy
10/6/2018	East Cooper Medical Center	\$ 78.88	Sterile supply
10/6/2018	East Cooper Medical Center	\$ 449.07	Shoulder complt
10/6/2018	East Cooper Medical Center	\$ 283.99	Surg lvl I
10/6/2018	East Cooper Medical Center	\$ 2,459.42	ER visit lvl IV
10/6/2018	East Cooper Medical Center	\$ 522.18	Tdap7yr vac ij
10/6/2018	East Cooper Medical Center	\$ 163.28	Adm snl vacc
10/6/2018	East Cooper Medical Center Physicians	\$ 951.00	99284 Emergency dept visit
10/6/2018	East Cooper Medical Center Physicians	\$ 516.00	10120 Remove foreign body
10/6/2018	East Cooper Medical Center Physicians	\$ 237.00	99053 Service provided between 10:00PM and 8:0
10/8/2018	Roper Physicians Partners	\$ 784.00	AAB
10/10/2018	Roper Physicians Partners	\$ 273.00	RTS
10/14/2018	Roper Physicians Partners	\$ 235.00	DBM
11/7/2018	Southeastern Spine Institute	\$ 900.00	99456 Work/medical disability examination
11/8/2018	Charleston Radiologists	\$ 150.00	23350 Lt - injection for shoulder x-ray
11/8/2018	Charleston Radiologists	\$ 239.00	73222 26,lt - MRI joint upr extrem w/dye
11/8/2018	Charleston Radiologists	\$ 83.00	77002 26 - needle localization by xray
11/8/2018	Southeastern Spine Institute	\$ 930.00	72148 MRI of lumbar spine w/o gado
11/8/2018	Trident Medical Center	\$ 1,490.00	XR arthrogram shldr lt
11/8/2018	Trident Medical Center	\$ 736.00	Minor surgery proc
11/8/2018	Trident Medical Center	\$ 3,724.00	MRI up jnt w/cont lt
11/14/2018	Southeastern Spine Institute	\$ 175.00	99214 Office/outpt visit, est, detailed
11/14/2018	Southeastern Spine Institute	\$ 145.00	72110 X-ray exam lwr spine, min 4 views
11/14/2018	Southeastern Spine Institute	\$ 1,900.00	L0637 LSO s/c shell prefab
11/14/2018	Southeastern Spine Institute	\$ 300.00	L0972 LSO corset front
11/15/2018	Charleston Radiologists	\$ 239.00	73222 26,rt - MRI joint upr extrem w/dye
11/15/2018	Charleston Radiologists	\$ 150.00	23350 Rt - injection for shoulder x-ray
11/15/2018	Charleston Radiologists	\$ 83.00	77002 26 - needle localization by xray
11/15/2018	Trident Medical Center	\$ 1,490.00	XR arthrogram shldr rt
11/15/2018	Trident Medical Center	\$ 736.00	Minor surgery proc
11/15/2018	Trident Medical Center	\$ 3,724.00	MRI up jnt w/cont rt
11/16/2018	Southeastern Spine Institute	\$ 500.00	62323 Inj, spine,lumbar/sacral w/ guidance
11/16/2018	Southeastern Spine Institute ASC	\$ 1,874.00	Injection spine lumbar/s
12/3/2018	Lowcountry Orthopaedics	\$ 150.00	L3670
12/3/2018	Lowcountry Orthopaedics	\$ 102.00	L3030,LT
12/3/2018	Lowcountry Orthopaedics	\$ 102.00	73030,XU,RT
12/3/2018	Lowcountry Orthopaedics	\$ 356.00	99203
12/7/2018	Southeastern Spine Institute	\$ 145.00	Voucher 11348010
12/7/2018	Southeastern Spine Institute	\$ 500.00	62323 Inj, spine,lumbar/sacral w/ guidance
12/7/2018	Southeastern Spine Institute ASC	\$ 1,874.00	Injection spine lumbar/s
12/11/2018	Lowcountry Outpatient Surgery Center	\$ 5,507.15	29827 Scope shldr surg; w/rotor cuff
12/11/2018	Lowcountry Outpatient Surgery Center	\$ 5,507.15	29828 Arthroscopy, shoulder, surg; biceps tenodesis
12/11/2018	Lowcountry Outpatient Surgery Center	\$ 5,222.00	29824 Scope shldr surg; dist clavicul
12/11/2018	Lowcountry Outpatient Surgery Center	\$ 5,507.15	29823 Arthroscpy shouldr surg;debrid
12/11/2018	Lowcountry Outpatient Surgery Center	\$ 5,507.15	29826 Arthroscpy shldr; decomp subac
12/11/2018	Lowcountry Outpatient Surgery Center	\$ 1,284.00	L8699 Prosth implnt nos
12/11/2018	Lowcountry Orthopaedics	\$ 2,081.00	29823,XU,RT
12/11/2018	Lowcountry Orthopaedics	\$ 2,246.00	29824,XU,RT

**PLAINTIFF'S
EXHIBIT**

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12/11/2018	Lowcountry Orthopaedics	\$ 1,500.00	29826,RT
12/11/2018	Lowcountry Orthopaedics	\$ 3,577.00	29827,RT
12/11/2018	Lowcountry Orthopaedics	\$ 3,075.00	29828,RT
12/11/2018	Lowcountry Orthopaedics	\$ 520.00	29823,AS,XU,RT
12/11/2018	Lowcountry Orthopaedics	\$ 562.00	29824,AS,XU,RT
12/11/2012	Lowcountry Orthopaedics	\$ 375.00	29826,AS,RT
12/11/2018	Lowcountry Orthopaedics	\$ 894.00	29827,AS,RT
12/11/2018	Lowcountry Orthopaedics	\$ 769.00	29828,AS,RT
12/11/2018	Premier Patient Advocates	\$ 60.00	97760 Mgt and training/del and pick up
12/11/2018	Premier Patient Advocates	\$ 275.00	E0655 NU shoulder wrap
12/11/2018	Premier Patient Advocates	\$ 2,700.00	E0650 RR pneumatic compress non seg
12/11/2018	Premier Patient Advocates	\$ 1,500.00	E0217 RR hot/cold therapy
12/11/2018	Premier Patient Advocates	\$ 5,000.00	E0676 RR dvt feature
12/28/2018	Southeastern Spine Institute	\$ 175.00	99214 Office/outpt visit, est, detailed
1/7/2019	Progressive Physical Therapy	\$ 92.00	97110 Therapeutic exercises
1/7/2019	Progressive Physical Therapy	\$ 39.00	97140 Manual therapy
1/7/2019	Progressive Physical Therapy	\$ 100.00	97161 PT eval low complex 20 min
1/9/2019	Progressive Physical Therapy	\$ 39.00	97140 Manual therapy
1/9/2019	Progressive Physical Therapy	\$ 92.00	97110 Therapeutic exercises
1/14/2019	Progressive Physical Therapy	\$ 92.00	97110 Therapeutic exercises
1/16/2019	Progressive Physical Therapy	\$ 92.00	97110 Therapeutic exercises
1/16/2019	Progressive Physical Therapy	\$ 78.00	97140 Manual therapy
1/17/2019	Lowcountry Orthopaedics	\$ 150.00	L3670,LT
1/23/2019	Progressive Physical Therapy	\$ 138.00	97110 Therapeutic exercises
1/25/2019	Progressive Physical Therapy	\$ 138.00	97110 Therapeutic exercises
1/30/2019	Progressive Physical Therapy	\$ 39.00	97140 Manual therapy
1/30/2019	Progressive Physical Therapy	\$ 138.00	97110 Therapeutic exercises
1/31/2019	Progressive Physical Therapy	\$ 138.00	97110 Therapeutic exercises
2/5/2019	Lowcountry Outpatient Surgery Center	\$ 5,507.15	29828 Arthroscopy, shoulder, surg; biceps tenodesis
2/5/2019	Lowcountry Outpatient Surgery Center	\$ 5,222.00	29824 Scope shldr surg; dist clavicul
2/5/2019	Lowcountry Outpatient Surgery Center	\$ 5,507.15	29823 Arthroscpy shouldr surg;debrid
2/5/2019	Lowcountry Outpatient Surgery Center	\$ 5,507.15	29826 Arthroscpy shldr; decomp subac
2/5/2019	Lowcountry Orthopaedics	\$ 2,081.00	29823,79,XU,LT
2/5/2019	Lowcountry Orthopaedics	\$ 2,246.00	29824,79,XU,LT
2/5/2019	Lowcountry Orthopaedics	\$ 1,500.00	29826,79,LT
2/5/2019	Lowcountry Orthopaedics	\$ 3,075.00	29828,79,LT
2/5/2019	Lowcountry Orthopaedics	\$ 520.00	29823,AS,XU,LT
2/5/2019	Lowcountry Orthopaedics	\$ 562.00	29824,AS,XU,LT
2/5/2019	Lowcountry Orthopaedics	\$ 375.00	29826,AS,LT
2/5/2019	Lowcountry Orthopaedics	\$ 769.00	29828,AS,LT
2/5/2019	Premier Patient Advocates	\$ 60.00	97760 Mgt and training/del and pick up
2/5/2019	Premier Patient Advocates	\$ 275.00	E0655 NU shoulder wrap
2/5/2019	Premier Patient Advocates	\$ 2,700.00	E0650 RR pneumatic compress non seg
2/5/2019	Premier Patient Advocates	\$ 1,500.00	E0217 RR hot/cold therapy
2/5/2019	Premier Patient Advocates	\$ 5,000.00	E0676 RR dvt feature
2/8/2019	Progressive Physical Therapy	\$ 138.00	97110 Therapeutic exercises
2/11/2019	Progressive Physical Therapy	\$ 184.00	97110 Therapeutic exercises
2/14/2019	Progressive Physical Therapy	\$ 138.00	97110 Therapeutic exercises
2/18/2019	Progressive Physical Therapy	\$ 100.00	97161 PT eval low complex 20 min
2/18/2019	Progressive Physical Therapy	\$ 92.00	97110 Therapeutic exercises
2/18/2019	Progressive Physical Therapy	\$ 39.00	97140 Manual therapy
2/21/2019	Progressive Physical Therapy	\$ 39.00	97140 Manual therapy
2/21/2019	Progressive Physical Therapy	\$ 138.00	97110 Therapeutic exercises
2/25/2019	Progressive Physical Therapy	\$ 184.00	97110 Therapeutic exercises
2/28/2019	Progressive Physical Therapy	\$ 39.00	97140 Manual therapy
2/28/2019	Progressive Physical Therapy	\$ 138.00	97110 Therapeutic exercises

3/4/2019	Progressive Physical Therapy	\$ 138.00	97110 Therapeutic exercises
3/4/2019	Progressive Physical Therapy	\$ 39.00	97140 Manual therapy
3/7/2019	Progressive Physical Therapy	\$ 138.00	97110 Therapeutic exercises
3/12/2019	Progressive Physical Therapy	\$ 39.00	97140 Manual therapy
3/13/2019	Progressive Physical Therapy	\$ 138.00	97110 Therapeutic exercises
3/13/2019	Progressive Physical Therapy	\$ 138.00	97110 Therapeutic exercises
3/15/2019	Southeastern Spine Institute	\$ 175.00	99214 Office/outpt visit, est, detailed
3/15/2019	Southeastern Spine Institute	\$ 500.00	62323 Inj, spine,lumbar/sacral w/ guidance
3/15/2019	Southeastern Spine Institute	\$ 200.00	99152 Mod sedation, >5yrs, same phys, 15 min
3/15/2019	Southeastern Spine Institute ASC	\$ 1,874.00	Injection spine lumbar/s
3/22/2019	Lowcountry Orthopaedics	\$ 350.00	107
4/5/2019	Southeastern Spine Institute	\$ 175.00	99214 Office/outpt visit, est, detailed
5/10/2019	Southeastern Spine Institute	\$ 145.00	99213 Office/outpt visit, est prob
5/15/2019	Southeastern Spine Institute	\$ 930.00	72148 MRI of lumbar spine w/o gado
5/15/2019	Southeastern Spine Institute	\$ 175.00	99214 Office/outpt visit, est, detailed
5/16/2019	Lowcountry Orthopaedics	\$ 241.00	99213
6/5/2019	Southeastern Spine Institute	\$ 145.00	99213 Office/outpt visit, est prob
6/21/2019	Southeastern Spine Institute	\$ 500.00	62323 Inj, spine,lumbar/sacral w/ guidance
6/21/2019	Southeastern Spine Institute	\$ 200.00	99152 Mod sedation, >5yrs, same phys, 15 min
7/1/2019	Southeastern Spine Institute	\$ 300.00	9999
7/15/2019	Southeastern Spine Institute	\$ 175.00	99214 Office/outpt visit, est, detailed
7/24/2019	Southeastern Spine Institute	\$ 238.00	95886 MEG each ext w/ NCD +5 muscle complete
7/24/2019	Southeastern Spine Institute	\$ 400.00	95910 Nrv conductn, 7-8 studies
7/24/2019	Southeastern Spine Institute	\$ 175.00	99214 Office/outpt visit, est, detailed
8/12/2019	Southeastern Spine Institute	\$ 265.00	99204 Office/outpt visit,new,mod complex
10/8/2019	Southeastern Spine Institute	\$ 1,250.00	64493 Inject facet joint/nerve lum/sac
10/8/2019	Southeastern Spine Institute	\$ 850.00	64494 Inject 2nd facet jint/nerve lum/sac
10/17/2019	Southeastern Spine Institute	\$ 750.00	62323 Inj, spine,lumbar/sacral w/ guidance
10/17/2019	Southeastern Spine Institute	\$ 300.00	99152 Mod sedation, >5yrs, same phys, 15 min
10/25/2019	Southeastern Spine Institute	\$ 263.00	99214 Office/outpt visit, est, detailed
10/30/2019	Southeastern Spine Institute	\$ 1,630.00	72148 MRI of lumbar spine w/o gado
10/30/2019	Southeastern Spine Institute	\$ 305.00	76376 3d render w/o post process
11/1/2019	Southeastern Spine Institute	\$ 263.00	99214 Office/outpt visit, est, detailed
11/7/2019	Southeastern Spine Institute	\$ 623.00	99245 Office consultation, high complex
11/7/2019	Southeastern Spine Institute	\$ 218.00	72110 X-ray exam lwr spine, min 4 views
11/7/2019	Southeastern Spine Institute	\$ 190.00	99213 Office/outpt visit, est prob
11/13/2019	Southeastern Spine Institute	\$ 825.00	62290 Inject for spine disk x-ray, lumbar
11/13/2019	Southeastern Spine Institute	\$ 400.00	72295 X-ray of lower spine disk
11/13/2019	Southeastern Spine Institute	\$ 300.00	99152 Mod sedation, >5yrs, same phys, 15 min
11/20/2019	Southeastern Spine Institute	\$ 190.00	99213 Office/outpt visit, est prob
12/9/2019	Thomas C. Appleby	\$ 425.00	99245 Office/outpatient consultation- level 5
12/20/2019	Atlantic Coast Anesthesia Services	\$ 3,394.50	Anesth, spine, cord surgery - 00670
12/20/2019	Atlantic Coast Anesthesia Services	\$ 3,350.70	Anesth, spine, cord surgery - 00670
12/20/2019	East Cooper Medical Center	\$ 2,922.00	Med-sur-gy/pvt
12/20/2019	East Cooper Medical Center	\$ 3,344.00	Pharmacy
12/20/2019	East Cooper Medical Center	\$ 227.00	Pharmacy
12/20/2019	East Cooper Medical Center	\$ 177,305.00	Supply/implants
12/20/2019	East Cooper Medical Center	\$ 885.00	Laboratory or lab
12/20/2019	East Cooper Medical Center	\$ 25,499.00	OR services
12/20/2019	East Cooper Medical Center	\$ 3,157.00	Anesthesia
12/20/2019	East Cooper Medical Center	\$ 444.00	Physical therap
12/20/2019	East Cooper Medical Center	\$ 126.00	Phys therap/eval
12/20/2019	East Cooper Medical Center	\$ 223.00	Occupation ther
12/20/2019	East Cooper Medical Center	\$ 197.00	Occup therap/eval
12/20/2019	East Cooper Medical Center	\$ 40.00	Drugs/detail code
12/20/2019	East Cooper Medical Center	\$ 240.00	Drugs/detail code

12/20/2019	East Cooper Medical Center	\$ 120.00	Drugs/detail code
12/20/2019	East Cooper Medical Center	\$ 138.00	Drugs/detail code
12/20/2019	East Cooper Medical Center	\$ 630.00	Drugs/detail code
12/20/2019	East Cooper Medical Center	\$ 480.00	Drugs/detail code
12/20/2019	East Cooper Medical Center	\$ 136.00	Drugs/detail code
12/20/2019	East Cooper Medical Center	\$ 324.00	Drugs/detail code
12/20/2019	East Cooper Medical Center	\$ 20.00	Drugs/detail code
12/20/2019	East Cooper Medical Center	\$ 440.00	Drugs/detail code
12/20/2019	East Cooper Medical Center	\$ 15.00	Drugs/detail code
12/20/2019	East Cooper Medical Center	\$ 159.00	Drugs/detail code
12/20/2019	East Cooper Medical Center	\$ 5,353.00	Recovery room
12/20/2019	East Cooper Medical Center	\$ 708.00	EEG
12/20/2019	East Cooper Medical Center	\$ 163.00	Vaccin admin
12/20/2019	Southeastern Spine Institute	\$ 5,829.00	22558 Lumbar spine fusion w/bone graft
12/20/2019	Southeastern Spine Institute	\$ 2,125.00	22853 Insrt spinal prosthetic device w/ fusion
12/20/2019	Southeastern Spine Institute	\$ 800.00	20930 Allograft, spine surg, morselized
2/3/2020	Progressive Physical Therapy	\$ 184.00	97110 Therapeutic exercises
2/5/2020	Progressive Physical Therapy	\$ 184.00	97110 Therapeutic exercises
2/10/2020	Progressive Physical Therapy	\$ 184.00	97110 Therapeutic exercises
2/12/2020	Progressive Physical Therapy	\$ 184.00	97110 Therapeutic exercises
2/17/2020	Progressive Physical Therapy	\$ 184.00	97110 Therapeutic exercises
2/19/2020	Progressive Physical Therapy	\$ 184.00	97110 Therapeutic exercises
2/25/2020	Progressive Physical Therapy	\$ 184.00	97110 Therapeutic exercises
2/26/2020	Progressive Physical Therapy	\$ 184.00	97110 Therapeutic exercises
3/2/2020	Progressive Physical Therapy	\$ 184.00	97110 Therapeutic exercises
3/4/2020	Progressive Physical Therapy	\$ 184.00	97110 Therapeutic exercises
3/9/2020	Progressive Physical Therapy	\$ 184.00	97110 Therapeutic exercises

Total: \$ 386,452.61

CERTIFICATE OF COUNSEL

RECEIVED

Feb 06 2025

SC Court of Appeals

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

January 31, 2025

s/Raymond D. Turner
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