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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE GREENVILLE COUNTY
Court of Common Pleas

Patrick C. Fant, III, Circuit Court Judge

Case No.: 2023-CP-23-000176

Margie Evett,.....Appellant,

v.

Desmine Sartain,.....Respondent.

RECORD ON APPEAL

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2300176

Margie Evett
PLAINTIFF(S)

Desmine Sartain
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

This matter came before the Court on February 26, 2025 pursuant to Defendant Desmaine Sartain's Motion for Summary Judgement. Based on a review of the file, submissions of the parties, and arguments by the attorneys the Court hereby grants Summary Judgment as to all causes of action. Counsel for Defendant to prepare a formal proposed order and provide to opposing counsel.

IT IS SO ORDERED

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/27/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Greenville Common Pleas

Case Caption: Margie Evett vs. Desmine Sartain

Case Number: 2023CP2300176

Type: Order/Electronic Form 4

So Ordered

Patrick C. Fant, III

Electronically signed on 2025-02-27 11:24:46 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

) IN THE COURT OF COMMON PLEAS
) THIRTEEN JUDICIAL CIRCUIT
)

C.A. No.: 2023-CP-23-00176

Margie Evett,

)
)
) Plaintiff,

v.

)
)
) Desmine Sartain,

)
)
) Defendants.
)
)

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

This matter came before the Court on Wednesday, January 26, 2025, for a hearing on Defendant's Motion for Summary Judgment. Based on a review of the file, submissions by the parties, and arguments made during the hearing, I conclude that the Defendant's Motion should be granted.

Facts

This matter arises out of an incident whereby the Plaintiff alleges she was injured while holding a dog on a leash and allegedly fell while being pulled down a flight of stairs by a dog. The Plaintiff had known the Defendant between eight and ten years, and the Plaintiff started cleaning the Defendant's house shortly after they met. During the time period that Plaintiff worked for the Defendant, the Defendant always had at least one German Shepherd at the Defendant's house. The Plaintiff would help take care of the Defendant's German Shepherd dog, which included routinely exiting with the Defendant's German Shepherd dog through the side door of the Defendant's house, and down the Defendant's stairs to take the German Shepherd on walks. At the time of the alleged incident the Defendant had a German Shepherd dog named Blue. The Plaintiff would feed Blue and take Blue to the kennel on behalf of the Defendant. The Plaintiff claims that the Defendant never asked the Plaintiff to participate in any activity with Blue that the Plaintiff thought was unreasonable.

On the day of the alleged subject incident, the Plaintiff went over to the Defendant's house to take Blue and another dog named Koblenz to the kennel. While at the Defendant's house, the Plaintiff placed her own personal leash on Blue, and took Blue outside through the side door of the Defendant's house, which led to a set of stairs with a landing. Outside the entrance to the side door of the Defendant's house, and while holding the leash that was attached to Blue, the Plaintiff claims that she stepped down one step of the Defendant's stairs in order to go down the stairs. The Plaintiff's right hand was through a "loop" in the leash attached to Blue, and the Plaintiff's left hand was holding on to the rail to the Defendant's stairs. At this time, Blue, possibly due to seeing a squirrel, subsequently ran down the Defendant's stairs. The Plaintiff, whose right hand was through the loop of the dog leash, claims that she was pulled down the remaining stairs. After the Plaintiff's alleged fall, Blue sat at the bottom of the Defendant's stairs, and Blue ultimately helped the Plaintiff back inside the Defendant's residence by allowing the Plaintiff to hold onto Blue while they both went back up the stairs.

Legal Standard

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." Gauld at 558, 671 S.E.2d at 85. Pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure, "a mere scintilla" of evidence is not the correct standard of proof for deciding whether the "non-moving party has created a genuine issue of material fact necessary to survive a motion for summary judgment. Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 460, 892 S.E.2d 297, 300 (2023). Rather, the "non-moving party has to present facts that would permit reasonable inference to be drawn from evidence that creates issues of fact for trial." Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 460, 892 S.E.2d 297, 300 (2023). Therefore, summary judgment should be granted when "the pleadings, depositions, answers to interrogatories, and

admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Gauld v. O'Shaugnessy Realty Co., 380 S.C. 548, 557, 671 S.E.2d 79, 84 (Ct. App. 2008).

Discussion

The Plaintiff has alleged causes of action under S.C. Ann § 47-3-110(A), also known informally as South Carolina’s Dog Bite/Attack Statute, and negligence. S.C. Ann § 47-3-110(A) states the following:

“(A) If a person is bitten or otherwise attacked by a dog while the person is in a public place or is lawfully in a private place, including the property of the dog owner or person having the dog in the person's care or keeping, the dog owner or person having the dog in the person's care or keeping is liable for the damages suffered by the person bitten or otherwise attacked. For the purposes of this section, a person bitten or otherwise attacked is lawfully in a private place, including the property of the dog owner or person having the dog in the person's care or keeping, when the person bitten or otherwise attacked is on the property in the performance of a duty imposed upon the person by the laws of this State, the ordinances of a political subdivision of this State, the laws of the United States of America including, but not limited to, postal regulations, or when the person bitten or otherwise attacked is on the property upon the invitation, express or implied, of the property owner or a lawful tenant or resident of the property.

Although S.C. Ann. § 47-3-110 is a strict liability offense, the Plaintiff must still prove that there was a dog attack or a dog bite. Padget v. Mercado, 341 S.C. 229, 233, 533 S.E.2d 339, 340 (SC App Ct. 2000) In Padget v. Mercado, 341 S.C. 229, 533 S.E.2d 339 (SC App Ct. 2000), the defendant called animal control and requested the removal of an adult rottweiler that the defendant could not control. The plaintiff, an animal control officer, responded and “enticed” the dog to the

fence in an effort to place the noose of a control stick, five feet in length, around its neck. Padget v. Mercado, 341 S.C. 229, 230, 533 S.E.2d 339 (SC App Ct. 2000). The plaintiff was subsequently successful in noosing the dog. Padget v. Mercado, 341 S.C. 229, 230, 533 S.E.2d 339 (SC App Ct. 2000). However, while the plaintiff was lifting the dog into the plaintiff's truck, something "popped" in plaintiff's shoulder. Padget v. Mercado, 341 S.C. 229, 230, 533 S.E.2d 339 (SC App Ct. 2000). The plaintiff filed suit against the defendant alleging that she sustained a shoulder injury as a result of a dog "attack." Padget v. Mercado, 341 S.C. 229, 533 S.E.2d 339 (SC App Ct. 2000),

In Padget, the Court, noted that the word "attack" implies the "taking of initiative in a struggle" and that "attack" has also been defined as "any hostile offensive action." Padget v. Mercado, 341 S.C. 229, 232, 533 S.E.2d 339, 340 (SC App Ct. 2000). The Court subsequently held in Padget that the plaintiff's alleged injury was not due to a dog attack, but due to the plaintiff lifting the dog into the plaintiff's truck. Padget v. Mercado, 341 S.C. 229, 232, 533 S.E.2d 339, 340 (SC App Ct. 2000). To further support its conclusion, the Court in Padget also cited to an Illinois case where a woman fell down steps after she stumbled over a sleeping dog, and she subsequently alleged that contact with the dog constituted an attack. Padget v. Mercado, 341 S.C. 229, 533 S.E.2d 339 (SC App Ct. 2000) (citing Bailey v. Bly, 87 Ill. App. 2d 259, 231 N.E. 2d (Ill. App 5 Dist. 1967)). However, as the Court in Padget noted, the Court in Illinois did not find that set of circumstances whereby the Plaintiff made contact with the Defendant's dog to be an "attack" because the woman not attacked or injured by the dog. Padget v. Mercado, 341 S.C. 229, 533 S.E.2d 339 (SC App Ct. 2000) (citing Bailey v. Bly, 87 Ill. App. 2d 259, 231 N.E. 2d (Ill. App 5 Dist. 1967)).

Here, like the Defendants' dogs in Padget and Bailey, the Defendant's dog, Blue, did not direct any "hostile offensive action" towards the Plaintiff since the Plaintiff's own testimony is

that Blue ran down the Defendant's stairs possibly to chase a squirrel. In fact, the Plaintiff's testimony shows the opposite of any "hostile offensive action" directed towards the Plaintiff since the Plaintiff's testimony was that Blue ran away from the Plaintiff rather than to or towards the Plaintiff. Therefore, it is clear that the Defendant's dog, Blue, did not "attack" the Plaintiff for the purposes of liability under S.C. Ann § 47-3-110(A) since Blue did not direct any "hostile offensive action" towards the Plaintiff.

The Plaintiff has also alleged a cause of action against the Defendant for negligence under a theory of premises liability and general negligence. According to South Carolina law, the nature and scope of duty in a premises liability action, if any, is determined based upon the status or classification of the person injured at the time of his or her injury. Roe v. Bibby, 410 S.C. 287, 763 S.E.2d 645 (SC Ct. App. 2014). In a premises liability case, the "invitee" is offered the utmost duty of care by the landowner. Sims v. Giles, 343 S.C. 708, 541 S.E.2d 857 (S.C. Ct. App. 2001). An "invitee" is a person who enters onto the property of another at the express or implied invitation of the property owner. Sims v. Giles, 343 S.C. 708, 541 S.E.2d 857 (S.C. Ct. App. 2001). The landowner owes to an "invitee" the duty of exercising reasonable or ordinary care for her safety, and is liable for injuries resulting from the breach of such duty. Sims v. Giles, 343 S.C. 708, 541 S.E.2d 857 (S.C. Ct. App. 2001).

The landowner has a duty to warn an invitee only of latent or hidden dangers of which the landowner has knowledge or should have knowledge. Sims v. Giles, 343 S.C. 708, 541 S.E.2d 857 (S.C. Ct. App. 2001). The landowner's duty to warn an invitee of latent or hidden dangers is an active or affirmative duty. Sims v. Giles, 343 S.C. 708, 541 S.E.2d 857 (S.C. Ct. App. 2001). Foreseeability of the precise manner in which the injuries were sustained is not a prerequisite to a finding that a landowner breached his duty of care to an invitee; rather, it is sufficient that there is

a reasonable generalized gamut of greater than ordinary dangers of injury and that the sustaining of the injury was within this range. Sims v. Giles, 343 S.C. 708, 541 S.E.2d 857 (S.C. Ct. App. 2001).

Here, the Plaintiff was an invitee under the law because the Plaintiff was at the Defendant's residence at the invitation of the Defendant to perform a benefit to the Defendant. However, no legal duty existed on the part of the Defendant because there were no known, or even unknown, latent or hidden dangers on the Defendant's property that caused or could have caused the Plaintiff's injuries. The Defendant's dog, Blue, also does not constitute a latent or hidden danger since the Plaintiff was familiar with the layout of the Defendant's house, the Plaintiff had been familiar with the Blue for years, and there is no evidence that Blue had a propensity to run down stairs prior to the subject incident. Therefore, the Defendant did not owe any legal duty to the Plaintiff since there were no known, or even unknown, "latent or hidden dangers" at the Defendant's property.

Although no legal duty existed, since there were no known, or even unknown, dangers located at the Defendant's property that the Defendant could have warned the Plaintiff about, even if there was such a legal duty, the Defendant did not breach her legal duty since the Defendant cannot warn the Plaintiff of a non-existent danger. There is also no legal duty under a general theory of negligence since there is no legal duty to train one's dog not to run down stairs, or to train one's dog in general. Therefore, even if the Defendant owed a legal duty under a theory of premises liability, the Defendant did not breach her legal duty to the Plaintiff nor did the Defendant owe any legal duty to the Plaintiff under a general theory of negligence.

Based upon the available evidence in this case and construing the evidence in the light most favorable to the Plaintiff, there is no genuine issue of to any material fact, and the Plaintiff cannot

establish a claim or cause of action pursuant to S.C. Ann § 47-3-110(A) or under a theory of negligence. As a result, summary judgment in favor of the Defendant is proper.

Therefore, IT IS HEREBY ORDERED THAT the Defendant's Motion for Summary Judgment is GRANTED and this case is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

The Honorable Patrick Cleburne Fant, III
Presiding Judge

Date: _____
Greenville, South Carolina



Greenville Common Pleas

Case Caption: Margie Evett vs. Desmine Sartain

Case Number: 2023CP2300176

Type: Order/Summary Judgment

So Ordered

Patrick C. Fant, III

Electronically signed on 2025-03-10 18:01:29 page 8 of 8

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2300176

Margie Evett
PLAINTIFF(S)

Desmine Sartain
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

This matter is before the Court pursuant to Plaintiff's Motion Pursuant to Rule 59(e), SCRPC. Based on a review of the submissions by the Parties and the relevant law, the Court hereby Denies the Plaintiff's Motion.

It is so ordered.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/31/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Greenville Common Pleas

Case Caption: Margie Evett vs. Desmine Sartain

Case Number: 2023CP2300176

Type: Order/Electronic Form 4

So Ordered

Patrick C. Fant, III

Electronically signed on 2025-03-31 08:36:56 page 3 of 3

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

Margie Evett,

Plaintiff,

vs.

Desmine Sartain,

Defendant.

SUMMONS

(REQUEST FOR A JURY TRIAL)

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is served upon you, and to serve a copy of your Answer on the subscriber at their offices at Venus Poe, PA, 105 North Main Street, Fountain Inn, South Carolina 29644 within thirty days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint in the time aforesaid, a judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted:

s/Sheally Venus Poe
 Sheally Venus Poe
 Venus Poe, PA
 105 North Main Street
 Fountain Inn, South Carolina 29644
 (864) 963-0310
 Facsimile (864) 601-9049
vpoe@venuspoe.com
 ATTORNEY TO MARGIE EVETT

This 17th day of January 2023
 Fountain Inn, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

Margie Evett,

Plaintiff,

vs.

Desmine Sartain,

Defendant.

COMPLAINT

(REQUEST FOR A JURY TRIAL)

The Plaintiff, above-named, through their Attorney, Sheally Venus Poe, complaining of the Defendant herein, would allege:

1. The parties and subject matter herein contained are within the jurisdiction of this Honorable Court.
2. That the Plaintiff was a citizen and resident of the County of Greenville and the State of South Carolina at the time of the incident plead in the Complaint.
3. That upon information and belief, Defendant, was a resident of Greenville County, South Carolina at the time of the incident described in the Complaint.
4. The incident occurred in Greenville County, South Carolina. This Court has jurisdiction over the Defendant and subject matter of this Complaint.

FACTS

5. On January 24, 2020, the Plaintiff was attempting to close the door of the Defendant's home. The Plaintiff had the leash of Ms. Sartain's large German Shepard and was preparing to take him to the kennel. The dog bolted and pulled the Plaintiff down brick steps outside Ms. Sartain's home causing extensive injuries.

FOR A FIRST CAUSE OF ACTION

(Negligence/Gross Negligence/Recklessness and Premises Liability)

6. Paragraphs one through five are restated herein as if repeated verbatim.
7. Defendant owned a large German Shepard. Defendant had a duty to others for her dog not to harm others, to warn of any danger and to properly train her dog not to harm others.
8. Margie Evett was an invitee on the Defendant's property.
9. Defendant breached her duty to Plaintiff in the following particulars:
 - a. When her dog bolted, jerking Margie Evett down brick stairs to a hard landing.
 - b. Failure to properly train her dog;
 - c. Failure to warn Ms. Evett of the dogs propensities; and,
 - b. In other such particulars as the evidence may show.
10. As a direct and proximate result of the negligent, grossly negligent, careless, and reckless acts and omissions of the Defendant, Margie Evett;

- a. Was severely, seriously, and painfully injured;
- b. Incurred past medical treatment and bills;
- c. Has incurred and will incur in the future substantial medical and doctor bills;
- d. was subjected to extreme pain, mental anguish, suffering, and discomfort over considerable period of time;
- e. Was prevented from attending her usual and ordinary household duties;
- f. Has lost income as a result of her injuries;
- g. Has been prevented from enjoying her usual and normal hobbies and recreational past times;
- h. Has suffered severe emotional trauma and distress;
- i. Loss of enjoyment of life; and,
- j. In other such particulars as the evidence may show.

Any or all of which were the cause in fact and the direct and proximate cause of the injuries and damages suffered by the Plaintiff, said acts being in violation of the laws of the County of Greenville and the State of South Carolina.

FOR A SECOND CAUSE OF ACTION
(Strict liability per South Carolina Code § 47-3-110)

11. Paragraphs one through ten are restated herein as if repeated verbatim.
12. Defendant Sartain was the owner of the dog that injured Margie Evett.
13. Margie Evett was lawfully on Ms. Sartain's property as an invited guest at the time of her injuries.
14. While an invited guest at the residence of Ms. Sartain, the Plaintiff suffered injuries as a result of Ms. Sartain's dog's actions.
15. Ms. Evett did not provoke or harass Ms. Sartain's dog.
16. Ms. Evett suffered extensive injuries as a direct and proximate result of the actions of Ms. Sartain's dog including but not limited to:
 - a. Was severely, seriously, and painfully injured;
 - b. Incurred past medical treatment and bills;
 - c. Has incurred and will incur in the future substantial medical and doctor bills;
 - d. was subjected to extreme pain, mental anguish, suffering, and discomfort over considerable period of time;
 - e. Was prevented from attending her usual and ordinary household duties;
 - f. Has lost income as a result of her injuries;

- g. Has been prevented from enjoying her usual and normal hobbies and recreational past times;
 - h. Has suffered severe emotional trauma and distress;
 - i. Loss of enjoyment of life; and,
 - k. In other such particulars as the evidence may show.
17. Per South Carolina Code Ann. §47-3-110, Defendant Sartain is strictly liable for the damages Plaintiff suffered.
18. Ms. Evett is entitled to an award of actual and punitive damages per South Carolina Code Ann. §47-3-110

WHEREFORE, The Plaintiff demands judgment against the Defendant for actual and punitive damages, including the costs of this action and attorney's fees and other damages this Honorable Court deems appropriate, just, and proper.

Respectfully submitted:

s/Sheally Venus Poe
Sheally Venus Poe
Venus Poe, PA
105 North Main Street
Fountain Inn, South Carolina 29644
(864) 963-0310
Facsimile (864) 601-9049
vpoe@venuspoe.com
ATTORNEY FOR MARGIE EVETT

This 17th day of January 2022
Fountain Inn, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No.: 2023-CP-23-00176
Margie Evett,	)	
	)	
Plaintiff,	)	
	)	ANSWER
v.	)	(Jury Trial Demanded)
	)	
Desmine Sartain,	)	
	)	
Defendant.	)	
	)	

The defendant, Desmine Sartain, answering the Complaint of the plaintiff, would respectfully allege and show unto the Court as follows:

FOR A FIRST DEFENSE

1. The defendant lacks sufficient information to form a belief regarding the allegations of Paragraph 1, and therefore, denies them.
2. The defendant lacks sufficient information to form a belief regarding the allegations of Paragraph 2, and therefore, denies them.
3. The defendant admits the allegations of Paragraph 3.
4. The defendant lacks sufficient information to form a belief regarding the allegations of Paragraph 4, and therefore, denies them.
5. The defendant lacks sufficient information to form a belief regarding the allegations of Paragraph 5, and therefore, denies them.
6. Insofar as the allegations of Paragraph 6 require a response, the defendant realleges and incorporates by reference her prior answers and allegations as if fully repeated verbatim herein.

7. In response to the allegations of Paragraph 7, the defendant admits that she owned a dog. The defendant further admits that she had a duty to comply with South Carolina law and has done so at all relevant times. The defendant denies the remaining allegations of Paragraph 7.

8. The defendant admits the allegations of Paragraph 8.

9. The defendant denies the allegations of Paragraph 9.

10. The defendant denies the allegations of Paragraph 10.

11. Insofar as the allegations of Paragraph 11 require a response, the defendant realleges and incorporates by reference her prior answers and allegations as if fully repeated verbatim herein.

12. In response to the allegations of Paragraph 12, the defendant admits that she owns a dog. The defendant denies the remaining allegations of Paragraph 12.

13. The defendant denies the allegations of Paragraph 13.

14. The defendant denies the allegations of Paragraph 14.

15. The defendant denies the allegations of Paragraph 15.

16. The defendant denies the allegations of Paragraph 16.

17. The allegations of Paragraph 17 call for a legal conclusion and, therefore, no response is required. To the extent a response is required, the defendant denies the allegations of Paragraph 17.

18. The defendant denies the allegations of Paragraph 18.

19. The defendant denies each and every allegation of the Complaint not specifically admitted, modified, or explained herein above.

20. The defendant hereby denies any and all Requests for Admission served on the defendant pursuant to Rule 36 of the South Carolina Rules of Civil Procedure which are inconsistent with the defendant's Answer.

FOR A SECOND DEFENSE

21. The defendant incorporates herein the allegations of her previous defenses which are consistent with this defense.

22. The defendant alleges that the Complaint of the plaintiff fails to state facts sufficient to constitute a cause of action against her and, therefore, the Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

23. The defendant incorporates herein the allegations of her previous defenses which are consistent with this defense.

24. The defendant alleges that even assuming she was negligent, careless, grossly negligent, willful, wanton or reckless in any respect, and that any such conduct on her part operated as a proximate cause of the incident and 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 plaintiff's negligent, grossly negligent, reckless, willful and wanton conduct contributed more than 50% to the cause of the incident and plaintiff's resulting injuries and damages, if any. For that reason, the defendant is not liable to plaintiff in any sum whatsoever.

FOR A FOURTH DEFENSE

25. The defendant incorporates herein the allegations of her previous defenses which are consistent with this defense.

26. The defendant alleges that even if she 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 even if any such conduct on her part operated as a greater than 50% cause of the incident and 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, she is entitled to a determination as to the percentage which plaintiff's negligent, grossly negligent, reckless, willful and wanton conduct contributed to the incident and to a reduction of any amount awarded to plaintiff in an amount equal to that percentage of plaintiff's own negligent, grossly negligent, reckless, willful and wanton conduct.

FOR A FIFTH DEFENSE

27. The defendant incorporates herein the allegations of her previous defenses which are consistent with this defense.

28. The defendant alleges that to the extent that the plaintiff recovers punitive damages related to the loss complained of in the 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 and §15-32-520.

FOR A SIXTH DEFENSE

29. The defendant incorporates herein the allegations of her previous defenses which are consistent with this defense.

30. The defendant alleges that the plaintiff failed to properly mitigate her damages. The defendant pleads such failure as a complete bar to any recovery and/or that any recovery should be reduced by an amount to be proved at the trial of this case.

FOR A SEVENTH DEFENSE

31. The defendant incorporates herein the allegations of her previous defenses which are consistent with this defense.

32. The defendant 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 clauses of the Fifth and Fourteenth Amendments, respectively, of the United States Constitution, as well as the applicable corresponding sections of the Constitution of the State of South Carolina, Article 1, Section 3.

33. The plaintiff's claim for punitive damages violates the 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 defendant's exercise of that right.

34. The plaintiff's claim 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 defendant for imposition of punitive damages is void for vagueness; and
- b) Insofar as punitive damages are not measured against actual injury to the plaintiff 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 damage that may be awarded is indeterminate at the time of the defendant's alleged conduct.

FOR AN EIGHTH DEFENSE

35. The defendant incorporates herein the allegations of her previous defenses which are consistent with this defense.

36. The defendant hereby pleads the equitable doctrines of waiver, estoppel, laches and unclean hands as affirmative defenses to the plaintiff's allegations.

FOR A NINTH DEFENSE

37. The defendant incorporates herein the allegations of her previous defenses which are consistent with this defense.

38. At this early stage of litigation there has been no discovery and the defendant has not had the opportunity to fully investigate Plaintiff's claims and, accordingly, reserves the right to amend this Answer to include any additional defenses which may be revealed through discovery, investigation, or otherwise.

FOR A TENTH DEFENSE

39. The defendant incorporates herein the allegations of her previous defenses which are consistent with this defense.

40. The defendant alleges that any injuries sustained by the plaintiff, as alleged in the Complaint, were due to and caused by the sole acts of negligence, recklessness and wantonness on the part of the plaintiff and the defendant does plead the sole negligence, recklessness and wantonness of the plaintiff as the proximate cause of said injury.

FOR AN ELEVENTH DEFENSE

41. The defendant incorporates herein the allegations of her previous defenses which are consistent with this defense.

42. Upon information and belief, the plaintiff provoked the dog in question and her claims are barred as a result of that provocation.

WHEREFORE, having fully answered the Complaint of the plaintiff, the defendant prays that the 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.

By: s/ James P. Walsh
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JURY TRIAL DEMANDED

By: s/ James P. Walsh
James P. Walsh (15180)

March 29, 2023

STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS
 COUNTY OF GREENVILLE * TRANSCRIPT OF RECORD

-----X
 MARGIE EVETT, *
 Plaintiff, *
 vs. * Case No. 2023-CP-23-00176
 DESMINE SARTAIN, *
 Defendant. *
 -----X

February 26, 2025

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

B E F O R E:

The Honorable Patrick C. Fant, III, Presiding Judge

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

Sheally Venus Poe, Esq.
 Attorney for the Plaintiff

John Solar, Esq.
 Attorney for the Defendant

Recorded by: TEC Courtroom Recording

Court Transcriber: Bobbi Fisher, RPR
 SC Official Court Reporter III

I N D E X

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E X H I B I T S

(None.)

COURT REPORTER LEGEND

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

P R O C E E D I N G S

THE COURT: And I did get a summary judgment -- I guess a memo --

MR. SOLAR: Yes, sir, I filed a memo ---

THE COURT: -- a memo filed --

MR. SOLAR: --- with three exhibits.

THE COURT: Yep. Had two pictures of these steps?

MR. SOLAR: Yes, sir.

THE COURT: Okay. I mean, I know it's a discussion and I'll hear from y'all as far as whether or not this falls under the statute, I guess.

MS. POE: And, Your Honor, I have a memo that I --

THE COURT: Thank you. Awesome.

MS. POE: I'd like to point out that this memo was not within the 72-hour window, and so we had that one together in the last 24 hours literally.

THE COURT: Well, thank you for doing that. And I certainly would give you time to do it.

All right. We are here on Defendant's Motion for Summary Judgment.

MR. SOLAR: May it please the Court, Your Honor. My name is John Solar. I represent the defendant.

Your Honor, assuming everything the plaintiff said or has said about the subject incident is correct, the facts do not support a cause of action under the law for a dog attack or

1 negligence.

2 Your Honor, starting with the dog attack, Padgett v.
3 Mercado tells us two important things. First, it tells us
4 that a dog attack is a hostile, offensive action. It also
5 tells us that, just because some -- a dog is involved in the
6 context of someone's injuries, it does not automatically mean
7 that it was a dog attack.

8 What happened in this case, Your Honor, was the plaintiff
9 went to the defendant's house. The plaintiff was very
10 familiar with the defendant's house, very familiar with the
11 defendant's dog. She leashed the defendant's dog. She goes
12 outside on the defendant's door and there's the set of --

13 THE COURT: Was she a housekeeper?

14 MR. SOLAR: Yes, sir, she was.

15 THE COURT: For a couple of years? Like seven years?
16 Six years? Something like that?

17 MR. SOLAR: She knew her -- the testimony was she knew
18 her for about seven or eight years, and that, shortly after,
19 she started being her housekeeper.

20 MS. POE: She worked for multiple members of the family.

21 THE COURT: I gotcha. Okay. All right.

22 MR. SOLAR: And so what happened, Your Honor, is they go
23 out onto the steps. The plaintiff testified that she had the
24 loop of the leash kind of around her wrist or her arm ---

25 THE COURT: Blue?

1 MR. SOLAR: Yes, sir. Blue, the dog.

2 And Blue is since deceased.

3 MS. POE: Oh, I didn't know Blue died.

4 MR. SOLAR: Yeah.

5 THE COURT: RIP Blue.

6 MR. SOLAR: --- and Blue took off. The plaintiff
7 believes he took off because of a squirrel. He bolted down
8 the steps, and the plaintiff, because she had her hand through
9 that loop of the leash, she went with the dog, Your Honor.
10 And the plaintiff did sustain significant injuries.

11 But what's important, Your Honor, is those facts do not
12 constitute an attack under the law. There was no offensive or
13 hostile offensive action directed towards the plaintiff. It's
14 actually the opposite, Your Honor. The dog ran from the
15 plaintiff down the stairs, not toward the plaintiff.

16 THE COURT: So tell me this -- and I mean, I -- I know
17 you haven't been in front of me before, at least that I
18 recall.

19 MR. SOLAR: I...

20 THE COURT: Maybe?

21 MR. SOLAR: I haven't had anything substantive before you
22 before.

23 THE COURT: I usually -- it just helps me to ask
24 questions as we go along.

25 MR. SOLAR: Absolutely.

1 THE COURT: And I apologize for interrupting, but -- and
2 I'm not saying that I -- I'm just asking this question: Why
3 -- and I may totally agree with you, but I need -- I just want
4 to hear your answer on this. Why would this not be -- why is
5 this a matter of law for me and not a question of fact for a
6 jury?

7 MR. SOLAR: It's a matter of law, Your Honor, because --

8 THE COURT: As far as whether it was hostile versus, you
9 know...

10 MR. SOLAR: Well, I think, Your Honor, what happens is
11 the case law and the case law cited in Plaintiff's Brief in
12 Opposition, every aspect shows that, when the dog has been --
13 or it has been constituted a dog attack before, the dog has
14 directed some type of action towards the plaintiff. They may
15 not have made contact with the plaintiff, but they directed it
16 towards them.

17 And here, there is no evidence whatsoever that there was
18 any offensive action by the dog towards the plaintiff. And I
19 believe that's the legal distinction, Your Honor, where we can
20 obtain a ruling that this was not a dog attack.

21 THE COURT: Okay. All right. Thanks. I just wanted
22 to...

23 MR. SOLAR: And, Your Honor, also, negligence has been
24 alleged. The plaintiff was an invitee under the law. Under
25 the law, the property owner had a duty to warn of known,

1 latent, or hidden dangers.

2 It's our position, Your Honor, that there was actually no
3 duty owed because there was no known -- there was no danger
4 whatsoever to the property. So if there's no dangers at the
5 property, why would she have to warn her of anything?

6 But, if she did have to warn her, again, there was no
7 breach because there was no danger at the property. There was
8 no allegations whatsoever that there was anything wrong with
9 the handrail or the steps to the house or any other aspect of
10 the house. The simple fact is, is the plaintiff was familiar
11 with the dog. There's been no evidence of any propensity for
12 the dog to run down the stairs before this.

13 And so, Your Honor, we believe that there is no dog
14 attack under the law and that there's no negligence under the
15 law, and we ask that our motion be granted.

16 THE COURT: All right. Ms. Poe?

17 MS. POE: Thank you, Your Honor. Venus Poe for Margie
18 Evett.

19 So the facts of the case I think Defendant stated -- and
20 Ms. Evett was severely injured. And Blue is a German
21 shepherd, so he was a large dog, and Ms. Evett is elderly and
22 petite.

23 Under the -- under 47-3-110, the dog bite statute, the
24 cases that defendants rely on, Padgett vs. Mercado that he
25 quoted, and Bailey vs. Bly, which is actually an Illinois

1 case, that the -- they're not applicable to our facts.

2 In Padgett, the plaintiff was injured when she was -- she
3 was an Animal Control officer and somebody called about a dog
4 that they wanted out of their yard. And it was a large dog,
5 and she went and enticed the dog over, got the noose around
6 its neck and injured herself -- injured her shoulder putting
7 it into her vehicle.

8 So the dog did no action. There's no allegation in that
9 suit of a struggle or that the dog was in any way fighting her
10 to get in. It was just the dog was heavy and she was trying
11 to put it in the car.

12 In Bly, a lady -- or Bailey, I think -- the lady tripped
13 over a sleeping dog and fell down the stairs.

14 So, in both of those cases, the dog could have been
15 furniture. I mean, it doesn't -- it's not doing dog stuff.
16 They're just there, and the injuries are not because they came
17 in contact with a dog.

18 Next, the defendant argues that, because the dog did not
19 make physical contact with Ms. Evett to cause her injury to
20 fall, they're not subject to strict liability. The appellate
21 courts -- you know, I cited Morris vs. Waverly, which is out
22 of Minnesota. We don't really have a good, solid reported
23 case on no contact.

24 I have talked to a gajillion people over the past week
25 about this to see if I could find a no-contact dog case in

1 South Carolina, and all of them are like, "Mine settle." But
2 it's very well known that the dog doesn't have to make
3 contact.

4 But, in Minnesota, there was a case, Morris vs. Waverly
5 where a boy was riding his bicycle and the dog ran towards
6 him. He dismounted his bike, fell, hurt his shoulder, and the
7 dog just turned and walked away. The dog did not attack him
8 at all.

9 And then, even more important, in Henman v. Alter, the
10 Court found that Mr. Henman -- this dog -- this large dog just
11 ran past him. Mr. Henman twisted his back because a large dog
12 ran past or around him. Although no physical contact
13 occurred, the dog's actions directly and immediately produced
14 Henman's injuries.

15 THE COURT: So like in that case -- in Henman -- and I'll
16 look at it, but was the dog -- you know, I mean, at least
17 there, there's an argument that the dog was somehow being
18 aggressive because they were coming towards the person. I'm
19 just curious, under the statute and the language, "bitten or
20 otherwise attacked," and I'm just --

21 MS. POE: In Elmore versus --

22 THE COURT: -- about how does your specific facts fall
23 under that statute?

24 MS. POE: In Elmore vs. Ramos, which is probably the
25 pivotal case of this in South Carolina, the Court of Appeals

1 interpreted "otherwise attacked" to mean no evil intent. So,
2 in that case, Mrs. Elmore was very familiar with the dog.
3 They were in the backyard of a friend's house, and the dog
4 came up and bumped her from behind, and she fell and hurt
5 herself. And she actually testified in that that "the dog was
6 not attacking me" and that the dog was being playful.

7 And the Elmore court goes through that the dog doesn't
8 have to have any kind of intent to attack, and it applies to
9 any offensive action.

10 And I can tell you that Ms. Evett feels like being pulled
11 down -- she wasn't just pulled down the stairs; she was pulled
12 from the top of that to the concrete.

13 THE COURT: I have no --

14 MS. POE: And Ms. Evett feels that that was very
15 offensive. And it was because of the dog. And Harris vs. --
16 and I just want to point out too, I put Harris vs. Anderson
17 County in there because, in their brief, they alleged that
18 Ms. -- Ms. Evett was in control of the dog, but actually, in
19 Harris vs. Anderson County, that's a case where a vet tech was
20 hurt by a dog from the Sheriff's Department, and the Sheriff's
21 Department made the allegation that they were no longer in
22 control of the dog and the vet was. And the Court said that
23 doesn't matter; you own the dog and it's your responsibility
24 for its actions.

25 So if you look at the -- all the cases, it would be like

1 there have been plenty of cases in this state --
2 unfortunately, not recorded -- where someone does get hurt by
3 the leash because, say, two dogs are fighting or the dogs wrap
4 themselves around the legs of a person causing them to trip
5 and fall, or like, in this case, just being pulled down by a
6 leash is a physical, offensive act by that dog that caused her
7 great bodily injury. And he was being aggressive; he was just
8 running after --

9 THE COURT: Just not towards her.

10 MS. POE: Just not towards her.

11 THE COURT: Just aggressive towards the squirrel?

12 MS. POE: Yeah, towards the squirrel. So he was being
13 aggressive.

14 What would be any different than if it was a dog that was
15 out there and he was trying to go out and fight with another
16 dog and it not be a squirrel? There would be no difference.
17 He would still have an aggressive behavior that then injured
18 Ms. Evett.

19 MR. SOLAR: Your Honor -- oh, excuse me.

20 THE COURT: Are you finished?

21 MS. POE: Well, I wanted to address the negligence. And
22 I agree, Your Honor, with the point that you were making about
23 "Is it offensive" -- you know, is it offensive action to --
24 offensive conduct to pull her down the stairs by that loop,
25 you know?

1 THE COURT: And, like, even in the Elmore, I know it was
2 playful, but at least there was some engagement between the
3 plaintiff there and the dog.

4 MS. POE: Well, there's engagement here.

5 THE COURT: Well, there is, but it's not towards one
6 another.

7 MS. POE: I don't think it has to be towards one another.

8 THE COURT: Well, I'm -- look, I'm sorting my way through
9 this. Okay?

10 MS. POE: And I think that --

11 THE COURT: You can sit down; you're going to have a
12 chance.

13 MR. SOLAR: Okay. Thank you, Your Honor.

14 MS. POE: And I do think that the offensive conduct would
15 be a jury question, and the fact that it wasn't -- I don't
16 want to say it wasn't directed towards the plaintiff. I mean,
17 she's holding that dog, trying to shut the door, and the dog
18 knows that she's got ahold of him, and he bolts down the
19 stairs after the squirrel. And what's the difference if he
20 bolted after a person or another dog?

21 THE COURT: And Elmore gets into the evil intent of the
22 dog?

23 MS. POE: Yes, it does.

24 THE COURT: We're getting into the mind of the dog?

25 MS. POE: Yes. In Elmore, it says -- that's the actual

1 language they use. "The Court held that the statute does not
2 require evil intent and that an attack applies to any
3 offensive action."

4 So I think that, if you read that in conjunction with
5 these cases that are like the lady just putting the dog in the
6 back of the car or tripping over a dog, the dog is not doing
7 any action. The dog is not making any action there.

8 Here, Blue definitely did have a lot of action.

9 THE COURT: Just directed towards the squirrel.

10 MS. POE: Just directed towards the squirrel.

11 And I don't think that that's dispositive, because if
12 that offensive actually, no matter where it is, injures
13 another, then the dog owner is responsible.

14 THE COURT: Okay. All right. How about on the
15 negligence?

16 MS. POE: On the negligence...

17 THE COURT: I mean, are you finished with the ---

18 MS. POE: Yes, I was going to move on to negligence.

19 THE COURT: --- the evil intent?

20 MS. POE: One, we've alleged negligence and premises
21 liability. So they've made an argument under premises
22 liability that they didn't have to -- they're only liable if
23 they didn't warn her of any known, latent, or hidden dangers.

24 The rule actually requires a landowner duty to warn an
25 invitee only of latent or hidden dangers of which the land

1 owner has knowledge or should have knowledge, unless the
2 possessor should anticipate the harm, despite such knowledge
3 and obviousness.

4 So I was trying to think of something yesterday that
5 would be kind of equivalent. Let's say you had a large wasp
6 nest on your front porch and it had been there for a whole
7 season. Everybody knew it was there, and the mail carrier
8 knew it was there, but he's still got to deliver your mail
9 because he's a business invitee just like Ms. Evett. If he
10 goes onto the porch and they swarm, well, he had knowledge of
11 it, but the homeowners should have anticipated the harm.

12 And, really, the duty to an invitee is to keep their
13 premises in a reasonably safe condition. So it's not just to
14 only warn of latent and hidden defects and then they have no
15 other duty. It's to keep the premises in a reasonably safe
16 condition.

17 So really what they're arguing in that is that they
18 didn't breach that duty, and that would be a question of fact
19 for the jury.

20 And, secondly, I'd like to also say that we have simple
21 negligence as well so that, even if Ms. Evett was pulled down
22 at the vet where she was going, or the kennels, she would
23 still have a claim against -- under simple negligence against
24 Ms. Sartain, which is encompassed in that cause of action for
25 not properly training the dog.

1 And the only defense to strict liability is provocation
2 of the dog, which is not alleged in any way in this case, at
3 least not by Ms. Evett.

4 THE COURT: Okay. Anything in response?

5 MR. SOLAR: Your Honor, first, I'd just like to say that
6 there is no legal duty to train your dog. There's no general
7 legal duty that exists.

8 I'd also like to talk about, although we're not disputing
9 the facts that the dog may have run down the stairs due to a
10 squirrel, it is interesting that the plaintiff's testimony was
11 that, once she got to the bottom, the dog stopped and sat down
12 and stayed with her. So if there was any aggression, it
13 subsided very quickly.

14 THE COURT: But the dog sat and stayed with her after
15 jerking her down the steps?

16 MR. SOLAR: Correct. And then she testified that she
17 held onto the dog as the dog helped her crawl back up the
18 steps.

19 THE COURT: So he was not successful in eradicating the
20 squirrel.

21 MR. SOLAR: Correct, Your Honor.

22 MS. POE: I am not here to attack Blue's character in any
23 way. He was a good dog. He really was.

24 MR. SOLAR: And, Your Honor, I'd just like to also --
25 I'll wrap up just to say that with these hidden dangers, I

1 don't know how it can be a factual question because there is
2 no allegation that there was any type of danger on the
3 property. There's no question for the jury to decide.
4 There's no allegation, excuse me, that, for example, there was
5 something wrong with the stairs, there was something wrong
6 with the handrail.

7 The only allegation is, is she put the dog on the leash
8 and then she fell down because her hand was through the loop
9 of the leash.

10 THE COURT: All right. Well, what if the owner knew of
11 Blue's propensity to chase after squirrels?

12 MR. SOLAR: I would agree, Your Honor, that that could
13 establish a duty; however, there's been no evidence whatsoever
14 that there is any propensity or any known propensity prior to
15 this incident for this dog to run down the steps.

16 THE COURT: Anything else before we go back to Ms. Poe?

17 MR. SOLAR: I'll let Ms. Poe take it.

18 THE COURT: Okay. Let's see...

19 MS. POE: Ms. Evett, in her deposition, testified that,
20 while she was comfortable with Blue, Blue and his sister were
21 very large German shepherds and that they did frequently growl
22 and bark at the doors, they've torn up blinds, they would
23 growl and bark at the fence whenever people would go by.

24 So they did know that Blue was an excitable dog that was
25 trying to get at things, and so there is evidence that they

1 would have known, you know, that Blue could potentially cause
2 a danger to Ms. Evett.

3 THE COURT: Had she taken care of this dog numerous times
4 before?

5 MS. POE: It really -- it wasn't like her job, but she
6 had fed them before and she had taken them to the vet.

7 THE COURT: She had been working there -- did I read
8 seven years? I already asked y'all that. I don't think I was
9 right on that.

10 MR. SOLAR: I think it's fair to say that she was working
11 there at least five to seven years, Your Honor.

12 THE COURT: And so she cleaned the house.

13 MS. POE: Yeah. And she definitely knew the dogs.

14 THE COURT: Okay. Well, had she ever had -- I mean, is
15 this the first time that she --

16 MS. POE: This is the first time she's been injured by
17 the dogs.

18 THE COURT: Okay. But plenty of times when she's taken
19 the dog out and not had any issues?

20 MS. POE: Typically how she does it, she usually did it a
21 different way, and that's the whole thing with this case is
22 that, normally, she would take them out of the back so she
23 wouldn't have to be on the leash. But she couldn't do that
24 that day because of her vehicle.

25 So she had pulled up to the side door and had made it so

1 they could get into that vehicle. She typically drove a
2 different vehicle, but the vehicle she was in that day
3 couldn't get into the backyard. So it wouldn't be a typical
4 thing where she would have to take him down those stairs on a
5 leash.

6 THE COURT: Okay.

7 MR. SOLAR: I would say, though, Your Honor, I believe
8 the record supports the fact that maybe there's a dispute
9 whether she took the dog down the stairs before, but she
10 certainly had the dog on a leash before and this was not her
11 only time walking the dogs.

12 MS. POE: I would agree. I mean, you know, I don't think
13 that's the standard, though. I mean, if you look at Elmore,
14 the dog can just be playful. And, you know, that's the whole
15 thing with the strict liability dog statute is the evolution
16 of it and the case law.

17 You know, you were left in this weird position before
18 strict liability where you've got this one bite kind of thing
19 going on and a parent would have more responsibility for what
20 a child did than what they would have for what their dog did,
21 and they actually mention that in the legislative notes when
22 they're doing the strict liability.

23 So the legislature passed the strict liability so that a
24 dog owner would be responsible for their dog's actions. And
25 that's what we're asking in our lawsuit, that they're -- you

1 know, that Ms. Sartain is responsible because Blue, through
2 his actions, seriously \$450,000 worth of injuries --

3 THE COURT: Does the legislature get into intent?

4 MS. POE: I don't know that and I can't answer that here.
5 If I had 24 hours --

6 THE COURT: About -- about, you know, just this language?

7 MS. POE: But Elmore gets into intent.

8 THE COURT: Of course. It gets into evil intent.

9 MS. POE: Yeah, but the dog does not have to have an evil
10 intent.

11 THE COURT: And Blue is no longer here to ask.

12 MS. POE: Yes. And I don't think Blue meant to
13 hurt Ms. Evett, and I think that's why he stopped. He saw,
14 you know, that she was injured and went "Oh."

15 THE COURT: And you would say, under Elmore, that ---

16 MS. POE: That that would be behavior that's encompassed
17 under Elmore.

18 THE COURT: Okay. Anything else that y'all want to bring
19 to my attention?

20 MR. SOLAR: Just to say, Your Honor, I think Elmore just
21 stands for the general proposition that there can be liability
22 under the dog bite statute for acts that are not a dog bite.
23 But other than that, the facts are nothing like this case.

24 They've also talked a little bit about how the dog was
25 large and Ms. -- or the plaintiff was small. We don't deny

1 that. But the plaintiff did testify that she was never asked
2 to do anything unreasonable and this wasn't an unreasonable
3 request to take the dog to the kennel.

4 THE COURT: Thank y'all. I will read both of your
5 briefs.

6 MS. POE: Thank you, Your Honor.

7 MR. SOLAR: Thank you, sir.

8 THE COURT: Great to see you again.

9 (The above hearing concluded.)
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Certificate of Transcriber

CASE NAME: Evett v. Sartain

DATE OF HEARING: 2/26/25

RECORDING METHOD: TEC Courtroom Recording

I, Bobbi Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that I was not present for the live proceeding; and that said proceedings were transcribed to the best of my ability from the audio and/or video recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case; and I have no interest, financial or otherwise, in its outcome.

Bobbi Fisher

/s/ Bobbi Fisher_____

Bobbi Fisher, SC Official Court Reporter III, RPR

Transcript Prepared: 5/12/25

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No.: 2023-CP-23-00176
Margie Evett,	)	
	)	
Plaintiff,	)	
	)	DEFENDANT DESMINE SARTAIN'S
v.	)	MOTION FOR SUMMARY JUDGMENT
	)	
Desmine Sartain,	)	
	)	
Defendant.	)	
	)	

PLEASE TAKE NOTICE, the Defendant, Desmine Sartain, by and through her undersigned counsel, moves pursuant to Rule 56 of *South Carolina Rules of Civil Procedure* for an Order granting her Summary Judgment.

More specifically, the Defendant asserts that as a matter of law, the Plaintiff cannot establish a claim, cause of action, or set of facts sufficient to create a cause of action against her and, therefore, she is entitled to judgment as a matter of law.

This Motion will be based upon the pleadings, all discovery undertaken thus far, and any briefs or affidavits which may be submitted at a later date.

/s/ James P. Walsh

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Attorneys for Defendant

Greenville, SC
December 10, 2024

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEEN JUDICIAL CIRCUIT

C.A. No.: 2023-CP-23-00176

Margie Evett,

Plaintiff,

v.

Desmine Sartain,

Defendants.

**MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

The Defendant, Desmine Sartain, moves for summary judgment in the above-captioned case on the ground that the Plaintiff has failed to state a cause of action for which relief can be granted against the Defendant, and construing the evidence in the light most favorable to the Plaintiff, there is no genuine issue as to any material fact and summary judgment should be granted in favor of the Defendant. More specifically, the Defendant asserts that as a matter of law, the Plaintiff cannot establish a claim, cause of action, or set of facts sufficient to create a cause of action against them.

BRIEF FACTUAL SUMMARY

The Plaintiff has known the Defendant between eight and ten years, and the Plaintiff started cleaning the Defendant's house shortly after they met. (See Exhibit A - Plaintiff's Depo Transcript Page 19, Lines 4-20 & Pg. 22 Lines 10- 20). During the time period that Plaintiff worked for the Defendant, the Defendant always had at least one German Shepherd at the Defendant's house. (See Exhibit A - Plaintiff's Depo Transcript Page 26, Lines 19-25 & Page 28, Lines 5-16 & Page 29, Lines 1-25 & Page 30, Lines 1-19). The Plaintiff would help take care of the Defendant's German Shepherd, which included routinely exiting with the Defendant German Shepherd through the side door of the Defendant's house, and down the Defendant's stairs to take the German Shephard on walks. (See Exhibit A - Plaintiff's Depo Transcript Page 26, Lines 19-25 & Page 28, Lines 5-16 & Page 29, Lines

1-25 & Page 30, Lines 1-19). Sometime while the Plaintiff was working for the Defendant, the Defendant obtained a new German Shepherd named Blue. (See Exhibit A - Plaintiff's Depo Transcript Page 31, Lines 1-10). The Plaintiff would help feed Blue, or take Blue to the kennel on behalf of the Defendant. (See Exhibit A - Plaintiff's Depo Transcript Page 31, Lines 16-25 & Page 32, Lines 1-18). The Defendant never asked the Plaintiff to partake in anything the Plaintiff thought was unreasonable. (See Exhibit A - Plaintiff's Depo Transcript Page 26, Lines 6-8).

On the day of the subject incident, the Plaintiff went over to the Defendant's house to take Blue and another dog named Koblenz to the kennel. (See Exhibit A - Plaintiff's Depo Transcript Pages 34, Lines 25-25 & Page 36, Lines 1, 12-22). At the Defendant's house, the Plaintiff placed her own personal leash on Blue, and took Blue dog outside through the side door of the Defendant's house. (See Exhibit A - Plaintiff's Depo Transcript Page 42, Lines 18-25 & Page 43, Line 1). Outside the entrance to the side door of the Defendant's house, the Plaintiff went down one step of the Defendant's stairs. (See Exhibit A - Plaintiff's Depo Transcript Page 47, Lines 6-24 & 56, Lines 11-25) (See also Defendant's Exhibit B & C). The Plaintiff's right hand was through a "loop" in the leash attached to Blue, and the Plaintiff's left hand was holding on to the rail to the Defendant's stairs. (See Exhibit A - Plaintiff's Depo Transcript Page & Page 59, Lines 15-23). Blue, possibly due to seeing a squirrel, subsequently took off down the Defendant's stairs. (See Exhibit A - Plaintiff's Depo Transcript Page 47, Lines 6-24). The Plaintiff, whose right hand was through the loop of the dog leash, was ultimately pulled down the remaining stairs. (See Exhibit A - Plaintiff's Depo Transcript Page 47, Lines 6-24). After the Plaintiff's fall, Blue sat at the bottom of the Defendant's stairs, and ultimately helped the Plaintiff back inside the Defendant's residence (See Exhibit A - Plaintiff's Depo Transcript Page 62, Lines 10-22 & Page 77, Lines 1-14).

Legal Standard

“The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder.” Gauld at 558, 671 S.E.2d at 85. Pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure, “a mere scintilla” of evidence is not the correct standard of proof for deciding whether the “non-moving party has created a genuine issue of material fact necessary to survive a motion for summary judgment. Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 460, 892 S.E.2d 297, 300 (2023). Rather, the “non-moving party has to present facts that would permit reasonable inference to be drawn from evidence that creates issues of fact for trial.” Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 460, 892 S.E.2d 297, 300 (2023). Therefore, summary judgment should be granted when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Gauld v. O'Shaugnessy Realty Co., 380 S.C. 548, 557, 671 S.E.2d 79, 84 (Ct. App. 2008).

Argument

The Plaintiff has alleged causes of action for strict liability pursuant to S.C. Ann § 47-3-110 and a cause of action for negligence. We address both of the Plaintiff's causes of actions individually below.

I. The Plaintiff's Own Account of the Subject Incident Does Not Constitute A Dog Attack Pursuant to S.C. Ann § 47-3-110

S.C. Ann § 47-3-110(A), also known as South Carolina's Dog Bite/Attack Statute, states the following:

“(A) If a person is bitten or otherwise attacked by a dog while the person is in a public place or is lawfully in a private place, including the property of the dog owner or person having the dog in the person's care or keeping, the dog owner or person having the dog in the person's care or keeping is liable

for the damages suffered by the person bitten or otherwise attacked. For the purposes of this section, a person bitten or otherwise attacked is lawfully in a private place, including the property of the dog owner or person having the dog in the person's care or keeping, when the person bitten or otherwise attacked is on the property in the performance of a duty imposed upon the person by the laws of this State, the ordinances of a political subdivision of this State, the laws of the United States of America including, but not limited to, postal regulations, or when the person bitten or otherwise attacked is on the property upon the invitation, express or implied, of the property owner or a lawful tenant or resident of the property.

Although S.C. Ann. § 47-3-110 is a strict liability offense, the Plaintiff must still prove that there was an attack. Padget v. Mercado, 341 S.C. 229, 233, 533 S.E.2d 339, 340 (SC App Ct. 2000) In Padget v. Mercado, 341 S.C. 229, 533 S.E.2d 339 (SC App Ct. 2000), the defendant called animal control and requested the removal of an adult rottweiler that the defendant could not control. The plaintiff, an animal control officer, responded and “enticed” the dog to the fence in an effort to place the noose of a control stick, five feet in length, around its neck. Padget v. Mercado, 341 S.C. 229, 230, 533 S.E.2d 339 (SC App Ct. 2000). The plaintiff was subsequently successful in noosing the dog. Padget v. Mercado, 341 S.C. 229, 230, 533 S.E.2d 339 (SC App Ct. 2000). However, while the plaintiff was lifting the dog into the plaintiff’s truck, the plaintiff heard something “pop” in her shoulder. Padget v. Mercado, 341 S.C. 229, 230, 533 S.E.2d 339 (SC App Ct. 2000), The plaintiff eventually filed suit against the defendant alleging that she sustained a shoulder injury as a result of a dog attack. Padget v. Mercado, 341 S.C. 229, 533 S.E.2d 339 (SC App Ct. 2000),

In Padget, the Court, in its analysis, noted that the word “**attack**” implies the “**taking of initiative in a struggle**” and that “**attack**” has also been defined as “**any hostile offensive action.**”(Emphasis added). Padget v. Mercado, 341 S.C. 229, 232, 533 S.E.2d 339, 340 (SC App

Ct. 2000). The Court subsequently held that the plaintiff's alleged injury was not due to a dog attack, but due to the plaintiff lifting the dog into the plaintiff's truck. Padget v. Mercado, 341 S.C. 229, 232, 533 S.E.2d 339, 340 (SC App Ct. 2000). To further support its conclusion, the Court in Padget also cited to an Illinois case where a woman fell down steps after she stumbled over a sleeping dog, and she subsequently alleged that contact with the dog constituted an attack. Padget v. Mercado, 341 S.C. 229, 533 S.E.2d 339 (SC App Ct. 2000) (citing Bailey v. Bly, 87 Ill. App. 2d 259, 231 N.E. 2d (Ill. App 5 Dist. 1967)). However, as the Court in Padget noted, the Court in Illinois did not find that set of circumstances whereby the Plaintiff made contact with the Defendant's dog to be an "attack" because the woman not attacked or injured by the dog. Padget v. Mercado, 341 S.C. 229, 533 S.E.2d 339 (SC App Ct. 2000) (citing Bailey v. Bly, 87 Ill. App. 2d 259, 231 N.E. 2d (Ill. App 5 Dist. 1967)).

Here, like the Defendants' dogs in Padget and Bailey, the Defendant's dog, Blue, did not take any "hostile offense action" towards the Plaintiff since the Plaintiff's own testimony is that Blue ran down the Defendant's stairs after a possible squirrel. Moreover, Padget and Bailey illustrate that just because a dog is involved in the context of a person's injuries, it does not automatically mean that any injuries are the result of a dog attack. However, it is important to note that in this case the facts are more favorable to the Defendant than in both Padget and Bailey in that unlike the dogs in Padget and Bailey, Blue did not make physical contact with the Plaintiff to cause the Plaintiff to fall. Therefore, the Plaintiff's own account of the subject incident does not constitute an "attack" under the law since the Defendant's dog did not take any "hostile offensive action" towards the Plaintiff, and the Defendant's dog did make physical contact with the Plaintiff to cause the Plaintiff to fall.

II. The Defendant Did Not Owe the Plaintiff Any Legal Duty Since there Were No Known Latent or Hidden Dangers At the Defendant's House

According to South Carolina law, the nature and scope of duty in a premises liability action, if any, is determined based upon the status or classification of the person injured at the time of his or her injury. Roe v. Bibby, 410 S.C. 287, 763 S.E.2d 645 (SC Ct. App. 2014). In a premises liability case, the “invitee” is offered the utmost duty of care by the landowner. Sims v. Giles, 343 S.C. 708, 541 S.E.2d 857 (S.C. Ct. App. 2001). An “invitee” is a person who enters onto the property of another at the express or implied invitation of the property owner. Sims v. Giles, 343 S.C. 708, 541 S.E.2d 857 (S.C. Ct. App. 2001). The landowner owes to an “invitee” the duty of exercising reasonable or ordinary care for her safety, and is liable for injuries resulting from the breach of such duty. Sims v. Giles, 343 S.C. 708, 541 S.E.2d 857 (S.C. Ct. App. 2001).

The landowner has a duty to warn an “invitee” only of latent or hidden dangers of which the landowner has knowledge or should have knowledge. Sims v. Giles, 343 S.C. 708, 541 S.E.2d 857 (S.C. Ct. App. 2001). The landowner's duty to warn an “invitee” of latent or hidden dangers is an active or affirmative duty. Sims v. Giles, 343 S.C. 708, 541 S.E.2d 857 (S.C. Ct. App. 2001). Foreseeability of the precise manner in which the injuries were sustained is not a prerequisite to a finding that a landowner breached his duty of care to an “invitee;” rather, it is sufficient that there is a reasonable generalized gamut of greater than ordinary dangers of injury and that the sustaining of the injury was within this range. Sims v. Giles, 343 S.C. 708, 541 S.E.2d 857 (S.C. Ct. App. 2001).

Here, the Plaintiff was an invitee. That being said, no legal duty existed on the part of the Defendant since there were no “latent or hidden dangers” at the Defendant's house. The Plaintiff had also worked at the Defendant's house for years, and was familiar with the layout of the

Defendant's house. The Plaintiff had also interacted in various ways with all of the Defendant's dogs, including Blue, for years prior to the subject accident, and there has been no evidence presented of Blue having a propensity to run down stairs while on a leash prior to the subject incident. Moreover, there is no accusation, since there is no evidence, that there was something inherently unsafe with Blue, or the Defendant's house, to include the Defendant's stairs or the Defendant's handrail to the stairs. Therefore, the Defendant did not owe any legal duty to the Plaintiff since there were no "latent or hidden dangers" at the Defendant's house.

Conclusion

We respectfully request that the Court find that the Defendant is not liable under S.C. Ann. § 47-3-110, commonly known as the South Carolina Dog Bite/Attack Statute, or for negligence and grant the Defendant's Motion for Summary Judgment. However, in the alternative, if the Court will not grant the Defendant's Motion for Summary Judgment on all of the Plaintiff's claims, we respectfully request that the Court dismiss the Plaintiff's cause of action for either strict liability pursuant S.C. Ann. § 47-3-110 or negligence as a matter of law.

/s/ James P. Walsh

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Greenville, SC
February 25, 2025

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	C.A. NO. 2023-CP-23-00176
MARGIE EVETT,	)
PLAINTIFF,	)
VS.	)
DESMINE SARTAIN,	)
DEFENDANT.	)

**DEPOSITION
OF
MARGIE EVETT**

PURSUANT TO NOTICE AND/OR AGREEMENT, THE DEPOSITION OF MARGIE EVETT WAS CALLED BY THE DEFENDANT ON THE 8TH DAY OF DECEMBER, 2023, COMMENCING AT THE HOUR OF 11:09 A.M., AT THE LAW OFFICES OF CLARKSON, WALSH & COULTER, P.A., 1164A WOODRUFF ROAD, GREENVILLE, SOUTH CAROLINA, ATTENDED BY COUNSEL AS FOLLOWS:

**TIMMI A. PARRISH
VERBATIM REPORTER**

TIMMI A. PARRISH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, SC 29376
864-921-8743

APPEARANCES

SHEALLY VENUS POE, ESQUIRE
VENUS POE, P.A.
105 NORTH MAIN STREET
FOUNTAIN INN, SOUTH CAROLINA 29644

ATTORNEY FOR THE PLAINTIFF,

JOHN D. SOLAR, ESQUIRE
CLARKSON, WALSH & COULTER, P.A.
1164A WOODRUFF ROAD
GREENVILLE, SOUTH CAROLINA 29607

ATTORNEY FOR THE DEFENDANT.

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1 PURSUANT TO NOTICE AND/OR AGREEMENT TO TAKE
2 DEPOSITIONS, THE WITHIN DEPOSITION WAS TAKEN BY THE
3 ABOVE-NAMED COURT REPORTER, A NOTARY PUBLIC FOR THE STATE
4 OF SOUTH CAROLINA, BY CONSENT OF ALL PARTIES.

5 * * * * * * * * * * * *

6 STIPULATIONS:

7 IT IS AGREED BY AND BETWEEN COUNSEL FOR THE PARTIES
8 AS FOLLOWS:

- 9 1. THE DEPOSITION IS BEING TAKEN PURSUANT TO THE
10 SOUTH CAROLINA RULES OF CIVIL PROCEDURE.
11 2. THE READING AND SIGNING OF THE DEPOSITION
12 TRANSCRIPT ARE WAIVED BY THE WITNESS AND THE
13 PARTIES.

14 * * * * * * * * * * * *

15 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
16 WHOLE TRUTH AND NOTHING BUT THE TRUTH CONCERNING THE
17 MATTER HEREIN:

18 MARGIE EVETT,

19 BEING FIRST DULY SWORN, TESTIFIED UNDER OATH AS
20 FOLLOWS:

21 EXAMINATION BY MR. SOLAR:

22 Q. Ms. Evett, thank you for being here today. My name
23 is John Solar. I represent Desmine Sartain.

24 A. Okay.

25 Q. Have you ever given a deposition before?

- 1 A. I have.
- 2 Q. Okay. When have you given a deposition?
- 3 A. Gosh, it was back 38 years ago.
- 4 Q. And what was the -- what was the context? Were you
- 5 a plaintiff in that case?
- 6 A. What's a plaintiff? I mean, I always get that mixed
- 7 up, a defendant and a plaintiff.
- 8 Q. Sure. Well, let me ---
- 9 A. A guy rear-ended me. And so, I guess I was suing
- 10 them, I guess.
- 11 Q. Okay. And what -- so you were hurt in that car
- 12 wreck?
- 13 A. Yeah.
- 14 Q. What happened in that car wreck in terms of
- 15 injuries?
- 16 A. A man -- I was on Church Street, and a man came -- I
- 17 was at a red light, and a man came up top of the
- 18 hill, and he didn't stop 'til he hit me. Well,
- 19 actually, he hit a car that knocked me into a car.
- 20 Q. And what injuries did you sustain?
- 21 A. I had upper back.
- 22 Q. Have you -- did you get a settlement in that case,
- 23 or did that case resolve with a settlement?
- 24 A. Uh-huh.
- 25 Q. Okay. Have you been involved in any other

1 depositions?

2 A. Not that I can remember.

3 Q. Okay. What I'm going to do real quick is just go
4 over the rules of the deposition with you just so
5 we're on the same page. First thing is, is you
6 realize that the court reporter has sworn you under
7 oath and that has the same significance as if you
8 were in a courtroom before a judge and jury where
9 you were swearing to tell the truth?

10 A. Yes.

11 Q. Okay. Please give verbal answers only.

12 A. Okay.

13 Q. If you nod your head, shake your head, give hand
14 gestures, I'll probably know what you mean. But to
15 try and get an accurate transcript, we need verbal
16 answers. So I might say, you know, is that a yes or
17 no. I don't mean any offense by it; I'm just trying
18 to clarify for the record. Please try not to talk
19 over me. I'll try not to talk over you. I feel
20 like this is the most difficult rule because I might
21 think you're finished and you might think I'm
22 finished, but please try to let me finish and I'll
23 do my best to let you finish so we get an accurate
24 record. If you -- if I ask the question and you
25 answer it, I'm going to assume you understood my

1 question. Does that makes sense?

2 A. Yes.

3 Q. Okay. So just to rephrase that, though, if you're
4 not a hundred percent sure what I'm asking, ask me
5 to repeat it or rephrase it, okay?

6 A. Okay.

7 Q. Your attorney might have objections during the
8 deposition. That's fine. Let her say what she
9 needs to say for the record and then please answer
10 unless she says not to, okay?

11 A. Okay.

12 Q. If you need a break for any reason, happy to give
13 you a break. There's just two things I ask. One,
14 if I ask a question, please answer my question
15 before asking for the break. And, two, if you talk
16 to your attorney or anyone else during the break, I
17 can ask you about that conversation, okay?

18 A. Okay.

19 Q. Have you consumed any alcohol within the last 24
20 hours?

21 A. No.

22 Q. Have you consumed any medication, prescription
23 medication, within the last 24 hours?

24 A. Just what I -- I've got three I take; Synthroid,
25 Trintellix, and a blood pressure pill.

1 Q. And Trintellix, what is that for?

2 A. That's depression.

3 Q. Okay. How long have you been taking that?

4 A. A long time. Gosh, I'm going to say probably about
5 ten years, I guess.

6 Q. And then, I'm sorry, what was the other one? It was
7 called Syn...?

8 A. Synthroid. That's for thyroid.

9 Q. Okay. How long have you been taking that one?

10 A. Oh, gosh, 20, probably 20 or 30 years.

11 Q. And then the third one you said was high blood
12 pressure?

13 A. Uh-huh.

14 Q. About how long have you been taking ---

15 A. Well, it's not a high blood pressure. Yeah, I guess
16 it is. It's high blood pressure, yeah.

17 Q. And about how long have you been taking that?

18 A. Probably a couple years.

19 Q. Were you taking it before this incident that we're
20 here for today?

21 A. Oh, no. The only thing I was taking then was the
22 Synthroid and the Trintellix.

23 Q. Are any of those prescription medications that
24 you're currently on in any way going to affect your
25 ability to testify accurately today?

1 A. No.

2 Q. Okay. Have you consumed any other substances within
3 the last 24 hours that could affect your ability to
4 testify accurately today?

5 A. No.

6 Q. What's your full legal name?

7 A. Margie Schmauch Evett.

8 Q. How do you spell Schmauch?

9 A. S-C-H-M-A-U-C-H.

10 Q. And is that your maiden name?

11 A. It is.

12 Q. What's your date of birth?

13 A. January 31st, 1954.

14 Q. Have you ever gone by -- other than -- was it
15 Schmauch?

16 A. Evett.

17 Q. Well, other than -- other than those two last names,
18 have you ever gone by any other names or nicknames?

19 A. No. Oh, I've got a nickname. It's Toot, T-O-O-T.

20 Q. Are you a Medicaid recipient?

21 A. No.

22 Q. Are you a Medicare recipient?

23 A. Yes.

24 Q. Okay. How long have you been a Medicare recipient?

25 A. I think since -- well, when my husband -- I get

1 those mixed up. Let's see. Medicare. You talking
2 about the retirement?

3 Q. Well, I want to know if you were -- were you ever on
4 Medicare for a disability before retirement age?

5 A. Yeah. Oh, yes.

6 Q. Okay. When did you -- when did you become disabled?

7 A. That was that wreck that I had that I told you
8 about.

9 Q. Okay. So that was, you said, about 38 years ago?

10 A. Yeah.

11 Q. Okay. And then are you still on disability or ---

12 A. No, because when you retire they do away with that.

13 Q. Okay. And when did you -- when did you officially
14 retire and start taking your benefits? And what I
15 mean by that is age. So, was it at 62; was it..?

16 A. Yeah, it was -- yeah, I think I did it at 62. I
17 can't remember, to be honest. I think it was around
18 62.

19 Q. Do you also have TRICARE?

20 A. I do.

21 Q. Okay. Were you in the military?

22 A. No, my husband was.

23 Q. Okay. How long have you had TRICARE?

24 A. Let's see. I didn't get that 'til he turned 60, and
25 he was born in '50. So that would be eight years

1 after he died. I need a calculator. I can't
2 remember.

3 Q. Safe to say more than ten years?

4 A. Oh, yeah.

5 Q. Okay. Are you -- do you have any other health
6 insurance or any other supplemental health
7 insurance?

8 A. I did get -- I got -- I don't know if this matters.
9 I got a cancer policy. They offered it. It was
10 like, what, a special for like three ninety-five or
11 eight ninety-five a month, so I went ahead and got
12 that.

13 Q. But that's with TRICARE or with ---

14 A. No.

15 Q. --- Medicare?

16 A. Uh-uh. That's just -- they offered -- like Mutual
17 of Omaha, I think, who offered it, one of those
18 mail-in things, and it was a cancer policy that I
19 got.

20 Q. What is your educational background?

21 A. GED.

22 Q. Did you -- I understand you got a GED, but did you
23 go to high school and leave before graduating or did
24 you ---

25 A. Uh-huh.

1 Q. Okay. Where did you go high school at?

2 A. Woodmont.

3 Q. Woodmont. And where is that at?

4 A. That's in Moonville, Piedmont, Pelzer.

5 BY MS. POE:

6 It's technically Piedmont.

7 BY THE WITNESS:

8 Piedmont.

9 EXAMINATION RESUMED BY MR. SOLAR:

10 Q. Is that in Greenville, Anderson County?

11 A. It's Greenville County.

12 Q. Okay. And so my understanding is you're a widow,
13 Ms. Evett?

14 A. I'm sorry?

15 Q. You're a widow?

16 A. Yes.

17 Q. When did your husband pass?

18 A. 2003, April 12th, 2003.

19 Q. And how did he pass?

20 A. A car wreck.

21 Q. Have you ever been married to anyone else?

22 A. No.

23 Q. Okay. Do you have any children?

24 A. I've got one.

25 Q. What's the name of your child?

- 1 A. It's Jared Douglas Evett, Jr.
- 2 Q. And where does -- where does your son live?
- 3 A. He lives in Simpsonville.
- 4 Q. And does he have any children?
- 5 A. He's got one. He's got a -- I've got a grandson.
- 6 Q. And what is your grandson's name?
- 7 A. Cooper Douglas Evett.
- 8 Q. And how old is Cooper?
- 9 A. He'll be three December 17th.
- 10 Q. Where do you currently live?
- 11 A. At 1215 Bracken Road, Piedmont, South ---
- 12 Q. Were you -- I'm sorry; I cut you off. Go ahead.
- 13 A. Piedmont, South Carolina 29673.
- 14 Q. Were you living there at the time of this accident?
- 15 A. Yes.
- 16 Q. How long have you lived there?
- 17 A. About 40 years.
- 18 Q. You live there alone?
- 19 A. No, I live with my boyfriend.
- 20 Q. Okay. And what's your boyfriend's name?
- 21 A. Well, he lives with me. It's Howard Scott Frisby.
- 22 Q. Okay. And how long have you and Mr. Frisby been
- 23 together?
- 24 A. Well, he was living in Georgia at the time. I guess
- 25 he's been gone five years. So, about seven years.

1 Q. Seven years he's been living with you or seven years
2 you guys have been together?

3 A. Oh, been together? Probably been together about 15.

4 Q. But about seven of those he's lived with you?

5 A. Uh-huh.

6 Q. Okay.

7 BY MS. POE:

8 Is that a yes?

9 BY THE WITNESS:

10 Oh, yes. I'm sorry.

11 BY MS. POE:

12 That's okay.

13 EXAMINATION RESUMED BY MR. SOLAR:

14 Q. Other than South -- have you lived in any other
15 states other than South Carolina?

16 A. No.

17 Q. Are you currently employed?

18 A. Retired.

19 Q. What did you retire from?

20 A. I did house cleaning, dogs sat, took people to
21 doctor's appointments. I just was kind of like --
22 mostly I did house cleaning.

23 Q. Were you ever employed by any company?

24 A. No.

25 Q. When did you retire?

1 A. I guess -- it's complicated. Let's see; I'm trying
2 to think. All right. I don't know how to word it.
3 Well, I was -- well, I'll just do this. I was doing
4 house cleaning; I was taking care of my mother, and
5 I was retired at that time, because we sold my
6 husband and my mom's business. We sold that in '06.
7 So technically I didn't start work -- I wasn't
8 working. I was retired then. But when I started
9 taking care of my mother, I had to do something to
10 get some extra income, so that's when I started
11 cleaning houses.

12 Q. Okay. So what did you retire from the first time;
13 what type of work?

14 A. Well, I really never worked 'til after when I -- I
15 never worked anymore after I had that wreck, the
16 first wreck.

17 Q. Okay. Because you were on disability?

18 A. Yes.

19 Q. Okay. But you did some things on the side?

20 A. Well, my husband and mom owned a business, and I'd
21 go up there and sit around, you know. I didn't
22 really do anything physical.

23 Q. And what was that business?

24 A. That was Augusta Road Marine Sales. They sold boat
25 motors and trailers.

- 1 Q. Okay.
- 2 A. Mostly, I stayed home, took care of my son.
- 3 Q. When you took care of your mother, what did that
- 4 involve?
- 5 A. Oh, geez. Well, she really wasn't that bad. It was
- 6 just more of a -- she had dementia and Alzheimer's.
- 7 She was really pretty physical, I mean, pretty good
- 8 'til that last couple of years, and I'd have to help
- 9 -- and that's why my boyfriend moved in with us,
- 10 because he could see I was struggling, and he moved
- 11 in with us, and he'd help me lift her, or whatever.
- 12 Q. Okay. So you had to help her out of bed, help her
- 13 to get a shower, things like that?
- 14 A. Yeah. Well, that part, when that came into play
- 15 hospice came in, because she could pretty much do
- 16 for herself.
- 17 Q. Okay. What year did your mother pass away?
- 18 A. August the 17th, 2018.
- 19 Q. You said your late husband served in the military?
- 20 A. He did.
- 21 Q. What -- do you know branch he served in?
- 22 A. Army National Guard.
- 23 Q. Did he retire from that, or did he just...?
- 24 A. Yeah. He had been out a year before he had the
- 25 wreck. So, that would be 2002.

1 Q. And you've never served in the military?

2 A. No.

3 Q. Okay. I ask these next two questions of everyone,
4 so please don't be offended.

5 A. Okay.

6 Q. Have you ever been arrested?

7 A. No.

8 Q. Have you ever been treated for substance abuse?

9 A. No.

10 Q. Do you have any family members that live in
11 Greenville County?

12 A. Oh, yeah; I've got a bunch.

13 Q. Okay. So, your son lives in Greenville County?

14 A. I guess that part -- I guess he lives in Greenville
15 County. He's lives in Simpsonville, off of Woodruff
16 Road. I think that's kind of -- Simpsonville is
17 Greenville County, I'm thinking.

18 Q. Do you have any siblings that live in Greenville
19 County?

20 A. Yeah, I've got two brothers.

21 Q. What are your brothers' last names?

22 A. Schmauch.

23 Q. Okay. Do you have any family members that live in
24 Greenville County other than the last name Evett or
25 -- I'm sorry; that was Schmauch, you said?

1 A. That's all right. No. I think that's all I know
2 of.

3 Q. Okay. So no -- no like Johnsons or Robinsons or
4 anything; just those two last names?

5 A. Yeah, the Schmauchs. Yeah, that's it.

6 Q. Okay. What does -- do your brothers still work?

7 A. Tony retired out from KEMET, and my other brother,
8 Joe, he does something with the sheriff's department
9 with cameras, traffic cameras.

10 Q. The Greenville County Sheriff's Department?

11 A. Yes. But I'm not real sure what he does; I just
12 know he does cameras, and he helps the Greenville
13 County Sheriff's Department out, and he also goes
14 all over the country setting them up for other
15 agencies.

16 Q. Do they have any children?

17 A. No.

18 Q. Are you a member of any church in Greenville County?

19 A. No.

20 Q. Are you a member of ---

21 BY MS. POE:

22 Was that a no?

23 BY THE WITNESS:

24 Oh, I'm sorry. No.

25 EXAMINATION RESUMED BY MR. SOLAR:

1 Q. Well, I thought you said -- okay. Are you a member
2 of any clubs in Greenville County?

3 A. No.

4 Q. How long have you known Desmine Sartain?

5 A. I'm thinking between eight and ten years.

6 Q. And how did you come to meet her?

7 A. We had a loan through her -- I call it her dad's
8 company, Mr. Luthi. I dealt with Mr. Luthi. I
9 would go in and pay the payment. And he also knew
10 my mom and dad. And we were talking one day when I
11 was in there making a payment, and that's when I
12 started realizing I had to do something to make some
13 extra money, you know, being I had mom. And he
14 said, "Well, what are you doing?" I said -- well, I
15 had cleaned a lady's house down in Greenwood. And I
16 said, "Well, I clean houses or I'll do anything."
17 And he said, "Well, I might get you to clean my
18 house." So he said, "I'll call you tonight and let
19 you know." So, he called me that night and told me
20 he wanted me to clean his house.

21 Q. When you said loan, what type of loan is it; a loan
22 on your house?

23 A. No, it was one on the business, my mom and my
24 husband's business.

25 Q. Okay. When did the business -- when did that

1 business stop? It didn't stop after your ---

2 A. No. Like I say, we went -- he passed in 2003, and I
3 think it was in '06 we sold it.

4 Q. Okay. So when you met Mr. Luthi, was your only
5 source of income your disability?

6 A. Uh-huh.

7 Q. Okay.

8 BY MS. POE:

9 Is that a yes?

10 BY THE WITNESS:

11 Oh, yes. It's a habit. I'm sorry.

12 EXAMINATION RESUMED BY MR. SOLAR:

13 Q. The -- and then your mother, was your mother -- what
14 was her source of income?

15 A. Social Security.

16 Q. Okay. Were you behind in your loan payments?

17 A. Yes, I had gotten behind. I did.

18 Q. Did the Sartains or the Luthis -- I don't really
19 know the bank term today. Did they kind of show you
20 some grace and help you out?

21 A. Uh-huh. Yeah. Oh, yes.

22 Q. Okay. So they never -- they never foreclosed on the
23 loan?

24 A. No.

25 Q. Okay. And so ---

1 A. Because I paid it.

2 Q. Sure, sire. But you were behind?

3 A. I was.

4 Q. I mean, that loan has now been paid off?

5 A. It has.

6 Q. Okay. Do you know what year it was paid off?

7 A. I want to say '20. Let's see. Mom had just died.
8 I'm thinking 2018 or 2019.

9 Q. Okay. And just to clarify, so the business you sold
10 in about 2006, but you were still paying a loan on
11 it 'til 2019?

12 A. We paid that loan -- we paid the business loan off.
13 I had had some prop -- I forgot. I had some
14 property in Laurens County that I mortgaged, and
15 that's the -- that's the mortgage that I had. We
16 did have a business loan with them, but that was
17 paid off. And then I came back and got some --
18 borrowed some money on my property down there in
19 Laurens County, and that's the one that I paid off.

20 Q. Why did you need to borrow some money from the
21 Laurens ---

22 A. To help take care of my mom, bills.

23 Q. So you said you started -- you first started working
24 for Mr. Luthi?

25 A. Uh-huh. I can't remember the year, to be honest

1 with you. And, actually, I worked -- he wanted me
2 to help his daughter Charlotte. I call her Chartee.
3 Everybody calls her Chartee. I was to help her
4 clean her daddy's house, because I think he'd gone
5 through a divorce and hadn't done anything with the
6 house, and she was going in there to straighten it
7 up, and they wanted me to help her.

8 Q. Is Chartee, is that my client's sister?

9 A. Yes.

10 Q. Okay. When did you start working or cleaning houses
11 for my client?

12 A. Like I said, it's -- I had -- you know, I did her
13 dad's house, and then she asked me to, you know,
14 start cleaning hers, and I did. Like I said, I
15 can't remember the dates.

16 Q. Sure.

17 A. And year, to be honest with you.

18 Q. Was it shortly after you started working for her
19 father, or do you think it was ---

20 A. It was probably shortly after.

21 Q. Okay. And in terms of cleaning, what exactly did
22 you do? And what I mean by that is, sometimes
23 there's just specific services, or did you clean the
24 whole house?

25 A. Well, no. Well, I tell everybody I'm slow and I'm

1 cheap, because I'm slow. I just told him I'm slow
2 but I'm thorough, and I dusted and I vacuumed and
3 anything else that, you know, needed to be done. I
4 washed her -- I washed her bed linens. I did, you
5 know, some of the laundry. It was just your basic
6 house stuff.

7 Q. At the time this accident, when you were working for
8 Ms. Sartain, or my client, were you working for
9 other family members, as well?

10 A. I didn't start working for them 'til after her and
11 her daddy. It's just kind of like it was like a
12 word of mouth, but it wasn't -- it wasn't -- now,
13 with Deedee, I worked every two weeks, and the
14 others, it would be three or four months go by;
15 somebody would want something done.

16 Q. And by Deedee, is that my client?

17 A. Yes.

18 Q. Okay. And other than my client, her father, and, I
19 guess, her relatives, did you clean houses for
20 anybody else?

21 A. Mr. Luthi got me a couple jobs with a friend his,
22 Mr. Buchanan and his wife, but they've already
23 passed. And I'm trying to think of who else. I did
24 for Frieda, her sister, her brother. I did like --
25 like if somebody would have a party, I would like do

1 the food, bartend, and that kind of thing.

2 Q. And I think you made a comment that you -- it was
3 every two weeks for my client you cleaned?

4 A. Uh-huh.

5 Q. Okay.

6 **BY MS. POE:**

7 Is that a yes?

8 **BY THE WITNESS:**

9 Yes.

10 **EXAMINATION RESUMED BY MR. SOLAR:**

11 Q. Was that -- was that every two weeks a consistent
12 schedule from when you first started to when you
13 stopped working for her, or what was your ---

14 A. That was -- that was the schedule that I had. I
15 worked for her every two weeks.

16 Q. Was it a particular day you'd come over?

17 A. Friday. She liked me to do Fridays.

18 Q. You'd come over Friday mornings or Friday ---

19 A. Yeah, Friday mornings.

20 Q. Was Mrs. Sartain, my client -- I know there's lot
21 of Sartains. I'll just say my client. Was she --
22 was she present when you would clean?

23 A. No. Uh-uh. No.

24 Q. Where would she be?

25 A. She was in Hilton Head with her daughter.

1 Q. So, for the, I don't know, five-plus years that you
2 cleaned for her, it was always on a Friday?

3 A. Yes.

4 Q. Okay. And she was always ---

5 A. That was her day.

6 Q. She was always out of the house in Hilton Head?

7 A. Oh, no, she -- she -- that day she was at Hilton
8 Head, but I -- I don't understand.

9 Q. Sure. By that day, you mean the accident, right?

10 A. Oh, the accident day? Yeah, that was -- that should
11 have been a Friday. I think it was.

12 Q. Sure. So I'm trying to talk a little bit, before we
13 get to the accident, of just about your background
14 with them.

15 A. Okay.

16 Q. So I'm just asking when you generally came over to
17 her house on Fridays was she usually there?

18 A. Yeah.

19 Q. Okay. And what was she usually doing while you were
20 cleaning the house?

21 A. Well, I'd come in and talk to her, and the whole
22 time I'm talking to her, or she would be talking to
23 me, I would be cleaning, doing whatever, you know.
24 I never stopped and sat down. I would just clean,
25 like dust, tidy things up while I'm talking.

1 Q. And what would you usually talk about?

2 A. Her family, just stuff, just, you know, weather,
3 politics, whatever.

4 Q. Did you like working for my client?

5 A. I did.

6 Q. Did she ever ask you to do anything you thought was
7 unreasonable?

8 A. No.

9 Q. How much were you paid an hour? Well, let me back
10 that up. Were you paid an hour, or how were you
11 paid?

12 A. Hour, hour.

13 Q. Okay. And how much were you paid an hour?

14 A. It was \$10.

15 Q. Okay. And how many hours did you typically work on
16 Friday?

17 A. I normally worked about an eight hour day. Like I
18 said, I'm slow.

19 Q. I understand. When you first started working for
20 Ms. Sartain, my client -- again, I know there's
21 other Sartains -- working for Desmine, did she have
22 any dogs?

23 A. Yes, she had -- when I started working she had Bear.

24 Q. Bear, okay. And what type of dog was Bear?

25 A. He was a German Shepherd.

1 Q. And I assume Bear is a male dog?

2 A. He is.

3 Q. Okay. And about -- do you know about how much he
4 weighed?

5 A. A lot.

6 Q. And I'm guessing ---

7 A. Eighty-five, a hundred pounds maybe.

8 Q. And I'm guessing Bear eventually passed away?

9 A. Yeah, he did.

10 Q. Okay. Did he -- was he sick? What did he die from?

11 A. I know she had to have him put to sleep, but I don't
12 -- I can't remember what it was. Because she called
13 me up before they were going to put him to sleep and
14 she said -- she wanted to know if I wanted to come
15 up to see him before she did so, and I did.

16 Q. So you were close with Bear?

17 A. The dog, yeah.

18 Q. Did she have any other dogs other than bear at the
19 time?

20 A. Sugar.

21 Q. Sugar, okay. And is Sugar her dog, or was it a
22 family member's dog?

23 A. That was Caroline's dog.

24 Q. Okay. And what type of dog was Sugar?

25 A. I think she was a Pekingese.

1 Q. And that's like a little dog, right?

2 A. Yeah, a little, small dog.

3 Q. Little yappy dog?

4 A. Not really, not that much.

5 Q. And so, Bear, did you take care of Bear?

6 A. I did.

7 Q. What did you -- how did you take care of him?

8 A. Well, when she would leave, I would go up and stay
9 with him and, you know, spend the night at the
10 house. I know one night I kept him, she was gone,
11 and she said I didn't have to stay with him, so I
12 came home, and then a thunderstorm came up, and I
13 heard it thunder and lightning, and I got up and
14 went up there because he was -- he didn't like
15 thunderstorms, so I went up there and stayed with
16 him 'til the next morning.

17 Q. Where did -- did you stay in the guest room? What
18 room did you stay in?

19 A. I stayed in Deedee's room.

20 Q. Stayed in her own room. Okay. So how many years
21 had you been working there before Bear passed away?
22 Just in general. A guess is fine.

23 A. I'm gonna say three, four years maybe.

24 Q. Okay. Did you ever take Bear anywhere?

25 A. I don't think. I'm trying to remember if I did or

1 not. If I did, I don't remember.

2 Q. Okay. You don't remember ever taking him to the
3 vet?

4 A. I took her cat. I remember taking her cat.

5 Q. Okay. Did you ever take -- you never took the dog
6 to the kennel for boarding, Bear?

7 A. From what I can remember, they never took Bear to
8 the kennel.

9 Q. Did you ever take Bear on walks?

10 A. I did.

11 Q. Walks where; like around the neighborhood?

12 A. Around the neighborhood. Uh-huh.

13 Q. Okay. When you would go and take Bear out on --
14 about how often did you take him on walks?

15 A. How often? Well, I guess it just depended. I guess
16 I took him on walks 'til he got older, and then I
17 stopped.

18 Q. What door did you generally take him out when you
19 would take him out?

20 A. Well, it depends. It depends on what I was driving.

21 Q. Okay. So tell me about that.

22 A. All right. When I -- when I used my -- when I had
23 my little Explorer -- well, I didn't take Bear out
24 with that. I didn't do Bear. Are you talking
25 about...

1 BY MS. POE:

2 He's talking about you took Bear for walks.

3 What door did you go out of when you would take Bear
4 for a walk?

5 WITNESS ANSWERS:

6 A. Front or the side door, side door going where the
7 cars are parked.

8 EXAMINATION RESUMED BY MR. SOLAR:

9 Q. Okay. Why would you go out the side door?

10 A. Take him for a walk.

11 Q. I know. But aren't there -- there's a front door
12 and a back door?

13 A. Yeah.

14 Q. Is there a particular reason why you liked to go out
15 the side door?

16 A. I just took -- that's the door I always took him out
17 of. She'd take him out that door.

18 Q. Okay. You've see my client take ---

19 A. Uh-huh. Yes.

20 Q. --- Bear -- okay. So now let's talk about Blue. My
21 understanding is Blue is the dog that was involved
22 in this accident?

23 A. Yes.

24 Q. Is that correct?

25 A. Uh-huh. Yes. I'm sorry.

1 Q. Did you know Blue since ---

2 A. Puppy.

3 Q. Since she first got him?

4 A. Yes.

5 Q. Okay. Did they also get another dog around that
6 time, as well?

7 A. They got both of them, Koblenz and Blue, at the same
8 time, because I think they're brother and sister.

9 Q. And just to clarify, Blue is a boy?

10 A. Yes.

11 Q. Okay. And the sister is Caroline's dog?

12 A. Yes. That's Koblenz.

13 Q. Okay. Did my client have Blue and Blue's sister
14 trained at all; do you know?

15 A. No, not that I'm aware of.

16 Q. Okay. Did you take care of Blue? And I'm talking
17 before this incident happened.

18 A. As in what way?

19 Q. Well, tell me about your interactions with Blue.
20 How did you interact with him? What did you -- did
21 you do anything for him?

22 A. Sometimes I would feed him, sometimes if she was
23 running late or like she'd call and say can you feed
24 the dog, so I'd feed him. Blue -- Koblenz wasn't
25 always there. Blue was at Deedee's house, and

1 Koblenz was at Caroline's. But sometimes, like that
2 day, both of them were there and I was supposed to
3 take them to the kennel.

4 Q. Again, just talking before the incident happened.
5 When you would go over there to clean, Blue would
6 generally be there?

7 A. Oh, yeah.

8 Q. Okay. Did you -- did you ever take him out to the
9 bathroom?

10 A. I'd open the door and let him out.

11 Q. Which door would you let him out of?

12 A. The back door.

13 Q. Okay. Why did you let him out the back door?

14 A. Because it was fenced in and I didn't have to leash
15 him or anything; I just let him run loose.

16 Q. So did you take Blue several times to the kennel
17 before this incident?

18 A. I have.

19 Q. Do you know about when the last time that was? And
20 I know I'm not asking for a specific date, but...

21 A. I'm going to say it was -- honestly, I'm going to
22 say a couple months. I can't remember.

23 Q. Did you ever take Blue anywhere else?

24 A. Just to the kennel.

25 Q. Does Blue have an issue with his elbow or his hip?

1 A. His hip. He does.

2 Q. What's wrong with his hip?

3 A. I don't know if it's hip dysplasia, but I think he
4 was born with it. It might be hip dysplasia, but I
5 know it's painful because I had a dog with it.

6 Q. How does that affect Blue?

7 A. Well, like getting in things, you know, like getting
8 in a car and that kind of thing, I think it hurts
9 him. So I try to be as easy with him as I can.

10 Q. Did you ever take Blue on walks?

11 A. No, I did not.

12 Q. What type of leash did you usually use when you ---

13 A. They had a -- they had a leash. It was probably
14 about five foot, I think, four or five feet, and I
15 couldn't find it, because I called her and asked her
16 where his leash was, and she said it was in the
17 laundry room, but it wasn't. So I had a couple
18 leashes in the car, and I went and got those and put
19 on them. So I took Blue first.

20 Q. Okay.

21 BY MR. SOLAR:

22 This is -- this says Exhibit 2, but we'll just
23 mark this as Defendant's Exhibit 1, and then -- do
24 you still have your copy?

25 BY THE WITNESS:

1 Are these supposed to be mine?

2 BY MR. SOLAR:

3 No, ma'am.

4 BY THE WITNESS:

5 I didn't think they were.

6 BY MR. SOLAR:

7 I'm just going to ask you about them.

8 BY MS. POE:

9 I'm fine.

10 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT 1,
11 PHOTOGRAPH, ATTACHED.)

12 EXAMINATION RESUMED BY MR. SOLAR:

13 Q. Do you know what's depicted in those photographs?

14 A. Do what?

15 Q. What is depicted in those photographs?

16 A. Two leashes.

17 Q. Okay. And are those the leashes that you typically
18 used for Blue and Blue's sister?

19 A. Well, yes.

20 Q. Okay. But you're saying on the day this happened
21 ---

22 A. I couldn't find them.

23 Q. Okay. My understanding is this -- the incident that
24 we're here for took place on January 24th, 2020.
25 Does that sound correct to you?

1 A. Uh-huh. That, I remember.

2 Q. Okay. Did you take any medication that day?

3 A. No.

4 Q. Okay. You didn't take your Synthroid or your
5 Trintellix?

6 A. Well, yeah, I took my Synthroid.

7 Q. Okay. What about your Trintellix?

8 A. I did.

9 Q. Okay. Anything else?

10 A. No, that was all I was taking at the time, that I
11 can remember.

12 Q. So why did you -- how did you end up going over to
13 my client's house? How did that come about?

14 A. If I remember correctly, I was coming from
15 Asheville. My thyroid doctor is up there, the one
16 that prescribes the Synthroid. And I was in my
17 truck, and she asked me to go by. I can't remember
18 if she called me or I -- no, she called me and asked
19 me to go by and vacuum her house, just to vacuum it,
20 and then she asked me if I would take the dogs to
21 the kennel because she was going to Hilton Head, and
22 I told her yes.

23 Q. Okay. Did you still go to the doctor that day?

24 A. I was coming from the doctor when she called me.

25 Q. Oh, coming from the doctor.

- 1 A. Yeah. My doctor's in Asheville.
- 2 Q. Okay. Do you recall if she told you if someone else
- 3 could handle the dogs if you weren't available?
- 4 A. No. I don't remember her saying that. I always
- 5 took care of them.
- 6 Q. You don't remember her saying that Cindy Luthi could
- 7 come by and taken care of the dogs?
- 8 A. No. Honestly, I don't.
- 9 Q. So what -- about what time did you get to the house?
- 10 A. There again, I'm going to say probably around 1,
- 11 maybe 2.
- 12 Q. Just clarifying for the record, that's 1 p.m.?
- 13 A. Yeah, 1 p.m..
- 14 Q. Okay. When you got there, you said you were driving
- 15 your truck?
- 16 A. Yes.
- 17 Q. What type of truck?
- 18 A. It's a Ford F-250.
- 19 Q. Okay. A pretty big truck.
- 20 A. Big.
- 21 Q. Do you use that for anything in particular, or you
- 22 just like big trucks?
- 23 A. Well, I used to pull stuff, but, no, I just like big
- 24 trucks. I just like trucks.
- 25 Q. And is that a -- is that just with a bench seat, or

1 do you have a back cab, as well?

2 A. It's a crew cab.

3 Q. Okay. So you got over to my client's house around 1
4 or 2 p.m. driving the F-250. Where did you park at?

5 A. Side door.

6 Q. Okay.

7 BY MR. SOLAR:

8 This is -- unfortunately, this on here says
9 Exhibit 1, but we're going to call it Defendant's
10 Exhibit 2. Just take a look at that, please.

11 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT 2,
12 PHOTOGRAPH, ATTACHED.)

13 BY MR. SOLAR:

14 I'm going to see if I can get you a -- do you
15 need a copy? Oh, you're good. Okay.

16 EXAMINATION RESUMED BY MR. SOLAR:

17 Q. What is that a picture of, Ms. Evett?

18 A. That's the side, side of the house.

19 Q. Okay. Did you ---

20 A. Where your cars park.

21 Q. Did you pull into the -- I guess that's kind of a
22 driveway, I would call it?

23 A. Yeah.

24 Q. Did you pull into the driveway?

25 A. I did, but let me tell you how I pulled in. This

1 kind of slopes, so I parked my truck long ways. The
2 reason I did that is because she's got kind of a
3 hill and kind of like a ditch, and I pulled in there
4 sideways so the truck would be lower for Blue to get
5 in, because it's hard for him to get in anything
6 that high. I couldn't go around to the back because
7 my truck doors -- the wall that she has, I would
8 just back up with my Explorer and the hatch would
9 come up. If I went around there with my truck, I
10 couldn't open my doors because the wall wouldn't
11 allow the doors to open. So that's why I took him
12 out that way. And, actually, Caroline's taken him
13 out -- taken her dog and Blue out that way.

14 Q. Let me show you something else. This will be
15 Defendant's Exhibit Number 3.

16 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT 3,
17 PHOTOGRAPH, ATTACHED.)

18 EXAMINATION RESUMED BY MR. SOLAR:

19 Q. Do you know what's depicted in that photograph?

20 A. Yeah, that's her gate.

21 Q. Okay. So can you just try to explain it to me? I'm
22 a little just confused what you meant by the car
23 door.

24 A. That's not the wall. Do you have anything of the
25 backyard at all?

1 Q. That might be all I have. Well, let me just ask you
2 some questions.

3 A. Okay.

4 Q. I understand you're saying this isn't a perfect
5 photograph. But the gate, couldn't -- you couldn't
6 drive your car through that gate?

7 A. I can get my car in that gate. There's a wall --
8 when you come out of the house, there's a -- she's
9 got like a wall that -- as you come out of the
10 house, you have to step down. Well, there's a wall
11 there where those two steps are, and it goes around
12 the side. I'm thinking it's probably ten, twelve
13 feet, and it's up about this high, well, about that.
14 So all I did when I would -- with my Explorer, I
15 could raise the hatch and he could just walk in.
16 But being I had my truck, I can't open the doors
17 because the wall was there. You don't have a
18 picture of the wall?

19 Q. Sure. No, I think I understand what you're saying.
20 So what you're saying, and please correct me if I'm
21 wrong, is you would -- with your Explorer, you would
22 basically drive ---

23 A. Drive through there and back up to that wall.

24 Q. As close as you could?

25 A. There's a wall back from here, close to her house.

1 There's a wall there, and I'd back up to that and
2 raise the hatch and open the door and he'd just go
3 in.

4 Q. And that's an elevated like area, so it was easier
5 for him to jump in?

6 A. Uh-huh.

7 BY MS. POE:

8 Is that a yes?

9 BY THE WITNESS:

10 Yes. But I couldn't do it with my truck.

11 EXAMINATION RESUMED BY MR. SOLAR:

12 Q. Sure; I understand.

13 A. And I'd have had to gone on all the way home, which
14 was actually -- I live -- where I live, I had to
15 pass that to go to the kennel. So I'd have had to
16 have gone all the way home and got my Explorer.

17 Q. Is it an Explorer or is it a Tahoe?

18 A. I have five cars.

19 Q. Okay. Well, we'll talk about that in a few minutes.

20 A. Well, I only -- at the time I had -- I had my
21 Explorer and my truck.

22 Q. Those are the only two vehicles you had at the time?

23 A. And my mother's Tahoe.

24 Q. Okay. Have you driven all three of those vehicles
25 at different times to my client's house?

1 A. I have.

2 Q. What are the two new vehicles you have now?

3 A. Well, after I fell, I was talking to my nephew and
4 he gave me his Ford Explorer. He gave it to me
5 because it's easier for me to get in and out of.
6 And then my niece found out that he gave -- he gave
7 me his car. She was buying a new car, and she said,
8 "Well, do you want my car?" And so they shipped
9 them down, and that's how I got five cars.

10 Q. Shipped them down. Where did they ship them from?

11 A. One was shipped from Ohio, and the other was shipped
12 from Chicago.

13 Q. Okay. So you got to the house. Did you generally
14 park on the side of the house?

15 A. Well, I normally parked in front of the house, but
16 being that I was taking him to kennel, I parked
17 where I could get him in the easiest.

18 Q. Sure. And just to go back to this photo right here,
19 I think we're calling it Defendant's Exhibit 1, so
20 you kind of like -- I don't know how to say it, but,
21 basically, you're saying you drove up ---

22 A. Well, when I got there, I pulled in the driveway,
23 but when I got ready to do Blue, I pulled my truck
24 out and parked longways because it's -- it rolls
25 down, and you can sink down and it's not as hard for

1 him to get in.

2 Q. So you got to the house. You said you parked there.
3 What door did you go in?

4 A. Probably that one, that side door.

5 Q. Do you have a key to that door?

6 A. I do.

7 Q. You do? Do you still have a key to that door?

8 A. Somewhere.

9 Q. Okay. So you have a -- you have a key to all doors,
10 like the front door, back door?

11 A. Honestly, I can't remember which door I came in, to
12 be honest. I do -- I know I come in -- probably
13 came in -- no, I probably came in from that one. I
14 think I've got a key to that one. Either that or I
15 went in the front.

16 Q. Okay.

17 A. I just don't remember.

18 Q. And so you went inside, and what happened next?

19 A. Well, I was getting the dogs together, and I think I
20 called Deedee and told her I couldn't find the
21 leashes. And when I went in there and looked, I
22 couldn't find them, so I went out to the car and got
23 -- I had -- because I've got dogs, and I had some
24 leashes out in the car, so I went and got those and
25 put on them, and I took Blue first out the side

1 door, to get him in first.

2 Q. Well, let me ask you a couple -- go back a little
3 bit. So, the leashes, how many leashes did you have
4 in your car?

5 A. It depends on which day. I had probably three or
6 four.

7 Q. Okay. And how many dogs do you personally have?

8 A. At that time, five.

9 Q. What type of dogs were those?

10 A. They're small. They're -- let's see. I had two
11 American Spitz, Toby. And they're all small dogs.
12 And I had one -- I had one big one, a Doberman,
13 Sallie Mae.

14 Q. So when you got in the house, though, did the first
15 thing you do was to go to kind of like corral the
16 dogs, or did you do some cleaning?

17 A. No, they just -- I just sat down and let them love
18 on me. They'll holler and whine because they're
19 excited. And so, I always do that when I come in.
20 And so I just got them ready to go. I mean, they're
21 never a problem to catch or anything like that.

22 Q. Sure. When you sat down and they were loving on
23 you, where were you sitting down at?

24 A. Depends. That day? Probably in the dining room,
25 because they'll come running in and -- when they

1 hear me, and they'll come running in, so I'll run --
2 I don't run; I just sit down in the dining room
3 chair, and then they start, you know, licking me and
4 all that kind of stuff.

5 Q. Okay. So if you came in from the side door on that
6 day, where -- how many rooms away exactly is the
7 dining room?

8 A. Let's see. That room, Deedee's room, hallway,
9 kitchen, dining room.

10 Q. Is the dining room closer to the front door?

11 A. It is.

12 Q. Okay. Is there reason, if you went through the side
13 door, that you would walk through all those doors
14 before sitting down in the dining room?

15 A. Like I said, I don't remember which door I come
16 through, to be honest with you.

17 Q. Okay. And so, did you do any cleaning that day?

18 A. No. She said something about vacuuming, and I said,
19 well, I'll go ahead and take the dogs and I'll come
20 back later on that afternoon to vacuum.

21 Q. Did you -- when you came there to the house, did you
22 -- were you dropping anything off, or you were just
23 there solely to pick up the dogs?

24 A. I'm thinking just to pick up the dogs.

25 Q. Okay. So you searched the house and you couldn't

1 find the leash, right?

2 A. Right.

3 Q. Okay. And you call Deedee and you still couldn't
4 find it?

5 A. Uh-uh. And that's when I went out and got two of
6 mine.

7 Q. Okay. What type of leashes -- do you recall the
8 type of leashes that you took from your car?

9 A. They're the ones that you -- they're short. They're
10 small leashes. They're probably about three, three
11 or four inches -- three or four feet.

12 Q. Can we -- and I know you said this photo was not
13 the, but ---

14 A. Mine were smaller than these.

15 Q. Okay. Are they -- did the handle -- did they have a
16 handle on the leashes?

17 A. Yeah, they did.

18 Q. Okay. Was the handle like -- and, again, I know
19 these aren't the same ones, but was the handle like
20 this or kind of in that shape?

21 A. Yeah. They weren't made of leather, no. They were
22 the nylon.

23 Q. Nylon, okay. And were they three -- three feet long
24 leashes?

25 A. I'm thinking three, three and a half maybe.

1 Q. Do you still have those leashes?

2 A. No. They should be on the dogs. They were left --
3 I left them on the dogs, because when I called Cindy
4 the leashes were on the dogs because, like I said, I
5 was getting ready to take Blue, which I did, took
6 him out the door and that's when he took off.

7 Q. Okay. Well, we'll get to that in a second. I know
8 we're just a lot of background. My one time to ask
9 you all these -- all these things. So, okay. So
10 you leashed up; you put a leash on, you're saying,
11 on both. I'm just going to call it Blue's sister
12 because that name's too difficult for me. So you
13 put a leash on -- so you put a leash on Blue and you
14 put a leash on Blue's sister?

15 A. Right.

16 Q. Is that correct?

17 A. Correct.

18 Q. Okay. Do you know what room you put a leash on them
19 in?

20 A. I sat down in -- I believe I sat down in the
21 recliner there by the door and put them on.

22 Q. Okay. And the recliner by the door, you're talking
23 the ---

24 A. Side door.

25 Q. Okay. And is that room also kind of referred to as

1 like a porch area?

2 A. Sunroom, or whatever, yeah.

3 Q. Okay; sunroom. Okay. So you put one on each, and
4 then were you going to take them out one at a time?

5 A. One at a time.

6 Q. Okay. So tell me about -- tell me about that and
7 how -- what happened exactly.

8 A. Okay. Well, I got the leash on him, and so, like I
9 said, I had the truck and everything with the door
10 open. Everything was ready. So I took him --
11 opened the door, and I stepped down one step, from
12 what I can remember, and I had my hand on the rail.
13 And for some reason he just took off. I don't know
14 if he saw a squirrel or what. But I had my hand --
15 I had the loop around my hand, and I was holding it.
16 Well, when he -- he pulled. When he took off, he
17 took me with him. I didn't hit a step. I bypassed
18 all those steps, and I hit the ground, and I hit her
19 flowerpot. That's what caused the knot on my head.
20 And when I -- I didn't pass out, but I was like
21 this, and I still had hold of him. In fact, I might
22 have been on top of him; I just can't remember. So,
23 anyway, and I ripped my fingernails off where I
24 grabbed the railing, and I laid there for a minute,
25 because when I hit the pot -- I remember hitting the

1 pot, and I said, oh, my God, if I break her pot
2 she's going to kill me.

3 Anyway, so I was laying there, and I said uh-
4 oh. So, I checked on Blue, and he was okay, and I
5 still had hold of him. And I got up -- I didn't get
6 up; I scooted around and pushed up on one of the
7 steps. And I still had Blue, and I said, well, let
8 me see if I can stand up. And when I stood up,
9 that's when my right leg gave, and I said uh-oh. I
10 had my phone, and I sat there for a minute to see
11 how I was going to do this thing. I was going to
12 call EMS, and then I got to thinking, if I call EMS
13 and everybody -- all these -- I don't know what he'd
14 do, because I've seen him tear the blinds off the
15 windows when people would walk by the house. So I
16 said if I can just get him in the house. So I
17 turned around, and I got my butt on the steps, and I
18 said, "Come on Blue; we've got to get in the house."
19 And I grabbed him on the collar, and he pulled me
20 back up the steps, you know, just one at a time.

21 So I got in. I slid in the door, opened the
22 door, you know, just reached up and opened it, and I
23 slid in and got to the recliner. And I got in that,
24 and I then took him off my wrist, because I wanted
25 to make sure he was in the house. And then that's

1 when I called Cindy that works for Deedee and asked
2 her if she could come to the house.

3 Q. Okay. Well, a lot to unpack, so I'm going to jump
4 around a little bit. You made the comment that if
5 you broke the pot that my client would kill you.

6 A. Well, she'd be mad; let's put it that way.

7 Q. Okay. Was my client, in your opinion, ever rude to
8 you or ever threaten you or anything like that?

9 A. No. I mean, I just always -- you know, I just
10 didn't want to break people's stuff. She can be,
11 but she's always been pretty decent to me.

12 Q. Did she ever yell at you about anything?

13 A. Oh, yeah.

14 Q. What did she yell about -- at you about?

15 A. Well, I was -- I kept the dog. They went -- I think
16 they went to Florida. Her, Caroline, Caroline's
17 boyfriend, and Deedee went to -- I think they went
18 to Florida down at Mr. Luthi's place. And I was
19 cleaning, and I washed a blanket that I normally --
20 I wasn't really paying attention. And it was made
21 of silk or something. Anyway, it shrunk. I messed
22 it up. And I was all upset. But, anyway, I would
23 take care of the dogs. You know, I don't know if
24 Blue was living at that time. But, anyway,
25 nevertheless, I was -- I screwed up her blanket, so

1 to speak. So, anyway, I waited 'til they got back.
2 They -- actually, did I pick them up at the airport?
3 I think I did. I believe I did. I picked them up
4 at the airport. And I could be wrong, but, anyway,
5 so I waited 'til the next day. They got home, and I
6 didn't want to tell her about the blanket and
7 everything. So I went ahead and put it back on the
8 bed and all.

9 And so the next day I came up there to get
10 paid, and she said -- well, she already realized the
11 blanket was messed up. I said, "Yeah," I said, "I
12 come up here to tell you about the blanket. I
13 didn't want to just tell you when you just got
14 back." And she said, "Well, I paid over a hundred
15 dollars for that blanket." I said, "I'll replace
16 it; I'll replace it." Well, she owed me like 200
17 and something dollars for keeping the dog. She
18 never paid me.

19 Q. Okay. So she never paid you the \$200, period?

20 A. It was 280-something dollars, because I kept the
21 dogs for like three days, three or four days. I
22 spent the night. I believe it was with Blue. I
23 believe it was Blue.

24 Q. Okay. And do you know -- and, again, I'm not trying
25 to hold you to a specific date, but do you know, was

1 this -- did this happen several years before the
2 incident that we're here for today or ---

3 A. Oh, yeah. I mean, that's probably when I first
4 started working for her. I needed the job.

5 Q. Okay. Well, why did you -- I mean, if she shorted
6 you a week's pay, or however many hours of pay, why
7 did you continue to work for her?

8 A. I needed the money. I needed to work.

9 Q. But you're saying she didn't pay you. So were you
10 concerned that she was going to continue not to pay
11 you?

12 A. She wasn't going to pay me because she was taking
13 that out for paying for the blanket.

14 Q. So you're saying that ---

15 A. Well, she told me she only paid a hundred dollars
16 for it at Tuesday Mornings, but she owed me close to
17 three, and she never gave me any money. She never
18 paid me anything. I guess she thought that was
19 enough for the blanket.

20 Q. Any other incidents where my client was ever upset
21 with you?

22 A. No.

23 Q. Okay. My client was never physical with you, right?

24 A. Oh, Lord no.

25 Q. Okay. You made a comment about Blue had torn the

1 blinds off at some point previously. So what blinds
2 are we ---

3 A. This door.

4 Q. Okay.

5 A. That door there.

6 Q. And so, did he do that in an aggressive way? Well,
7 let me try and rephrase it. So, I've got a -- well,
8 I don't have a dog. I kind of have a dog, but I
9 made my parents take the dog, and that dog sometimes
10 gets excited and will jump up and my -- that dog has
11 ruined the blinds. And so ---

12 A. I mean, there ---

13 Q. Was this -- did Blue ruin the blinds because he was
14 excited, or was he trying to physically get at
15 someone?

16 A. I figured he was trying to get out, because when
17 they get -- when they let them -- when they are in
18 the backyard, if anything goes by, boy, they're
19 right up there at that fence showing them teeth and
20 everything.

21 Q. Growling?

22 A. Yeah.

23 Q. Would you say Blue is an aggressive dog?

24 A. Oh, no, I don't know. That's why -- I didn't know
25 what he would do, and I didn't want to take a -- I

1 was afraid if he did get aggressive they'd shoot
2 him, and I didn't want them to shoot the dog or hurt
3 the dog.

4 Q. Were you ever afraid of Blue?

5 A. Oh, Lord no.

6 Q. Were you ever afraid of Blue's sister?

7 A. No.

8 Q. And so you said you fell down. Let me show you some
9 more photographs.

10 BY MR. SOLAR:

11 This will be -- this is marked as Defendant's
12 Exhibit 3. Let me find my copy.

13 BY MS. POE:

14 Do you want to re-mark it as 4?

15 BY MR. SOLAR:

16 Oh, it's 4? Okay. It will be 4. Sorry. I've
17 got a lot of things to go through. Okay. This is
18 it. Okay.

19 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT 4,
20 PHOTOGRAPH, ATTACHED.)

21 EXAMINATION RESUMED BY MR. SOLAR:

22 Q. So you told me that you leashed Blue and you were
23 going outside and that he bolted for some unknown
24 reason?

25 A. I don't know what reason he would do that.

1 Q. Okay. Was the door open like that when he bolted?

2 A. No. I actually shut it.

3 Q. Okay. You shut the door?

4 A. I shut it and went down the first step, and then
5 that was all I remember.

6 Q. Okay. And so, when you ---

7 A. But I did grab the railing on the side.

8 Q. Okay. Okay.

9 A. And that's where it tore my fingernails off.

10 BY MR. SOLAR:

11 Let's look at -- this one says 4, but is it 5
12 now? Okay. Let's look at Defendant's Exhibit
13 Number 5.

14 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT 5,
15 PHOTOGRAPH, ATTACHED.)

16 EXAMINATION RESUMED BY MR. SOLAR:

17 Q. You can see the railing.

18 A. Well, the trees and all weren't grown over it like
19 that.

20 Q. But, I mean, you can still see, if you look right
21 there, that that's kind of the outline of the
22 railing, correct?

23 A. Yeah. Well, there's railing up above and on the
24 side there.

25 Q. Okay. So you shut the door?

1 A. Uh-huh.

2 Q. And did you leave Blue's sister inside?

3 A. Uh-huh.

4 Q. Okay. Where ---

5 BY MS. POE:

6 Is that a yes?

7 BY THE WITNESS:

8 Oh, yes.

9 EXAMINATION RESUMED BY MR. SOLAR:

10 Q. Where did you -- where did you leave Blue's sister?

11 Did you leave her in that room or ---

12 A. Oh, I just put the leash on her and just left her
13 there.

14 Q. Okay. And so you shut the door, and then I guess --
15 so your -- looks like the railing would have been on
16 your left side?

17 A. Left. That's the fingernails that got ripped off.

18 Q. Okay. So your hand is on the ---

19 A. Rail.

20 Q. On the rail?

21 A. Uh-huh.

22 Q. And at the top -- top of the -- because you said
23 there was a little rail we can't see. So is it like
24 up here, or you're saying it was ---

25 A. Oh, I was up at the top. I was up at the top.

1 Q. Okay. And then let's go back to the other
2 photograph real quick. This is number four,
3 Defendant's Exhibit Number 4. Okay. Was your feet
4 when Blue bolted, was it still ---

5 A. No, I had stepped down one step.

6 Q. Okay.

7 A. The door was closed, and I had stepped down one
8 step. I had my hand on the rail, and all of a
9 sudden he just took off, and when he did, I went
10 with him.

11 Q. Okay. Did -- I understand you said you had stepped
12 down, but I'm trying to figure out where exactly
13 your feet were. So ---

14 A. The first step, not this step, the second step.

15 Q. Okay. So was one foot on that step and one foot was
16 back up here?

17 A. No, I had stepped both -- I stepped both down, had
18 him, and he just took off. When he did, I mean, I
19 was still holding and I just wasn't strong enough to
20 hold. And like I said, it ripped the fingernails
21 off my fingers.

22 Q. Could you just mark on here, and that'll be
23 Defendant's Exhibit 4, where, approximately, your
24 feet were? Or would that be a better one?

25 A. Yeah, this would be a better one.

1 Q. Okay. Well, that one's Defendant's Exhibit 5. So,
2 yeah, do it on that one, then.

3 A. I was right there.

4 Q. Okay.

5 A. And that was the only step I took, because he pulled
6 me so hard I flew. I never hit a step 'til I hit
7 the bottom, 'til I hit her planter with my head.

8 Q. Can you see her planter in that photograph?

9 A. No. This -- like I said, the shrubbery and stuff
10 wasn't like that, but there was a big pot.

11 Q. Okay. And ---

12 A. That's it. And it -- actually, it fell over.

13 Q. So that's -- this is Defendant's Exhibit 4. Could
14 you -- could you mark that pot for me, please?

15 A. Let's just say it looks like the pot.

16 Q. Okay. Sure. Are there any other pots that are
17 close there, generally?

18 A. Not that I can see. There was just that one pot.
19 Because that's why I hit -- I hit my head on the
20 pot, and I had a big 'ol knot on my head.

21 Q. And this might be the wrong word, but let me just
22 try to say it, and you can correct me if I'm wrong.
23 So you were up here on the top. Blue bolted, and
24 you, essentially, were airborne ---

25 A. Correct.

1 Q. --- all the way until past this and all the way to
2 the pot, which -- I mean, how many feet do you think
3 the pot is in front of those -- in front of those
4 steps?

5 A. Well, if my head was on the pot, hit the pot...

6 Q. Like how far is the pot right there from this last
7 concrete ---

8 A. Oh, it was over -- it was over here. It was right
9 here. It was at the bottom, but I couldn't tell you
10 how far.

11 Q. Okay. About how much did you weigh at the time?

12 A. I'm going to say about 142 maybe.

13 Q. And how much weight do you think Blue weighed at
14 that time?

15 A. I'm going to say -- I'm going to say between 85 and
16 a hundred.

17 Q. Okay. But that's just a guess; you never weighed
18 him, right?

19 A. Oh, no.

20 Q. Okay. And so when you talk about the leash, it was
21 in your right hand?

22 A. Uh-huh.

23 Q. What hand ---

24 **BY MS. POE:**

25 Is that a yes?

1 BY THE WITNESS:

2 Yes.

3 EXAMINATION RESUMED BY MR. SOLAR:

4 Q. See, it's so conversational that I understand what
5 you're saying. So, it was in your right hand. Are
6 you right-handed or left-handed?

7 A. I'm right-handed.

8 Q. Okay. What shoes were you wearing at the time?

9 A. Probably my tennis shoes.

10 Q. Okay. So, just laced-up shoes?

11 A. Skechers, yeah.

12 Q. What -- were you wearing pants; were you wearing a
13 dress?

14 A. Jeans.

15 Q. Jeans, okay. And then the -- you said that the
16 right hand was through the ---

17 A. The loop.

18 Q. --- loop? Okay.

19 A. I had my hand in the loop.

20 Q. Did you -- did you hold it any other way? And what
21 I'm trying to explain by that is, did you wrap it
22 around yourself?

23 A. No. I just always put the loop and hold it like
24 that.

25 Q. Okay. Had you ever taken Blue out that door, which

1 is reflected in Defendant's Exhibit Number 5,
2 before?

3 A. Honestly, I can't remember.

4 Q. Okay. Had you -- well, let me ask you this. You
5 said that depending on your vehicle you'll go to the
6 back usually, right?

7 A. Correct.

8 Q. Okay. More times than often, did you take him out
9 the back door?

10 A. Yeah. Probably, yeah.

11 Q. Okay. Okay. So you fell. Let's assume, though,
12 you didn't fall. And I'm not trying to say that you
13 didn't fall. I'm just saying if this was a world
14 where that didn't happen, how were you going to get
15 -- what were you going to do next?

16 A. I was gonna put him in the truck.

17 Q. Okay. So would you open -- which door was he going
18 to go up?

19 A. In the back. If I had -- the truck was facing this
20 way, I'd have him in the back on the left.

21 Q. So are we talking he was going to get into the
22 passenger side door or the driver's side door?

23 A. Driver.

24 Q. Okay. And that was -- is the closest door to the --
25 to the house, or do you have to go around to get to

1 that door?

2 A. You mean me physically to get to that door?

3 Q. Well, what I'm trying to say is, what was the
4 closest car door; what side was closest to the
5 house? Was it the passenger side?

6 A. Driver's side.

7 Q. Driver's side, okay. And then you said there was
8 kind of a jump that he could jump up?

9 A. It's kind of like a ditch, I guess for the water to
10 go down, but it's a pretty -- actually, Caroline --
11 I'm getting off the subject, but Caroline was taking
12 him -- taking him somewhere, I don't remember where,
13 and she had her car, and I said, "Caroline," I said,
14 "why don't you back down into the ditch here and
15 it'd be easy for Blue to get in." And she said,
16 "Well, why didn't I think of that?" So she backed
17 her car down and put Blue in, to keep from hurting
18 him.

19 Q. When she -- when she took Blue out, was Blue on a
20 leash?

21 A. Honestly, I can't remember.

22 Q. Okay. And so were you going -- because I understand
23 Blue has his hip, or whatever, problem, and he
24 needed kind of a higher landing to jump. Were you
25 going to help him at all? Because -- or you were

1 just going to tell him jump and ---

2 A. No, I'd help him. Usually, when I help a dog like
3 that, I get their front end up and then I push them
4 in.

5 Q. Okay. Did -- were you at all concerned about Blue's
6 weight? I mean, he's a pretty big dog. Were you
7 physically able to pick him up and push him in?

8 A. Yeah, a little bit. Well, I had to do what I had to
9 do.

10 Q. Okay. And so you said -- going back to what
11 happened, you said you were airborne and you fell,
12 and then, what, you managed to climb -- well, you
13 said you pulled on Blue and Blue pulled you up?

14 A. Like I said, I still had the leash in my hand, and I
15 -- I said, "Blue, you're gonna have to help me." So
16 I grabbed him by his collar. He had a collar on.
17 And I said, "Let's go," and we went one step at a
18 time. And then I got -- I was still sitting down,
19 and I did manage to get the door open, and I slid in
20 on my rear end, and I scooted up and got into the
21 recliner, because I couldn't step on my -- I
22 couldn't stand on my leg.

23 Q. About how long did it take you -- and, again, I know
24 you're just guessing, but about how long did it take
25 you to get back up the steps with Blue?

1 A. I'm gonna say ten minutes maybe.

2 Q. Ten minutes? Okay. And when you said you held on
3 to Blue's collar as you went step by step, which
4 hand were you holding onto Blue's collar?

5 A. Right.

6 Q. Right. Okay. That's the hand that had the leash on
7 it?

8 A. Correct.

9 Q. Okay. When you fell down -- and I understand you
10 made a comment that you tried to stand up and there
11 was an issue with your leg, right, or your knee?

12 A. My leg.

13 Q. Okay. Which leg is that?

14 A. My right.

15 Q. Right leg, okay. And is it just your leg in
16 general, or is it your knee? Where on your leg?

17 A. It just hurt. I couldn't stand on it. I just went
18 uh-oh. That's all I could say.

19 Q. When you fell, did you hear any sounds that may have
20 indicated you had a broken bone?

21 A. No. I heard my head hit the pot.

22 Q. Okay. And so your head hit the pot. Where on your
23 head did you hit the pot?

24 A. Right there.

25 Q. Okay. Did -- were you bleeding at all?

- 1 A. No.
- 2 Q. Did you break the pot when your head hit it?
- 3 A. I hope not. No, I don't think I did. No.
- 4 Q. Did you lose consciousness?
- 5 A. No, not that I'm aware of.
- 6 Q. Sure. I know; that's always a hard thing I always
- 7 think about, too. It's like, well, how does someone
- 8 exactly know that? But, okay, so you went up bit by
- 9 bit, up the stairs, and then the door, when you got
- 10 to the door, the door was shut?
- 11 A. Uh-huh.
- 12 Q. Okay. Was the door locked?
- 13 A. No.
- 14 Q. Okay. And so you open the door; you go in, and then
- 15 you said you sat in a chair?
- 16 A. Uh-huh. Her -- she's got a recliner there.
- 17 Q. Okay. What did you do next?
- 18 A. Made sure everybody was where they're supposed to
- 19 be, and then I called Cindy.
- 20 Q. Why did you call Cindy?
- 21 A. Because she works for Deedee and she's familiar with
- 22 the dogs.
- 23 Q. And what did you want Cindy to do?
- 24 A. I wanted her to take the dogs to the kennel.
- 25 Q. Okay. Did you call anyone other than Cindy?

1 A. I called my boyfriend.

2 Q. And your boyfriend's name, again? I'm sorry.

3 A. Howard Scott Frisby.

4 Q. And what did you tell him?

5 A. I asked him, I said, "Can you come up here and get
6 me?" I said, "You need to take me to the ER." I
7 told him what had happened, and I said, "Don't rush,
8 you know, take your time." And I said -- because I
9 needed him to carry me to the ER. I wasn't gonna
10 call an ambulance.

11 Q. The -- so you mentioned -- and I'm sorry I'm just
12 kind of jumping all over the place. But you hit
13 your head and your leg hurt, and you said it was
14 your right leg?

15 A. My right leg.

16 Q. Okay. Were you experiencing pain anywhere else in
17 your body?

18 A. I tell you, I think the adrenaline was so high, I
19 don't -- I don't remember. I just know it hurt when
20 I stood on it. And I was trying to use a broom, you
21 know, after the fact, when I was waiting for my
22 boyfriend to get there. And Cindy was going to take
23 the dog, and there was a broom there, and I was
24 trying to use that, see if I could use that as a
25 crutch, and it hurt too bad. I couldn't. So I just

1 had to sit back down and wait.

2 Q. Okay. What about your hand? You said your left
3 hand some nails ---

4 A. It just peeled the nails off. I mean, not down like
5 -- it just broke my fingernails, is what it did.

6 Q. Which -- which fingernails?

7 A. These.

8 Q. Okay. So that's your ---

9 A. Where I had to grab. It just peeled off.

10 Q. So you're saying your -- and I don't know the --
11 what are the names of the fingers? Your middle
12 finger, your pointer finger, and your ring finger?

13 A. It was probably -- it was these three. Well, it was
14 these three, because I had hold of it like that, and
15 I just -- it just -- you know, I was hanging on to
16 that thing. But it just -- I couldn't -- I wasn't
17 strong enough.

18 Q. Was your hand bleeding afterwards?

19 A. No.

20 Q. Okay. And so you said you didn't want to call the
21 ambulance once you got inside the house?

22 A. Because nobody had gotten there to the dogs yet.

23 Q. Okay.

24 A. I was waiting for Cindy to get there, and I said,
25 well, I can get, you know, Scott to come and get me.

1 I was hoping it wasn't a big deal, but it was.

2 Q. Had -- Scott's your boyfriend, right?

3 A. Uh-huh.

4 Q. Had he been to the house before?

5 A. Yeah.

6 Q. Okay. When did -- why?

7 A. I mean, he didn't go in; he just knew where it was.

8 Q. Okay. So he had -- he had been over there, but --
9 I'm trying to -- he knew where it was, or he had
10 been over there but he had never been inside?

11 A. I think we were somewhere and I drove by and I said
12 there's -- you know, there's Deedee's house, or
13 whatever. But he'd never been inside that I'm aware
14 of.

15 Q. Okay. So while you're waiting for Cindy -- well,
16 what did Cindy tell you?

17 A. I told her, I said, can you -- I said -- I asked
18 her, I said, "Are you busy?" And she said no. I
19 said, "Can you come and take the dogs to the kennel
20 for me?" And she said yeah. And so, she was on her
21 way. And then in the meantime Caroline came home.
22 I think she just came home for lunch, or whatever,
23 and I told her, you know, what had happened, and she
24 got a little upset. So she ran and got some ice,
25 and I put it on my leg, and then I reached up, was

1 scratching my head, and then I realized I had a bump
2 on my head, and I took the ice pack and put it on my
3 head.

4 Q. So what did you -- you just told her what you told
5 me about how you fell?

6 A. I just told her, I said, "I just fell," and she
7 said, "Did Blue do that?" And I didn't want to say
8 yeah, but I said yeah.

9 Q. Why would she think Blue did it?

10 A. Well, I don't know. She just asked me was it Blue,
11 and I said yeah.

12 Q. Okay. Did you tell her any parts of your body was
13 hurting?

14 A. I told her, I said, my -- "I can't stand on my leg,"
15 is what I told her. I said, "I can't stand on my
16 leg." And so, Cindy went ahead and took care of the
17 dogs, and my boyfriend came, and Caroline and Scott
18 came and took me to the -- to Scott's car. I got in
19 there, and then we went to the ER.

20 Q. Did -- and you said you couldn't stand on your legs.
21 Are we talking just your right leg, or is your left
22 leg?

23 A. It's my right leg.

24 Q. Okay. So your left leg was fine, as far as you
25 knew?

1 A. Yeah, as far as I knew, yeah.

2 Q. Okay. And so, did Caroline ask, though, if she
3 could call the ambulance for you?

4 A. If she did, I don't remember. But, I mean, she
5 could have. I think I told her, no, I was just
6 going to get Scott to, because he was on his way
7 anyway.

8 Q. Okay. And then where were the dogs when you were
9 sitting there?

10 A. I think they were in the other room with Cindy,
11 because I heard Cindy and Caroline around the
12 kitchen, around that area, because the dogs were --
13 if I remember correctly, the dogs were still there
14 before I left or either Cindy had just put them in
15 and left.

16 Q. Well, what I guess I'm asking is, so when you went
17 back inside the house did the dogs have free rein or
18 did you put them in another room?

19 A. Oh, no; they had free rein.

20 Q. Okay. And so Caroline got there. Who got there
21 next?

22 A. I think Cindy. I think -- yeah, I think Cindy came
23 in after Caroline. I can't remember, but I know
24 they both were there, but I remember seeing Caroline
25 coming around the -- where -- right on the side door

1 there, because I was sitting there in the chair. I
2 can't -- honestly, I can't remember who got there
3 first, but I think Cindy got there first.

4 Q. Okay. But you don't know if Caroline or Cindy got
5 there first; you think it was Caroline, but you
6 think your boyfriend got there last?

7 A. Right. I knew that. Yeah, he got there last.

8 Q. Okay. What did you tell Cindy when she got there?
9 What did she do?

10 A. I said, "You need to carry the dogs to the kennel,"
11 I said, "because I think I hurt myself." I said,
12 "Blue pulled me down the steps." Honestly, I don't
13 remember.

14 Q. Okay. Did you tell her you had any injuries to your
15 body?

16 A. Yeah, I just told her I couldn't stand; I just
17 couldn't walk on my leg.

18 Q. Do you remember telling her about your head?

19 A. I don't -- like I said, I didn't even know it was
20 hurt 'til Caroline got the ice pack, and then I put
21 it on my knee, and I was scratching my head. And, I
22 mean, it was good sized bump on my head.

23 Q. Did you have -- I know we talked about your fingers
24 and you had the bump on the head. Did you have any
25 scrapes or cuts on your face or your body?

1 A. Uh-uh. No.

2 BY MS. POE:

3 Is that a no?

4 BY THE WITNESS:

5 No, not that I can remember.

6 EXAMINATION RESUMED BY MR. SOLAR:

7 Q. And so, do you have -- I mean, when you said you
8 called your -- called Cindy first and you said you
9 had your phone on you at the time that you fell ---

10 A. It was in my pocket.

11 Q. Okay. Which pocket?

12 A. I don't remember. Usually I put it in this one,
13 usually.

14 Q. And what are you indicating right now? Is that your
15 front ---

16 A. Oh, my pocket. Yeah, my side pocket.

17 Q. Front ---

18 A. Side.

19 Q. --- right pocket?

20 A. Yeah.

21 Q. Okay. Did you have anything in your hands other
22 than the leash at the time?

23 A. No, just the leash.

24 Q. Okay. Were your shoes tied?

25 A. Yes.

1 Q. Okay. I've just got to ask all the questions.

2 Okay. So then about how long did it take to get --
3 for your boyfriend to arrive?

4 A. I'm going to say 20 minutes maybe.

5 Q. Okay. Where was he coming from?

6 A. He was coming from the house.

7 Q. Okay. And that's where you guys live together?

8 A. Correct.

9 Q. Okay. And he got there and then -- well, let me ask
10 you this. So Caroline, when she -- do you know
11 where she parked her vehicle when she got there?

12 A. No, because I had my truck. My truck was -- I think
13 she parked around the side there because she -- I
14 guess she could see where my truck was sideways, you
15 know, blocking the drive so I could get Blue in.

16 Q. And do you know where Cindy parked when she got
17 there?

18 A. I think she parked in the front.

19 Q. Okay.

20 A. Because she's got a pretty big car. She's got a
21 Suburban.

22 Q. And then where did your -- where did your boyfriend
23 park?

24 A. He -- my truck was here. He pulled around beside my
25 truck and -- you know, my truck was this way. He

- 1 pulled right there off the drive there.
- 2 Q. When -- you said when Caroline got there she came in
- 3 the side door?
- 4 A. Uh-huh.
- 5 Q. When Cindy got there, what door did she come in?
- 6 A. I don't remember. I do not.
- 7 Q. Do you know what door your boyfriend came in?
- 8 A. I was sitting there at the side here.
- 9 Q. So he came through the side door?
- 10 A. Yeah.
- 11 Q. Okay. So what happened next once he got there?
- 12 A. I said, "We've got to go." So, Caroline got on one
- 13 side and Scott got on the other, and they took me to
- 14 the car.
- 15 Q. Okay.
- 16 A. I couldn't -- like I said, I couldn't put any weight
- 17 on my leg at all.
- 18 Q. Did they -- when you say that you put an arm around
- 19 him, was it like you put your arm around their
- 20 shoulder ---
- 21 A. Yeah.
- 22 Q. --- and the other arm on their shoulder?
- 23 A. Yeah.
- 24 Q. Okay. And then were you kind of ---
- 25 A. I just had the one leg. We just had to hobble.

1 Q. Okay. Hobbling on the left leg?

2 A. Yeah.

3 Q. Okay. And when you left, you said you left the
4 leashes on Blue and Blue's sister?

5 A. Uh-huh.

6 Q. Okay. And then you got in the -- you got in your
7 boyfriend's vehicle?

8 A. Correct, yes.

9 Q. What type of vehicle was he driving?

10 A. Another Ford Explorer. Oh, that was the -- yeah,
11 that Explorer that I have.

12 Q. Okay. And then what happened? He took you to the
13 hospital?

14 A. He took me to St. Francis ER.

15 Q. Okay. Is there a particular reason why you went to
16 St. Francis ER versus a different ER?

17 A. Just a personal preference.

18 Q. Okay. So what happened when you got to St. Francis
19 ER?

20 A. Well, I had to wait. And I went in; they X-rayed my
21 leg. I think they X-rayed my head and X-rayed my --
22 because I told them what all I had hit. I think
23 they -- I can't remember if -- I think they did my
24 shoulder, my knee, and my head, and my back. Or I
25 can't remember what they -- I know they did my head

1 and my leg. I know they did my leg.

2 Q. Okay. Let's break that down. So your head, they
3 took some imaging of your head?

4 A. Uh-huh.

5 Q. Okay.

6 A. Because I had such a big knot on it.

7 Q. Did the imaging reveal anything wrong with your
8 head?

9 A. Uh-uh.

10 BY MS. POE:

11 Is that a no?

12 BY THE WITNESS:

13 No, not that I'm aware. Nobody said anything
14 to me.

15 EXAMINATION RESUMED BY MR. SOLAR:

16 Q. Okay. And you mentioned, I think, your shoulder,
17 you said, was imaged?

18 A. Yeah, my shoulder.

19 Q. Which shoulder are we talking about?

20 A. The right shoulder.

21 Q. Right shoulder, okay. Why did you want to get --
22 why did you -- why did they think they needed to ---

23 A. I just told them I fell and what all I hit.

24 Q. Okay.

25 A. And they're the ones that did all -- I told them my

1 leg, main thing my leg was hurting or was -- I
2 couldn't stand on. So that's when they did they
3 X-ray, and I left all that up to the doctors.

4 Q. Well, let me back up real quick. So I missed this
5 question. This might help with medicals. When you
6 fell down, what parts of your body did -- I know you
7 said you hit your head on the plant. But what parts
8 of your body hit the ground exactly? Did you fall
9 on your right side; did you fall on ---

10 A. I fell on my right side.

11 Q. Right side, okay. So you fell on your right
12 shoulder, arm, made contact with the ground?

13 A. Yes.

14 Q. And then your right side?

15 A. Yeah, everything on the right.

16 Q. Okay. Did you -- did you fall on your knee?

17 A. I just know I hit the ground, and I thought -- I
18 felt like, from what I can remember, everything was
19 on the side, on the left -- I mean, on the right.

20 Q. So I'm just trying to envision it. So when you --
21 after you were on the ground, you're kind of laying
22 on your side, like that?

23 A. Yeah.

24 Q. Okay. And what is -- what is -- what did Blue do
25 right after you fell?

1 A. Well, I still had him. I still had hold of him,
2 and, in fact, I think I fell on him.

3 Q. Okay. Did he -- when you were on the ground or
4 maybe you got off of him, or whatever, was he still
5 trying to ---

6 A. No.

7 Q. --- bolt in some direction?

8 A. No, he wasn't doing any -- he was just there. He
9 just sat there, and I said -- and I still had hold
10 of him, and I -- like I said, I waited to see -- you
11 know, settle down a minute, figure out what to do.
12 And then when I tried to get up, when I sat on the
13 step and I pulled myself -- tried to pull myself up,
14 and then my leg gave, and I said uh-oh.

15 Q. Did you -- were you crying after this?

16 A. No.

17 Q. Okay. Did you -- do you think you might have
18 screamed out when you went down?

19 A. No.

20 Q. Okay. You never called for help for anybody?

21 A. Uh-uh. No, not that I'm aware of. Wasn't nobody
22 there.

23 Q. Sure. But, I mean, it's a neighborhood and there's
24 other people, right? I mean, I know that we don't
25 know who they are, but you're not in the middle of

1 nowhere, right?

2 A. Well, yeah. I mean, just like I said, I think it
3 was the adrenaline, because I just was trying to
4 figure out how to get in the house, get him in the
5 house, and what I was going to do next.

6 Q. Had Blue ever -- correct me if I'm wrong. My
7 understanding, though, is you said that you've taken
8 him out the side door before this?

9 A. No, I said Caroline did.

10 Q. Carolina has. Okay. She's taken Blue or Blue's
11 sister or both?

12 A. Both.

13 Q. Okay. Did you ever see Blue run down the steps with
14 her?

15 A. No. I don't know. I don't even -- I don't know if
16 she even had a leash no him.

17 Q. So you had no ---

18 A. I don't know. I can't remember.

19 Q. So you had no knowledge or you were never told that
20 Blue might just bolt off?

21 A. No.

22 Q. Okay. Complete surprise?

23 A. Yeah. I mean, I was shocked.

24 Q. Okay. We'll go back now to the hospital. You said
25 your right shoulder was imaged. Do you recall what

1 the imaging said?

2 A. No. They mostly -- they told me, they said -- well,
3 they mostly focused on my leg. ,And I guess it was
4 on a Friday, and then they told me they had an
5 appointment. I ended up going to another doctor
6 with my leg, and they were more focused on my leg.

7 Q. Okay. And by leg, are we talking right?

8 A. Yeah, my right leg.

9 Q. And are we talking a specific part of your leg?

10 A. They said it broke, that it was broken. I can't
11 remember; is it a tibia, or whatever? I don't know.
12 They said it was broken, and they put my leg in a,
13 not a cast, but one of those blowup job things.
14 But, anyway, they said wear this and then go to -- I
15 had an appointment, I don't know how that even came
16 about, to Dr. -- I was wanting to go to Piedmont
17 Orthopedic, but they told me to go to Dr. -- not
18 Womack -- Watford. They sent me to that doctor.

19 Q. Well, let's -- we'll get to that in a second. So
20 the imaging, though, of your shoulder, your right
21 shoulder, did it say there was anything wrong with
22 your right shoulder?

23 A. They never told me. I don't remember them telling
24 -- only thing I remember them telling me, that they
25 were focused on my leg.

- 1 Q. Okay. And I know that you said they were focused on
2 your leg, but were you experiencing at the hospital
3 pain in any other parts of your body other than your
4 right leg?
- 5 A. Well, yeah.
- 6 Q. Okay. Tell me about your pain.
- 7 A. Well, my shoulder and my back and all was hurting,
8 and I just thought that was -- you know, when they
9 said my leg was broke, I just thought that was it.
- 10 Q. That was it as in that was all your injuries?
- 11 A. Well, no. That's all they told me.
- 12 Q. Okay. And your shoulder, it's your right shoulder?
- 13 A. It's right.
- 14 Q. Okay. And then your back, you said you hurt your
15 back?
- 16 A. Yeah.
- 17 Q. Where were you having back pain?
- 18 A. My lower back.
- 19 Q. Okay. Were you discharged from St. Francis ER the
20 same day?
- 21 A. Yes.
- 22 Q. Okay. And then I know you said that they sent you
23 to a doctor.
- 24 A. I think it was Watford.
- 25 Q. Is -- when did you follow up, though? And I'm just

1 asking for a general guess. Was it within the next
2 couple of days or...?

3 A. I think it was Friday. So I had to wait Monday for
4 -- I went to see him on Monday.

5 Q. Okay. And, unfortunately, I don't have the names of
6 him, but is it -- is that Dr. Watford, is he with --
7 who's -- do you know what practice he's with?

8 A. God, I've been to so many; I can't think. I think
9 he's with Carolina Orthopaedic, I think.

10 Q. And Neurosurgical Associates?

11 A. Yeah, I think. But I think they're the same.

12 Q. Okay. So you went and saw him, and what did you go
13 and see him -- what part of your body were you
14 seeking treatment?

15 A. My leg.

16 Q. Okay. Right leg?

17 A. Yes.

18 Q. Okay. Were you seeking treatment for your head at
19 this visit?

20 A. My head hurt, but, I mean, it wasn't nothing -- it
21 wasn't bleeding.

22 Q. Okay. Were you seeking treatment for your right
23 shoulder at this visit?

24 A. No. They were -- there again, everything was
25 focused on the leg that was broke.

1 Q. So it was solely the leg at this treatment? Just
2 trying to clarify that.

3 A. The leg was, yeah.

4 Q. Okay. Okay. Well, what did -- what did that doctor
5 at Carolina Orthopaedic -- did he do more imaging?

6 A. I don't remember, but he put me in another one of
7 those braces, and he said, "You have to wear this
8 for six weeks," or whatever, and that's...

9 Q. Okay. So the brace, where exactly on your leg is
10 the brace going? Is it going on your thigh; is it
11 going on your ---

12 A. Well, it went -- I mean, I couldn't bend my leg. It
13 had my leg straight out. I think it was -- anyway,
14 I can't remember. I think it was one of them blowup
15 ones. I'm not real sure. But I had to keep it on
16 and had to keep -- it stayed straight and he told me
17 to stay off of it.

18 Q. When you got to Carolina Orthopaedic, how did you
19 get there; were you on crutches?

20 A. I think my boyfriend -- I don't remember, to be
21 honest with you. Yeah, crutches. I did; I had
22 crutches, because they gave me crutches at the
23 hospital.

24 Q. And so he told you about the -- wearing the splint
25 or...?

1 A. Yeah.

2 Q. Did he tell you anything else?

3 A. No. They were just focused on the leg.

4 Q. Did he tell you that you're going to need surgery on
5 your leg?

6 A. Not at that time. He said it would take about six
7 weeks to heal, six to whatever, six to eight, or
8 whatever.

9 Q. Did he prescribe you any medication?

10 A. He did, but I didn't take it.

11 Q. Okay. What was it; just pain medication?

12 A. Yeah.

13 Q. Why didn't you take it?

14 A. I don't like taking pain pills. Tylenol will do
15 just as good.

16 Q. Do you have any history with taking pain pills and
17 adverse reaction?

18 A. No, I just don't like taking them.

19 Q. Okay. And so we're going to -- you did go to a lot
20 of medical providers.

21 A. Oh, yeah.

22 Q. And so I'm going to kind of jump around.

23 A. Okay.

24 Q. And it's probably not in the right order. So my
25 understanding, though, is after Carolina you

1 eventually went to -- or maybe before -- you went to
2 a place, also, called St. Francis Eastside. Do you
3 remember that?

4 A. Was that for imaging?

5 Q. That was for ---

6 **BY MS. POE:**

7 St. Francis Eastside is a hospital.

8 **BY THE WITNESS:**

9 What day are you talking about?

10 **EXAMINATION RESUMED BY MR. SOLAR:**

11 Q. Well, I'm just -- you went on a lot of different
12 dates, so I'm just going ---

13 A. Oh, well, I did -- I did have my knee replacement
14 over at Eastside.

15 Q. Okay. Is that your right knee?

16 A. Yeah.

17 Q. Okay. And is that the right knee you had in July of
18 2020?

19 A. Yes.

20 Q. Okay. So tell me about how the right knee ended up
21 having to be replaced.

22 A. Well, after it healed, or supposedly healed, it was
23 still hurting and all, and from what he told me,
24 that it had collapsed, and my knee would like jut in
25 that way. It didn't -- it didn't heal correctly.

1 Q. So about how long after the accident did he tell you
2 you needed to do the surgery?

3 A. I don't remember, to be honest with you, because
4 I've been to so many they just kind of run together.

5 Q. So you had the right knee surgery. Was that -- how
6 long was that operation?

7 A. You mean how long did I stay in the hospital.

8 Q. Well, was it like you were under the knife for
9 several hours or...?

10 A. Oh, I don't know. They just did the -- I don't
11 remember. I just know they knocked me out, and then
12 I stayed there a night.

13 Q. You stayed there a night. Okay.

14 A. Yeah, I stayed there one night.

15 Q. Had you ever had a knee surgery before this knee
16 surgery?

17 A. No. Wait a minute. I had an arthroscope. I don't
18 -- can't remember if it was my left or my right. I
19 think it's my right.

20 Q. Okay. Tell me about the arthroscope. What was that
21 for?

22 A. Just to clean up some arthritis and stuff in my leg.

23 Q. Okay. And when -- around what time period was that
24 arthroscope?

25 A. Years, several years.

1 Q. So you had some issue with your right knee years
2 before this accident?

3 A. It was either my left or my right. I don't
4 remember, to be honest with you. Well, I had
5 injections put in both of them. So, yeah.

6 Q. Okay. And that was due to arthritis, you said?

7 A. I'm assuming, yeah.

8 Q. Was there any other injury that you were involved
9 in?

10 A. No.

11 Q. Okay. So you just think it was natural age-related?

12 A. Yeah.

13 Q. Okay. I'm going to jump around a lot. Okay. So
14 let's go real quick to -- my understanding is you
15 had rotator cuff surgery in March.

16 A. Of what year.

17 Q. 2020.

18 A. 2020, yeah.

19 Q. Is that correct?

20 A. Yes.

21 Q. Okay. And is that -- what rotator cuff surgery; was
22 it your left shoulder or your right shoulder?

23 A. Right.

24 Q. Your right shoulder, okay. So how did that come
25 about?

1 A. Well, like I said, everybody was -- they was focused
2 more on my leg than anything else. My shoulder and
3 my back was hurt, but I thought it was just from the
4 fall. I said, well, it'll get better. And when it
5 didn't, I just went to have it checked, and that's
6 when they found out I needed some shoulder repair.

7 Q. Did they try to put you, before you had the shoulder
8 repair, in any physical therapy?

9 A. I know I had it on my knee. I don't remember. I've
10 been through so much physical therapy on different
11 things, I can't remember.

12 Q. Did you have injections before in your right
13 shoulder before you had the surgery?

14 A. I don't think I ever had any injections in my
15 shoulder.

16 Q. And so, I understand -- well, let me ask it this
17 way. You said that you had issues with your leg and
18 you couldn't walk on it. What were the issues that
19 you were feeling with your right rotator cuff?

20 A. Oh, it hurt. I mean, it felt like somebody had a
21 vise, I mean, pair of pliers in there just twisting
22 it.

23 Q. Okay. Could you move your arm?

24 A. Yeah, but it hurt.

25 Q. Okay. But you had full range of motion? You could

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A. No. It would -- it would hurt to -- it just depended on how I had it done, you know, how I was holding or positioning it.

Q. Okay. And we talked about how you had that right arthroscope on your knee before this incident.

A. Uh-huh.

Q. Had you ever had any surgery or procedures done before this incident on your right shoulder?

A. I did.

Q. Okay. What did you have done on your right shoulder?

A. I think he just went in there -- another cleaned it up, you know, like arthroscope, just cleaned it up, arthritis.

Q. But when you say cleaned it up, I mean, it was pretty bad to get to that point, right?

BY MS. POE:

Object to the form.

BY THE WITNESS:

Huh?

BY MR. SOLAR:

You can answer.

BY MS. POE:

I objected to the form. You can go ahead and

1 answer.

2 BY THE WITNESS:

3 I forgot.

4 EXAMINATION RESUMED BY MR. SOLAR:

5 Q. I'll re-ask it and I'll rephrase it.

6 A. Okay.

7 Q. Before you had your arthroscope in your right
8 shoulder, you were experiencing pain in your right
9 shoulder, correct?

10 BY MS. POE:

11 Object to the form. You can go ahead and
12 answer.

13 BY THE WITNESS:

14 All right. One more time.

15 EXAMINATION RESUMED BY MR. SOLAR:

16 Q. Sure. I'm trying to understand -- you referred to
17 it as you had to just to clean it up. I'm trying to
18 understand, you know ---

19 A. I guess for arthritis.

20 Q. Okay. But you would agree, though, that an
21 arthroscope is kind of like the -- it's a severe
22 step to treat arthritis?

23 BY MS. POE:

24 Object to the form.

25 EXAMINATION RESUMED BY MR. SOLAR:

1 Q. You can still answer.

2 A. Oh, okay. That's what I was told. They said we'll
3 just go in and clean it up.

4 Q. Okay. Did you try any other treatments for the --
5 for your shoulder before you had the arthroscope?

6 A. I may have done -- I might have done some physical
7 therapy. I think so; I'm just not sure.

8 Q. And you said earlier you don't think you ever had
9 any injections?

10 A. Not in my shoulder, no. No, no, no.

11 Q. Okay. And when was your -- when was your
12 arthroscope for your shoulder?

13 A. That was years. I'm saying several years, because
14 my son was still home when I had it done.

15 Q. And I think I know this answer, but just to clarify,
16 with the arthroscope you were put under anesthesia?

17 A. Yes.

18 Q. Okay. And then my understanding is -- so I've got
19 down that you had a shoulder -- well, I've got down
20 that you had a rotator cuff surgery and you, also,
21 had a shoulder surgery. Did you have two different?

22 A. Uh-huh. Yes.

23 Q. Okay. So where -- the rotator cuff was the right
24 one?

25 A. You mean what they did after the accident?

1 Q. Well, so let me -- I'll rephrase it. So it looks --
2 according to your discovery responses, you had
3 rotator cuff surgery on March 20th.

4 A. March 20 of what year?

5 Q. No. I meant March 2020.

6 A. 2020? Okay. He went -- Dr. Baumgarten -- I think
7 it was Baumgarten. I think he did my shoulder.
8 Yeah, he went in and had to do some repairs and had
9 to anchor some -- I don't know if it's tendons or
10 whatever, put some anchors in. And ---

11 Q. And are you saying that was because of this
12 accident, or you had that ---

13 A. Yes.

14 Q. --- before this accident?

15 A. No, that was after the accident.

16 Q. Okay. And then my understanding is you had a
17 shoulder surgery, also, in August of 2020?

18 A. I've had ---

19 Q. I'm just trying to ---

20 A. I've had two surgeries on this shoulder.

21 Q. Okay. And both after this accident?

22 A. Correct.

23 Q. Okay. And you had an arthroscope on that shoulder
24 before the incident?

25 A. I think so, yeah. I can't remember if -- that's

1 right.

2 Q. I know it's a lot; I'm just trying to... Okay. Then
3 my understanding is you had hip replacement in
4 August of 2022; is that correct?

5 A. Yes.

6 Q. Okay. Which hip?

7 A. Left.

8 Q. Left hip, okay. How did that come about? What was
9 wrong with your hip?

10 A. Well, my back was hurting, and I'd gone to several
11 doctors here, and all they were wanting to do was a
12 cage, and I said no. And I was talking to -- I
13 can't remember if I was talking to -- there's a
14 doctor up in Asheville, Hoski, and I'd heard of him
15 before, so I made an appointment with him, and I
16 went to see him about my back. And he says, "Well,
17 I want you to see an associate of mine," and I think
18 his name was Dr. Gooch. So, anyway, I went to him,
19 and I was talking to him, and he says, "I'll tell
20 you what," he says, "if you can," he said, "there's
21 a doctor up in Nashville, Tennessee, at Vanderbilt,
22 Dr. Gardocki," and he said, "That's the guy you need
23 to go see." So when I got to Dr. Gardocki, I went
24 up to Nashville, and he examined me and everything,
25 and he said -- I said, "Well, it's my back." He

1 says, "You've got a back issue," but he says,
2 "You've got a hip issue." He said, "Your hip issue
3 needs to be addressed first before we do anything to
4 the back." He says, "You've got an issue with your
5 back," but he said, "This hip issue needs to be
6 taken care of." So that's when I went and had my
7 hip done.

8 Q. How did you get up to Nashville; did you fly or
9 drive?

10 A. I flew.

11 Q. Did anyone go with you?

12 A. I went by myself.

13 Q. Okay. And you said it was your left hip?

14 A. Yeah.

15 Q. Okay. Did you fall on your left hip in this
16 incident?

17 A. Only thing I remember is when I -- was on the right.
18 I don't know. I can't say yes or no.

19 Q. How is your left hip doing today ---

20 A. Oh, it's good.

21 Q. --- since you've had the surgery?

22 A. And, actually, it has alleviated a lot of pain,
23 because I was having like groin pain in my groin,
24 and it was hurting, and that's kind of subsided. I
25 still have back pain, but it's nothing like what I

1 was having. They kept telling me to do my back when
2 it was my hip. But I do have hip problems -- I
3 mean, back problems.

4 Q. Are you expecting to have any future surgery or
5 treatment to your left hip?

6 A. No.

7 Q. Had you ever had any hip surgery, left hip surgery,
8 before this incident?

9 A. No.

10 Q. Had anyone ever told you before this incident that
11 you had degenerative disc disease?

12 A. I just thought it was arthritis. They may have.

13 Q. Anyone ever tell you you have osteoporosis?

14 A. Yes.

15 Q. Tell me about your osteoporosis. When were you
16 diagnosed with that?

17 A. The day of the accident.

18 Q. You were diagnosed with it the day of the accident?

19 A. No, no. I was up at my thyroid doctor, and he also
20 does bone scans and stuff, and he said I had
21 osteoporosis.

22 Q. Okay. So that was the -- just coincidentally that
23 was the day of the incident, but you were diagnosed
24 with it before, earlier that day?

25 A. Uh-huh.

1 BY MS. POE:

2 Is that a yes?

3 BY THE WITNESS:

4 Dr. Dodd, yeah, yeah.

5 EXAMINATION RESUMED BY MR. SOLAR:

6 Q. Okay. Well, I'm just trying to get you ---

7 A. Yeah.

8 Q. So your osteoporosis was not caused by this
9 accident?

10 A. Oh, no.

11 Q. Okay. Let's go back. I know we're jumping around.
12 I'm sorry. Your shoulder, the two shoulders on your
13 surgery -- two surgeries -- I'm getting all tongue-
14 twisted -- shoulder surgeries, how's your shoulder
15 doing today, your right shoulder?

16 A. It hurts.

17 Q. Your right shoulder hurts?

18 A. Yes, it's killing me. In fact, I went to -- I went
19 to my family doctor because I can't sleep at night.
20 If I get my back situated, my shoulder hurts. If I
21 get my shoulder situated, my back -- I don't -- I
22 sleep three, four hours a night, if I do that. So
23 he did an -- wanted me to do an MRI on it, so we
24 did, and he sent me to Dr. Anderson. No, wait a
25 minute. Dr. Anderson. My back, I went to -- my

1 back was hurting. So he did an MRI on my shoulder
2 and my back. That was probably three, four weeks
3 ago. I went to Dr. Anderson after the -- to get the
4 results of the MRI. Dr. Messer sent me to him. He
5 looked at my back and he says, "It looks like you've
6 tried just about everything." He said, "But I've
7 got one more thing I'd like for you to try," he
8 said, you know, "before considering any type of
9 surgery." So he sent me to another doctor, Sara
10 whatever, Baird, or whatever, over there at
11 Patewood, and she injected, I think -- did an SI
12 injection in my back here, and it -- I'm afraid to
13 say, because if I say it's gonna work, it won't.
14 But, anyway, it has alleviated a good bit of my
15 pain. And as I was leaving, he was -- Dr. Anderson
16 was still standing there at the desk there, and I
17 told him, I said, "Well, I meant to ask you about my
18 shoulder," and he said, "Yeah, I was just sitting
19 here looking at it." He said, "Let's deal with your
20 back," and he says, "I'm gonna talk to you about
21 your shoulder."

22 Q. Okay. So you're expecting future treatment ---

23 A. Oh, yeah.

24 Q. --- for your shoulder?

25 A. Uh-huh.

1 Q. Okay. Are you expecting future treatment for your
2 back?

3 A. Yes.

4 Q. Okay. What about your right leg, your right knee?
5 How's that doing since this injury?

6 A. Oh, that's fine.

7 Q. Okay. Expecting any future treatment there?

8 A. No, hope not.

9 Q. We're just going to go kind of out of order. But
10 you went to Piedmont Ortho?

11 A. Uh-huh. Yes.

12 Q. Were you going to Piedmont Ortho before this
13 accident?

14 A. Yes.

15 Q. What were you going there for?

16 A. Getting injections in my knees.

17 Q. In your knees, okay. Which knees? Both knees?

18 A. Both knees.

19 Q. Okay. Was that due to arthritis?

20 A. Yeah.

21 Q. Did your doctor at Piedmont Ortho ever before -- did
22 your doctor at Piedmont Ortho before this incident
23 ever tell you you were going to need knee surgery?

24 A. Yeah.

25 Q. He told you you were?

1 A. Well, my mother had it, so I figured I'd get it,
2 too.

3 Q. Okay. But I'm asking you if a doctor told you.

4 A. If he did, I don't remember.

5 Q. Okay. But you have -- you kind of have a family
6 history of ---

7 A. Yeah.

8 Q. --- knee issues?

9 A. Yes.

10 Q. And that's both knees?

11 A. Yes.

12 Q. Okay. Did you -- did you get any other type of ---

13 A. Do you have a tissue anywhere?

14 Q. Oh, yes.

15 A. My nose is running.

16 BY MR. SOLAR:

17 Do you need a break? Want a break?

18 BY MS. POE:

19 Yeah, let's take a five-minute break.

20 BY MR. SOLAR:

21 Okay.

22 (OFF THE RECORD)

23 EXAMINATION RESUMED BY MR. SOLAR:

24 Q. Ms. Evett, you understand we're back on the record?

25 A. Yes.

1 Q. Okay. And you understand that you're still under
2 oath?

3 A. Yes.

4 Q. Okay. Did you talk with anybody on the break?

5 A. No.

6 Q. Okay. Did you text anybody?

7 A. No. I looked at my phone to see what time it was.

8 Q. Okay.

9 BY MS. POE:

10 We have to take a break for just a second.

11 BY MR. SOLAR:

12 Oh, I'm sorry.

13 (OFF THE RECORD)

14 EXAMINATION RESUMED BY MR. SOLAR:

15 Q. You understand you're still under oath?

16 A. Yes.

17 Q. Okay. Sorry about that.

18 A. That's okay.

19 Q. Okay. You were saying you went to Piedmont Ortho
20 before -- before this incident happened, you were
21 going there?

22 A. Oh, yeah. Yes.

23 Q. Okay. And you said it was for your knees?

24 A. Yes.

25 Q. Both knees?

- 1 A. Yes.
- 2 Q. Okay. Were you getting any other treatment, any
- 3 other types of -- any other parts of your body at
- 4 Piedmont Ortho?
- 5 A. I think my shoulder.
- 6 Q. Okay. Was that your right shoulder?
- 7 A. Yeah.
- 8 Q. Okay. So you had shoulder issue -- a right shoulder
- 9 issue before this incident?
- 10 A. Yes.
- 11 Q. Then there's Piedmont Ortho PT. Is that the same
- 12 thing or...?
- 13 A. Yeah. That's their physical therapy department.
- 14 Q. Okay. What were you getting -- were you getting
- 15 physical therapy there before the accident?
- 16 A. No, not that I'm aware of.
- 17 Q. Okay. But you got -- you got physical therapy after
- 18 the accident there?
- 19 A. Oh, yes, yes.
- 20 Q. And what was the physical therapy; what part of your
- 21 body?
- 22 A. Well, I went there for my knee, and then I went
- 23 there for my shoulder. I just don't remember -- I
- 24 mean, I think -- wait a minute. I was doing my -- I
- 25 was doing my knee physical therapy, and then as I

1 was doing that we were getting ready to go in and do
2 my shoulder, unless I got it backwards. But I
3 believe I was doing -- they'd just repaired my knee,
4 and I was doing physical therapy on my knee, and
5 then about -- as I was into the physical therapy on
6 my knee, we went in and did my shoulder.

7 Q. And so I know we talked about Carolina Orthopaedic
8 and Neurosurgery, but my understanding is Carolina
9 Ortho and Neuro is different. Are you familiar with
10 Carolina Ortho and Neuro?

11 A. Yeah, yes.

12 Q. Okay. Did you go to them before this accident?

13 A. I think there was a Dr. Jordan there. I made an
14 appointment because my upper back was hurting, like
15 below my shoulder blades, and I thought it might be
16 me taking care of my mom, you know, having to --
17 just little things, you know, I was doing with her,
18 because I have to stand over. And even working,
19 when I would work, it's like leaning over and
20 vacuuming, it's like my back would fatigue out, and
21 I didn't know if there was something going on with
22 it. So I went to -- if that's the right place, I
23 went to see a Dr. Jordan.

24 Q. And that was before the accident?

25 A. Yes.

1 Q. Okay. And then there's a place called ATI Physical
2 Therapy.

3 A. Yeah, that was for -- I think that was for my
4 shoulder.

5 Q. And is that before or after the accident?

6 A. No, wait a minute. I've been to Piedmont
7 Orthopedic; I've been to ATI. I can't remember.
8 I've been several different physical therapy places,
9 because I did with my knee, my shoulder. I've been
10 twice with that. And then when I went to my
11 oncologist, because I developed breast cancer in the
12 middle of all this, I went in for my checkup --
13 well, there was a doctor, I can't pronounce his
14 name, but he was filling in for Dr. Vogel, my
15 oncologist, and he came in and he said, "I've been
16 watching you walk." And he came in on one of those
17 scooter-like things where you have your elbows. He
18 had back issues. And he said, "I was watching you
19 with your -- the way you walk," and he says, "You've
20 got back issues," and I said, "Yeah," and he said,
21 "Well, as you can tell, I have, too." But I thought
22 that was odd, him being an oncologist; he started
23 talking about my back. So, anyway, he was giving me
24 -- he said, "Have you ever tried physical therapy?"
25 He says, "You might want to try my physical

1 therapist." So I wrote it -- I mean, he wrote
2 everything down before we got started about my
3 breast issues. And he says, "I always just try to
4 help people who have, you know, back issues or
5 whatever." So he gave me a massage therapist and a
6 physical therapist and something else. So I did go
7 to that physical therapist he recommended, Tracy,
8 and she's with ATI.

9 Q. When you had that conversation with that doctor, was
10 that before the accident or after the accident?

11 A. After.

12 Q. Okay. So we'll just jump, since you brought it up,
13 real quick to cancer. You ---

14 A. Yeah.

15 Q. All right. Do you still have cancer?

16 A. No, not now. I'm pretty good.

17 Q. Okay. When were you diagnosed with cancer?

18 A. November of -- this is '23. I think it was November
19 '22.

20 Q. Okay. And is that your left or your right breast?

21 A. Left.

22 Q. Okay. Did you have surgery?

23 A. I did.

24 Q. Okay. I think I know the answer to this, but I just
25 have to do it for the record. You're not saying

1 your cancer is related to this accident, are you?

2 A. Oh, Lord no.

3 Q. Okay.

4 A. Unless you know something I don't.

5 Q. Okay. I didn't think so, but I didn't -- you know,
6 I didn't want us to go to mediation or something ---

7 A. Oh, yeah.

8 Q. Okay.

9 A. Oh, no.

10 Q. And so, did you get chemotherapy or radiation?

11 A. Radiation.

12 Q. Radiation, okay. And as far as you know, you're
13 doing okay? That's good to hear.

14 A. Yes.

15 Q. Did you -- have you ever had cancer in any other
16 area?

17 A. Maybe skin, but nothing, no.

18 Q. Where did you have skin cancer at; what part of your
19 body?

20 A. Face.

21 Q. Face, okay. Was that -- did you have to get that
22 cut off?

23 A. Yeah, they did. They froze it, whatever they do to
24 it, burn it, freeze it.

25 Q. My understanding is you went to a place called SC

1 Neurosurgical. Does that -- do you recall that?

2 It's actually called Southeastern Neurosurgical?

3 A. What's the address?

4 Q. (Indiscernible crosstalk) the address.

5 A. I've been to so many. I'm telling you; I just...

6 Q. Sure.

7 BY MS. POE:

8 That's Dr. Lynn, I think, right?

9 BY THE WITNESS:

10 Who?

11 EXAMINATION RESUMED BY MR. SOLAR:

12 Q. I should have wrote down the doctor. Usually people
13 just remember that.

14 A. Is it Dr. Lynn?

15 BY MS. POE:

16 I think so.

17 BY THE WITNESS:

18 Okay, yeah.

19 EXAMINATION RESUMED BY MR. SOLAR:

20 Q. Were you seeing Dr. Lynn before the accident?

21 A. Oh, no.

22 Q. Okay. What were you seeing Dr. Lynn for?

23 A. I was -- I went -- somebody sent me to him or told
24 me to go to him; I don't remember who. So I went to
25 him, and he referred me to Dr. Hale (phonetic), and

1 I did the nerve -- he did a bunch of nerve stuff on
2 my back.

3 Q. Okay. Lower back, upper back; where in your back?

4 A. Lower back.

5 Q. Okay. My understanding is you went to a place
6 called pain management and it's ---

7 A. I think that's Dr. -- Dr Lynn referred me to him,
8 Dr. -- I think his name's Dr. Hale.

9 Q. What part of your body were you getting treatment
10 for pain ---

11 A. My back.

12 Q. Your back, okay. Were you ever going to pain
13 management before this incident?

14 A. No, I don't think so, not that I can recall.

15 Q. Do you remember going to any pain management doctor
16 before this incident?

17 A. Not that I can recall.

18 Q. Okay. My understanding is you went to Patewood
19 Memorial Hospital. Do you remember that?

20 A. Oh, yeah, that's where I had Dr. -- I think it's Dr.
21 Hale did those nerve things. I had like five or six
22 of those done.

23 Q. Okay. Do you ever recall going to Patewood Memorial
24 Hospital before this incident?

25 A. I don't think so, not that I can think of.

1 Q. Are you familiar with Greenville Radiology?

2 A. Where are they located?

3 Q. We'll just skip that one. They probably did a test.
4 My understanding, you were treated by Palmetto
5 Anesthesiology. Did you ever go to one, or is that
6 just from your surgeries?

7 A. That's just from my surgeries.

8 Q. Okay. There's a place called Open MRI Asheville?

9 A. Yeah, that's where -- Dr. Hoski sent me there.

10 Q. Were you getting treatment from that place before
11 the accident?

12 A. No.

13 Q. And then Vanderbilt, we've talked about that. Who
14 referred you to Vanderbilt?

15 A. Dr. Gooch, who's in with Dr. Hoski. I went from Dr.
16 Hoski to Dr. Gooch to Gardocki.

17 Q. Okay. And Dr. Gooch ---

18 A. I think ---

19 Q. I wonder if that's really his name. Is he ---

20 A. It is.

21 BY MS. POE:

22 There's a Gooch family in Simpsonville.

23 BY THE WITNESS:

24 Poor things.

25 EXAMINATION RESUMED BY MR. SOLAR:

1 Q. Did he -- did -- who's Dr. Gooch with, as far as you
2 know, or remember?

3 A. He's in with Dr. Hoski.

4 Q. Do you remember the name of the practice?

5 A. Carolina -- no, Asheville -- I don't remember. I've
6 got a heart doctor. I can't remember.

7 BY MS. POE:

8 Carolina Spine and Mission?

9 BY THE WITNESS:

10 Yeah, that's it.

11 EXAMINATION RESUMED BY MR. SOLAR:

12 Q. So it seemed like you were going -- before this
13 happened you were doing -- having some treatment in
14 Asheville; is that correct?

15 A. No, not that I'm ---

16 Q. You weren't going to Asheville for anything before
17 this happened?

18 A. Oh, yeah. My -- some of my doctors were up there.

19 Q. What doctors were up in Asheville?

20 A. I've got my gynecologist, Dr. Buys, my heart doctor
21 up there at Vanderbilt Road. I've got a heart --
22 cardiologist up there. That's about all I can think
23 of right off the top of my head.

24 Q. Is there a reason you -- well, let me back up real
25 quick. You said the day of the accident you were

1 coming from your doctor in Asheville, right?

2 A. Uh-huh.

3 Q. And was that your thyroid doctor?

4 A. Yes.

5 Q. Okay. Is there a particular reason you go to
6 Asheville instead of going somewhere in South
7 Carolina?

8 A. Better doctors.

9 Q. Okay. So in terms of this accident, what injuries
10 are you claiming? And I'll try to break that down.
11 Are you claiming you've injured your head as a
12 result of this accident?

13 A. I did, but I don't think there's anything wrong with
14 it ---

15 Q. Okay. So ---

16 A. --- at the moment.

17 Q. So you're saying that you hit your head, but that
18 knot subsided?

19 A. Yeah.

20 Q. Okay. Your legs, and we'll break this down; are you
21 saying you injured your right leg as a result of
22 this accident?

23 A. I did.

24 Q. Okay. And is that like your right knee area we
25 talked about?

1 A. Yes.

2 Q. Okay. And you ended up having to have surgery?

3 A. Yes.

4 Q. And you believe that surgery was related to this
5 accident?

6 A. Yes.

7 Q. Okay. And you've got your hips, so we'll start with
8 your left hip. Oops. I skipped your left leg. Are
9 there any issues with your left leg?

10 A. Just I used to get shots in it, but I haven't had an
11 injection in over four years.

12 Q. Okay. You used to get shots in your left leg?

13 A. No. I mean, I did. I mean, I got the injections.
14 I haven't had any injections in four years.

15 Q. Okay. What were you getting injections in your left
16 leg for?

17 A. When that -- for my arthritis.

18 Q. Oh, okay. So your hips -- your left hip, you had
19 the hip surgery?

20 A. Yes.

21 Q. Okay. And you're claiming the left hip surgery is
22 related to this accident?

23 A. I can't say that. I don't know.

24 Q. Don't know, okay. But you are claiming in general
25 that you hurt your hip from this accident or not?

1 A. Hurt my back.

2 Q. Hurt your back, okay.

3 A. And my leg.

4 Q. Well, we'll get -- we'll get through this.

5 A. Yeah.

6 Q. Let's go to the -- I think we said your head. Any
7 issues with your neck?

8 A. No.

9 Q. Okay. Your shoulders, you hurt your right shoulder
10 in this accident?

11 A. Yes.

12 Q. Are you saying that your rotator cuff surgery and
13 your right shoulder surgery are related to this
14 accident?

15 A. Yes.

16 Q. Okay. What about your left shoulder; did you hurt
17 that?

18 A. No, it's fine.

19 Q. Okay. Let's talk now about your back. Is this your
20 whole back, your upper back, your low back?

21 A. It's lower back.

22 Q. Lower back, okay. You haven't had to have any
23 surgeries for your lower back, correct?

24 A. Correct.

25 Q. But you're saying you might have to have surgery in

1 the future?

2 A. Correct.

3 Q. Okay. And are you saying that your back pain is due
4 to this accident?

5 A. Yes.

6 Q. Okay. Did I cover your neck?

7 A. Huh?

8 Q. Did we talk about your neck? Is your neck okay?

9 A. Yeah, yeah. My neck's fine.

10 Q. Okay. Okay. So all of those injuries, you said
11 your head's recovered; your hip's doing okay now?

12 A. Oh, yeah.

13 Q. Okay.

14 A. I'm good.

15 Q. Your right leg's doing okay now?

16 A. Yes.

17 Q. So, and your right shoulder still hurts, though?

18 A. Oh, yes.

19 Q. Okay. And your -- you still have back pain?

20 A. Yes.

21 Q. Okay. And your head's resolved?

22 A. Yeah.

23 Q. Okay. My understanding is you have about \$345,000
24 in medical bills. Does that sound about right?
25 It's okay if you don't -- most of the time people

1 don't know, but I was going to ask if you did know?

2 A. I don't know.

3 Q. But you're anticipating future treatment?

4 A. I am.

5 Q. So you're anticipating your medical bills to go up,
6 then?

7 A. Yes.

8 Q. Other than possible back surgery -- or let me ask
9 you this. Did they tell you what type of back
10 surgery you would need?

11 A. Well, from what Dr. Gardocki was saying, he does the
12 non-invasive for your -- and he's also a -- he
13 teaches this. That's why Dr. Gooch sent me up
14 there. He said he's sent like 12 patients up there,
15 and I said, "Well, what did they say?" He says, "I
16 don't know. They never came back." So evidently --
17 but he said, "He's real good. This might be what
18 you need." And it's non-invasive. They don't go in
19 and cut like nerves or muscle and stuff. They go in
20 arthroscope or whatever, microscope or whatever, to
21 do it. And that's to do a fusion, I guess.

22 Q. Okay. Did they -- did they give you a projection of
23 what that surgery would cost?

24 A. No.

25 Q. Did they say -- I'm going to have to make these

1 things up as I go because I don't know the proper
2 medical terms. But are you going to be bedridden?
3 Did they tell you you'd be bedridden after the
4 surgery on your back for a certain period of time?

5 A. If it doesn't work.

6 Q. Well, sure. But I'm sure there's a recovery period
7 where -- like I'll give you an example. My
8 grandmother needed to have knee surgery, as well.
9 And it's a good question to ask you, too. They told
10 her she'd be off her feet for three months after
11 that.

12 A. Oh, no.

13 Q. Were you -- were you off your feet for a period of
14 time after your surgeries, or were you kind of back
15 within a week or two?

16 A. Oh, no, not no week or two. It took me a couple,
17 couple months, two or three months.

18 Q. Okay. Did someone ever have to come in and take
19 care of you after your surgeries?

20 A. Yes.

21 Q. Who came in?

22 A. Deedee's sister.

23 Q. Deedee's sister, okay. And which sister was that?

24 A. Charlotte.

25 Q. Charlotte, okay.

1 A. Chartee.

2 Q. And is Charlotte and Deedee on -- are they on good
3 terms?

4 A. I wish they were. I don't know. It's hard to say.
5 I just stay out of that.

6 Q. Okay. And so the back surgery. Any other surgeries
7 possibly?

8 A. Nothing that I can think. Just my shoulder and my
9 back is the only thing that's really an issue.

10 Q. And I'm sorry; I know we probably covered this.
11 There's just so much information. But the right
12 shoulder, are you saying you're going to need
13 another surgery for that, as well?

14 A. Well, according to Dr. Anderson, he's wanting to
15 look at -- he was showing me. He said, "I pulled up
16 your MRI here." He says, "You've got a problem." I
17 can't remember what it was. He said we'll look at
18 that when we see how these injections do in my back.

19 Q. Okay. And when was the last time you went to a
20 doctor for these injuries?

21 A. Probably about two weeks ago.

22 Q. Do you have any -- I know you said you anticipate
23 future treatment, but do you have anything
24 scheduled?

25 A. Yeah. Dr. Anderson's supposed to -- he's supposed

1 to call me, do the Zoom or whatever you do on --
2 which I don't do all that stuff. But he's going to
3 call me back probably in another week to see how the
4 injections did, and then he said, "Then we'll
5 discuss your shoulder."

6 Q. And your issues with your shoulder, you're saying,
7 are still related to this accident?

8 A. Yes.

9 Q. Are you claiming any lost wages?

10 A. Well, yeah.

11 Q. Okay. So tell me about your lost wages. I've got
12 to know all your damages so we can figure out what
13 we can do.

14 A. I don't even know how to do that because I didn't
15 really make enough to file taxes.

16 Q. Sure. Okay. Well, let's back up, then, real quick.
17 So, have you worked since this accident for anybody?

18 A. No.

19 Q. Okay. So what have you -- okay. So you just -- you
20 just -- the last day you worked was the day of this
21 accident?

22 A. That's it.

23 Q. Okay. And you were making -- about how much were
24 you making for -- well, at the time -- at the time
25 of this accident you were working for my client and

1 you were working for several of her family members?

2 A. Well, yeah. Like I said, I didn't -- it wasn't
3 anything consistent. If they needed something, you
4 know, they're having a party or something, I'd clean
5 their house. I'd be -- I'd serve food, drink,
6 whatever.

7 Q. Okay. So you had nothing consistent?

8 A. No, nothing consistent.

9 Q. Okay.

10 A. And then I had a lady over at -- where Mr. Luthi was
11 over at Waterstone, he was over there, and I started
12 taking care of this lady, Ms. Mavis, but I was only
13 working for her for like three or four hours a day.

14 Q. And that was before this happened?

15 A. Yes.

16 Q. Okay. Was everybody paying you \$10 an hour or was
17 anybody paying you more than that?

18 A. Ms. Mavis was paying me 13, because I would drive
19 her places and stuff.

20 Q. Okay. And you said you weren't reporting any of
21 this money on your taxes?

22 A. My accountant, I told him what I made, and he said,
23 "You don't make enough to file."

24 Q. Okay. So you don't really have an idea of what your
25 lost wages are?

1 A. Uh-uh.

2 Q. I went through a lot. I just have a few more things
3 I want to talk about. You've been diagnosed with
4 vertigo?

5 A. I have.

6 Q. Okay. Actually, I maybe missed one thing. Going
7 back to your injuries. Your hand, you said you hurt
8 your hurt your hand in this accident, your right
9 hand, where your fingernails popped off?

10 A. No, my left hand.

11 Q. Oh, left hand; I'm sorry.

12 A. It just sheared the fingernails off. It didn't
13 actually go down to the quick; it just ripped the
14 fingernails.

15 Q. Are you ---

16 A. But they grew back.

17 Q. Are you -- did you have any treatment at all for
18 your fingernails?

19 A. No.

20 Q. Okay. Okay. So, vertigo. Were you ever diagnosed
21 with vertigo?

22 A. I am.

23 Q. When were you diagnosed with vertigo?

24 A. Well, I don't have it all the time.

25 Q. It comes around periodically, right?

1 A. Yeah. Mostly -- the only time I have vertigo is
2 when I lay down.

3 Q. Does it come on spontaneously?

4 A. Like I said, when I lay down, that's the only time
5 it does it.

6 Q. Well, let me ask you this. Every time you lay down
7 at night ---

8 A. Not every time, just occasionally.

9 Q. Okay. So it's random?

10 A. Yeah.

11 Q. I don't know if you answered this. Did you say when
12 you were diagnosed with vertigo?

13 A. I can't -- couldn't tell you.

14 Q. Okay. Have you -- did you have vertigo episodes
15 before this incident?

16 A. No.

17 Q. You did not?

18 A. No.

19 Q. Okay. So January 6th you never went to the doctor,
20 of 2020, for vertigo?

21 A. January 6th, 2020? I don't remember. If I did, I
22 don't remember.

23 Q. But you remember some doctor telling you you had
24 vertigo?

25 A. Yeah, Dr. Messer.

1 Q. Okay. And who's -- do you know who Dr. Messer's
2 with?

3 A. Well, he's with Prisma now, but I think he's getting
4 ready to move again. He's with Reedy Family
5 Practice.

6 Q. And is that your primary care doctor?

7 A. It is.

8 Q. Okay. So how -- I know you said it was when you're
9 laying down, but can you tell me about how your
10 symptoms of -- what your symptoms of vertigo are
11 exactly? How does that affect you?

12 A. You just -- I just get a little dizzy.

13 Q. Okay. So is it when you lay down, then all of a
14 sudden you get up, and then you get ---

15 A. No. If you lay down and you turn your head real
16 quick that way, it'll do it.

17 Q. Okay. Does that ---

18 A. But, now, when I'm standing up I don't.

19 Q. And how long did it take for that to -- how long
20 does it take to subside once you have a ---

21 A. Seconds.

22 Q. Seconds?

23 A. It doesn't last long.

24 Q. Okay. Do you recall the month that this happened,
25 but before it happened, that you were not feeling

1 well for about a week or two?

2 A. I don't.

3 Q. You don't? Okay. When was the last time you had an
4 episode of vertigo?

5 A. Well, every time I go under anesthesia it seems like
6 it flares it up.

7 Q. So every time after you've had your surgeries?

8 A. Uh-huh.

9 Q. Okay.

10 A. But now I don't. I mean, I haven't had one -- been
11 a while.

12 Q. Well, let me ask you this. So when you have the
13 anesthesia and -- it's hard for me to say that word.
14 When you have it for, let's say, your shoulder and
15 you -- does that mean like the next couple days when
16 you go home you're kind of having vertigo because
17 it's -- or are you -- I'm trying to get like the
18 correlation of ---

19 A. Yeah. It seems to -- like it irritates it or
20 something. I don't know. It just makes it -- but
21 it's only when I lay down, only when I lay down.

22 Q. Did you ever go over to my client's house wearing a
23 back brace?

24 A. Yeah.

25 Q. Okay. Are you wearing a back brace now?

1 A. No.

2 Q. Okay. Can you tell me about why were you -- when
3 did you start wearing a back brace?

4 A. Well, when I went to Dr. Jordan, that's the one when
5 I told you my back was fatiguing out. I went over
6 there -- when I went to him and he said you're
7 probably straining your back bending over, like my
8 mother, making up beds, whatever, and he said try a
9 back brace. He said that'll help.

10 Q. Did the back brace help?

11 A. It did.

12 Q. Okay. But you're not wearing one today, you said?

13 A. No.

14 Q. So, but you still have back issues?

15 A. It was a different -- it was a different issue.

16 Q. Okay, okay.

17 A. It's upper back. It's upper back, below the
18 shoulder blades. It just like -- it would -- it
19 would hurt. Like I said, it would fatigue out and
20 my back would start hurting.

21 Q. Sure. And then your brace, how exactly do you -- is
22 it like you wear it around the waist or you wore it
23 over the chest?

24 A. You wear it around, around up here.

25 Q. Okay. And you were wearing that full time?

1 BY MS. POE:

2 And just for the record, you're pointing like
3 kind of below your chest around the ribs?

4 BY THE WITNESS:

5 Yeah.

6 EXAMINATION RESUMED BY MR. SOLAR:

7 Q. Right above the belly button?

8 A. If I -- if I did this, when I bent over a lot, it
9 would hurt. If I stood up straight, if I was
10 straight, it wouldn't hurt.

11 Q. Okay. And I'm just confused. So why aren't you
12 wearing the brace anymore?

13 A. Because it's a different issue.

14 Q. Well, what I'm trying to say is, so your upper back
15 issues have since resolved?

16 A. Yeah.

17 Q. Okay. When did they resolve?

18 A. I guess when my mother passed away and I wasn't
19 working.

20 Q. Okay. When you went over to my client's house on
21 the 24th of January 2020, were you wearing a brace
22 that day?

23 A. No.

24 Q. Okay. So you had stopped wearing a brace since your
25 mother died?

1 A. Yes.

2 Q. And she passed away, what, you said ---

3 A. '18.

4 Q. '18, okay.

5 A. August 17th, 2018.

6 Q. I understand you have -- you said you take
7 medication for your thyroid?

8 A. I do.

9 Q. So, how's your thyroid been acting up or affecting
10 you?

11 A. It's been perfect.

12 Q. Well, you had to go on medication for it, right?

13 A. I have to take that for the rest of my life.

14 Q. And when did -- but what exactly was the thyroid
15 causing you to have issues to take medication for?

16 A. It was overactive, and they -- Dr. Dodd nuked it.
17 They gave me -- what is it? They burn it out with
18 radiation, and then you have to stay on this for --
19 that's been like 30 years ago.

20 Q. Burn it out with radiation, but it wasn't cancer?

21 A. They did it with pills.

22 Q. Oh, I gotcha.

23 A. They do it with pills. You swallow the pills and it
24 kills the thyroid.

25 Q. So what exactly, though, was your issues, though?

1 You said it was overactive, but what does that mean?

2 What symptoms was it causing you to have?

3 A. You would shake; you lost weight, hair would fall
4 out; you were irritable.

5 Q. Okay. And when did you -- when did they burn it
6 out, as you said?

7 A. It's been like over 30 years.

8 Q. Have you ever been diagnosed with any autoimmune
9 diseases?

10 A. Not that I'm aware of.

11 Q. Okay. Never told -- and I'm not saying you do; I'm
12 just -- this is a general question I ask. Have you
13 ever been diagnosed with multiple sclerosis?

14 A. Oh, no.

15 Q. Okay. Fibromyalgia?

16 A. No.

17 Q. Okay. Have you been diagnosed before with
18 depression?

19 A. Yeah.

20 Q. Okay. When were you diagnosed with depression?

21 A. Let's see. My dad died 30 years ago, and I've been
22 taking care of my mother by myself. Yeah.

23 Q. And how did your father die?

24 A. A massive heart attack.

25 Q. And so the -- you're taking depression medication?

1 A. Uh-huh. Yes.

2 Q. Okay. Do you do counseling, as well?

3 A. I did, but I don't anymore.

4 Q. When did you stop doing counseling?

5 A. When my husband passed away. Let's see. He passed
6 away in '03, so I had it in '04.

7 Q. Do you recall the name of your counselor?

8 A. Karen Scott.

9 Q. Is she someone local?

10 A. Well, she was. I don't know if she still is.

11 Q. Sure, sure. Okay. Any other -- anything else that
12 caused the depression other than the loss of your
13 father (indiscernible crosstalk) ---

14 A. Well, no, it was the loss of my -- well, it was the
15 loss of my dad, and then I'm having to take care of
16 my mom, and I worried about her a lot. Yeah.

17 Q. You have two brothers, you said, right?

18 A. No help.

19 Q. Okay. Just asking.

20 A. Have a sister. No help.

21 Q. Does your sister live in Greenville?

22 A. No, she lives in South Dakota.

23 Q. And then just going back real quick to the car
24 accident back 38 years ago. You said you've been on
25 disability since then?

1 A. Yeah.

2 Q. Okay. I think we talked about it a little briefly,
3 but what exactly caused you to have to go on
4 disability?

5 A. It was -- well, I had -- I had some back issues, but
6 not like this. I'm trying to think how to put it.
7 And then I developed, not Crohn's, but irritable
8 bowel. They put me on disability for that and my
9 back. It's a different injury. It's nerve and
10 muscle, is what this was.

11 Q. Did you have to go through -- I mean, go to doctors
12 and get approved and through that whole process?

13 A. Yeah. I had Dr. Walton up in Asheville, again.
14 Everybody, here again, is wanting to do bone grafts
15 and fusion, but he says -- he told me, he says, "You
16 don't have a structural issue; you've got nerve and
17 muscle damage." So what he did, he said, "I want
18 you to go home, find a fitness trainer," he said,
19 "not a physical therapist, but a fitness trainer,"
20 and he said, "Get me their name and number and I'll
21 call them." And it was at Top Shape. I went to Top
22 Shape over here off of Augusta Road.

23 Q. And what did you do at Top Shape?

24 A. They did -- it was more intense physical therapy. I
25 did it for like three months. And he said, "We need

1 to stretch you and get your muscles," he said
2 because -- and when I had the wreck and with the
3 doctors here, they never put me in physical therapy.
4 So he said that I needed really intense physical
5 therapy, so he told me to get the trainer. So they
6 stretched me and, oh, it hurt, but it paid off.

7 Q. When was -- around what time period was the trainer?

8 A. I want to say '86, '87.

9 Q. You said that was Top what?

10 A. Top Shape.

11 Q. Top Shape, okay. Here in Greenville?

12 A. Yes.

13 Q. And you mentioned that you had nerve damage from
14 that accident. But where was your nerve damage?
15 Like where in your body was these nerves?

16 A. I think it was in my left side. It was on my left
17 side.

18 Q. Okay. When you say left side, you're talking ---

19 A. Left side of my back.

20 Q. Left side of your back. Okay. And is that middle
21 back, low back?

22 A. Side back.

23 Q. Side back, okay.

24 A. On the left side of the lower back.

25 Q. And then what about the muscle damage? What muscle?

1 A. I don't know; I can't -- I'm not a doctor; I
2 couldn't tell you. It's just, I guess, the muscle
3 in the lower back.

4 Q. Well, what I'm trying to ask is, you were in a car
5 accident; you were hurt. What ---

6 A. Well, what happened was, when I saw the guy coming
7 over the hill, which I shouldn't have done, I saw
8 him coming, so I pushed back into the seat, and I
9 had my foot up against the floorboard, and when I
10 did, it pushed everything up.

11 Q. And which foot; is that your right foot or your left
12 foot?

13 A. Left.

14 Q. Left foot, okay. Prior to this accident, have you
15 ever broken any bones?

16 A. No.

17 Q. Prior to this accident, I know you didn't at the
18 time of the accident, but prior to this accident,
19 have you ever ridden in an ambulance before?

20 A. Yes, I did.

21 Q. Okay. When did you ride in an ambulance?

22 A. I was coming out of my mom and husband's store, and
23 I pulled out, and a guy turned in front of me and
24 broad-sided me.

25 Q. And that was a car accident?

1 A. Yeah.

2 Q. And when was that car accident?

3 A. Oh, geez. '90 something.

4 Q. And what injuries did you sustain as a result of
5 that?

6 A. None.

7 Q. You weren't injured? Okay. Any other ambulance
8 rides?

9 A. Not that I can think of. Oh, wait a minute; I did.
10 I take that back. I had -- I had a coronary issue.
11 That was probably about three, two years, two or
12 three years ago. I was coming down -- I can't
13 remember where I was going, but I was going down 291
14 right there where East North Street, and something
15 just came over me. I said this ain't good. So I
16 pulled off to Walgreens, and I called my boyfriend
17 and told him, I said, "I'm having some kind of
18 issue." I said, "I'm going to have to call EMS to
19 come get me." Well, he was at a doctor's office,
20 but, anyway, he came, but I called EMS to come and
21 get me because I didn't want to drive, because I
22 didn't know what was going to happen.

23 Q. Was this before the accident or after?

24 A. After.

25 Q. Okay. Are you saying that incident is related to

1 this accident?

2 A. No.

3 Q. Okay. Did the doctor end up telling you what that
4 incident was? You said something about coronary?

5 A. Yeah. I had to end up having a heart ablation.

6 Q. Okay. So it was a heart-related condition?

7 A. Yes.

8 Q. Did you -- when you said your nails popped off on
9 your left hand ---

10 A. No, they didn't pop off; they ripped off.

11 Q. Ripped off. Okay.

12 A. Yeah. I mean, it didn't like injure me. They just
13 -- I had no nails.

14 Q. Sure.

15 A. But, I mean, I had to re-file them because it just
16 peeled.

17 Q. Sure, sure.

18 A. Just cracked and broke the nails. It didn't rip my
19 beds or anything out.

20 Q. Well, did you take any photos of your hand?

21 A. No.

22 Q. Okay. Did you take any photos of your body in
23 general after the accident?

24 A. No.

25 Q. So, just a reason why you didn't do that?

1 A. What was the need?

2 Q. Okay. And ---

3 A. I had a bruise on my butt where I fell, but I didn't
4 take a picture of that either.

5 BY MS. POE:

6 Margie, you know we all want to sit around and
7 look at pictures of your butt.

8 BY THE WITNESS:

9 I don't know how people do that. I ain't doing
10 that.

11 EXAMINATION RESUMED BY MR. SOLAR:

12 Q. I wanted to -- I'm just going to show you this real
13 quick. This is some text messages. This is...

14 BY MR. SOLAR:

15 What number is this going to be? Okay, six?
16 Plaintiffs -- I mean, excuse me, Defendant's Exhibit
17 Number 6.

18 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT 6, TEXT
19 MESSAGES, ATTACHED.)

20 EXAMINATION RESUMED BY MR. SOLAR:

21 Q. If you could just look that over for a second. Do
22 you just want to go page by page? Because I'm not
23 going to ask you about every single of these pages.

24 A. Oh, okay.

25 Q. So if you'll go back to the first page, do you see

1 where it says January 2nd?

2 A. Yeah.

3 Q. Well, actually, let me back up. Do you -- have you
4 seen this before?

5 A. No.

6 Q. Okay. Are these text messages, though, between you
7 and my client?

8 A. No, I haven't.

9 Q. I'm sorry?

10 A. I said I haven't seen this before.

11 Q. Okay. But do you recall these text messages between
12 my client and yourself?

13 A. No, but that doesn't mean anything.

14 Q. Okay. So are you saying that you don't think these
15 are text messages between ---

16 A. Oh, yeah, yeah, yeah. I mean, if she said they are,
17 then they are.

18 Q. Okay. If you look at your comment -- no, I'm sorry.
19 Got them reversed. If you look down at January 3rd,
20 it says that you might have a bug or vertigo?

21 A. Yeah.

22 Q. Do you recall what was going on at that time period?
23 This was several weeks before.

24 A. I do not.

25 Q. Okay. What about -- let's go to the second page.

1 If you'll just look that over for a second.

2 A. I guess I was not -- really wasn't vertigo; it was
3 my blood pressure.

4 Q. Well, did you say in the text, though, that you had
5 vertigo?

6 A. Oh, yeah.

7 Q. Okay. So ---

8 A. But I don't know if it was that time because --
9 let's see. It says I went -- I don't even remember
10 going to the ER, but that don't mean nothing.
11 Unless they did a blood test for my thyroid, I don't
12 -- all I can say ---

13 Q. Well, let me ask you this. So you had an issue with
14 your blood pressure, you recall?

15 A. Yes.

16 Q. Okay. So what was going on with your blood
17 pressure?

18 A. I think I was taking ibuprofen for my back. I might
19 have had a back issue or something. And I found out
20 I was allergic to ibuprofen, so I can't take that
21 anymore.

22 Q. Okay. And when you went to -- and I understand, and
23 I'm just asking for your explanation, that it says
24 -- talks about your blood pressure and your vertigo.
25 But I thought you told me that your vertigo usually

1 subsided pretty quickly. So, do you recall why you
2 went to the ER for vertigo?

3 A. I think my blood pressure was reading high. I'm
4 trying to remember, because I do -- I did have to
5 leave work one day because my blood pressure was up,
6 but I don't know if this is when that happened or
7 not.

8 Q. And when your blood pressure's up, how does that
9 affect you?

10 A. Oh, I get a headache, and it feels like -- the way
11 it was doing, it felt like a wave, and that's what
12 it did the day that I stopped, that I had to call
13 the ambulance. It's like a wave. It just comes
14 over you, and you can feel it coming, because when I
15 was sitting there with the doctor when I called the
16 EMS, he said, "Well, how does it feel?" And they
17 had me all hooked up to stuff. I said, "I don't
18 know but," I said, "here comes another one, and it's
19 like a wave." And he looked over at the monitor,
20 and he says, "Yeah, I see it now."

21 Q. You're not saying your blood pressure is any way
22 related to the accident, right?

23 A. Oh, no.

24 Q. Okay. And your vertigo is not related to it either,
25 correct?

1 A. No.

2 Q. Okay. Is there a way you are treating your vertigo?

3 A. Well, Dr. Messer gave me some pills, but they make
4 you feel worse than the actual thing. So like I
5 said, they don't last long and it's not -- it's not
6 every day.

7 Q. So at the time of this accident, you were not taking
8 any medication for vertigo?

9 A. Uh-uh.

10 Q. Okay.

11 **BY MS. POE:**

12 Is that a no?

13 **BY THE WITNESS:**

14 No. No. I'm sorry.

15 **EXAMINATION RESUMED BY MR. SOLAR:**

16 Q. And do you believe you experienced a vertigo episode
17 or attack while you were at my client's house?

18 A. No.

19 Q. Okay. If you go to the next page, which I think is
20 page three. I'll let you look at it for a second.

21 A. Okay. Yes.

22 Q. Okay. If you look at the first comment, did you
23 say, "I'm back up running. Do you want me Friday?"

24 A. Yes.

25 Q. Okay. Is that dated January 15th?

1 A. Yes, if that's the date I was supposed to come, then
2 yeah.

3 Q. Okay. So you texted her -- I'm just trying to ask
4 about this. I think you texted her you weren't
5 feeling well on January 3rd, and then it wasn't 'til
6 January 15th you said that you were back up and
7 running. So were you -- were you sick that entire
8 time between those dates?

9 A. I don't even remember that, to be honest with you.

10 Q. Okay. Well, what do you ---

11 BY MR. SOLAR:

12 Scratch that.

13 EXAMINATION RESUMED BY MR. SOLAR:

14 Q. If we go to the next page, next one, please.

15 A. Oh, sorry.

16 Q. I promise we're not going to go through them all.

17 A. Hey, I've got nothing but time.

18 Q. If you'd just take a second...

19 A. Okay. Yeah, yeah, I remember this now.

20 Q. So if you look to January 24th, I think my client is
21 saying to you, "Hey. Call me when you get to my
22 house. Too much to put in a text." Do you recall
23 talking to her before the incident happened or what
24 that -- what she wanted to tell you?

25 A. Oh, it was probably about the dogs.

1 Q. Okay. And ---

2 A. And that's where -- where it says, "Dogs have been
3 delivered," Cindy took them. And so when Cindy told
4 me she took the dogs to the kennel, I texted Deedee
5 and told her dogs have been delivered.

6 Q. Okay. And then we'll go down to January 24th, 2020.
7 It says, "Dogs have been delivered." Did you
8 deliver the dogs to the kennel?

9 A. No, Cindy did.

10 Q. Okay. So how did you know? Did Cindy contact you?

11 A. Yes, she did.

12 Q. Okay. Did you not tell -- why didn't you tell my
13 client about your accident?

14 A. Well, she'd been having a pretty rough time at her
15 office, and she went down there to spend some time
16 with her daughter, and I didn't -- at the time, I
17 didn't want to ruin her little vacation.

18 Q. What do you mean by she was having a rough time?

19 A. With her dad, you know. He was having some issues,
20 and work, just work stressing her out, that kind of
21 thing.

22 Q. Did you ever tell Caroline when she came over on the
23 day of the accident after it happened not to tell
24 her mom about the accident?

25 A. I didn't want her to tell her at that time. I

1 wanted her to wait 'til she got back home to tell
2 her. I didn't mean not tell her at all.

3 Q. Sure, sure. And I think I know, but can I just get
4 your reasoning for that on the record, please?

5 A. Well, I didn't want to ruin her trip down to see her
6 daughter.

7 Q. Okay. Do you think she would have came back if you
8 had told her that you had fallen?

9 A. I don't know. She may have. Or like I said, I
10 worry about people. I just felt like she didn't
11 need to be bothered with it at the time, that she
12 could deal with it when she got home.

13 Q. I might have not been honest with you. We might end
14 up going through all these. I apologize.

15 A. That's fine.

16 Q. The next page, if you can look at that real quick.

17 BY MS. POE:

18 Do we want to take a break and tell Caroline
19 that we're going to be late on the Zoom call?

20 BY THE COURT REPORTER:

21 She's in the waiting room.

22 BY MR. SOLAR:

23 Oh, she is? I'm not going to be much longer,
24 but I'm sure you might have -- do you have -- do you
25 anticipate follow-up?

1 BY MS. POE:

2 I just have very few.

3 BY MR. SOLAR:

4 Okay. Yeah, let me -- so what do you want to
5 do with Caroline?

6 BY MS. POE:

7 Let's just take a five-minute break and tell
8 her we're going to be at least 15 more minutes.

9 BY MR. SOLAR:

10 Okay. Okay.

11 (OFF THE RECORD)

12 EXAMINATION RESUMED BY MR. SOLAR:

13 Q. Are you okay to keep going, Ms. Evett?

14 A. Yeah.

15 Q. Do you understand you're still under oath?

16 A. I do.

17 Q. Okay. Did you have a chance to look at the -- well,
18 there's not a page number, but it's the one that
19 starts with 59 at the top.

20 A. Okay. And...?

21 Q. Did you ever text Margie -- you're Margie; I'm
22 sorry. Did you ever text my client and ask -- I
23 mean, and tell her about what happened to you?

24 A. Did I tell her what happened?

25 Q. Well, over text.

1 A. I think I just talked -- no, I just talked to her.

2 Q. Okay.

3 A. But, I mean, after, you know, after the fact, yeah,
4 but when she got back home. I don't -- I think I
5 just talked to her.

6 Q. Okay. And so let's look at January 28th. "Knee is
7 cracked. No surgery."

8 A. Yeah, I was looking at that. I don't -- that
9 doesn't look right to me. I would have said broke,
10 because that's what they told me, it was broke.
11 Where did it go? I saw it. Said it was cracked.

12 Q. But that -- so I guess when you sent that on the
13 28th, though, you weren't aware of any issues with
14 your right shoulder at that time?

15 A. Are we on 59?

16 Q. Yes, ma'am.

17 A. Okay.

18 Q. Well, now are we on 59?

19 A. No, I thought we'd done done that.

20 Q. I guess that's 59 right there, too. I'm sorry.
21 January 28th, 2020.

22 **BY MS. POE:**

23 It's probably going to be 59 on all of them.

24 That's just number of messages.

25 **BY MR. SOLAR:**

1 Oh, you got me on that one.

2 **BY THE WITNESS:**

3 Oh, okay. I'm thinking this is after the
4 accident. This is before. Okay. What do you want
5 to know?

6 **EXAMINATION RESUMED BY MR. SOLAR:**

7 Q. Okay. Well, January 28th, 2020 ---

8 A. Wait a minute. Okay. No, it was broke, but he did
9 say no surgery. Stay off for three weeks; he told
10 me six weeks. So I'll wear the brace, so I'm good.

11 Q. Okay. So just to clarify, you said a couple things.
12 So you're saying that you meant broken, not cracked?

13 A. Correct.

14 Q. Okay. And you also -- it says three weeks, but you
15 meant six weeks?

16 A. Six weeks.

17 Q. Okay. At that time, I don't see you mentioning
18 anything in this text message about your right
19 shoulder. Did you think your right shoulder was
20 okay at this time?

21 A. Well, I just -- after the fall and everything, I was
22 aching all over. I didn't know if it was just from
23 being, you know, sore.

24 Q. Okay. And if we could just go to the next page,
25 please.

1 A. I try to be positive.

2 Q. Sure.

3 A. And...?

4 Q. Okay, yes. I think it says, "I'm feeling good.
5 Just waiting to heal and get back up and running. I
6 always say things happen for a reason, so don't
7 worry." And I'm not trying to play gotcha; I'm just
8 asking. What did you mean by things happen for a
9 reason? Like why did you make that comment?

10 A. Well, I mean, I didn't -- I wasn't like mad at her,
11 you know, because actually she acts like I think she
12 pushed me off the steps.

13 Q. Sure.

14 A. But, no, I just -- you know, I try to be positive.
15 I'm not a negative person. I'm always, you know,
16 think positive.

17 Q. Well, what I was just trying to get at is, if I say
18 things happen for a reason I always kind of mean
19 that there's some type of silver lining in what
20 happened.

21 A. Well, no, I just -- things happen for a reason.
22 I've learned that going through life, just things
23 happen for a reason, and that's just the best way to
24 look at it. And there wasn't no silver lining from
25 her. But I'm just saying, I just really didn't want

1 her to worry about it.

2 Q. Okay. And then if you got on to February 9th, you
3 say, "I love you, too. Don't worry; I will be back
4 dusting before you know it."

5 A. Positive.

6 Q. So it's just you being positive?

7 A. Yeah, just being positive.

8 Q. Okay. But that turned out not to be the case,
9 correct?

10 A. Correct.

11 Q. Okay. And so at that time were you -- were you just
12 being positive, or did you think that you really
13 were going to be able to return?

14 A. I really did. I thought I was going to be able to
15 get back to doing what I do best.

16 Q. And then I think on here, on the last one she texts
17 you Merry Christmas on December 22nd, 2020?

18 A. Uh-huh.

19 Q. Have you talked to her at all since this, since
20 December 2020?

21 A. No. The last time I saw her was when her dad passed
22 away, because her sister called and told me that her
23 dad had passed away. So I went over there to be
24 with her, and we were sitting around from the
25 Cascades, they had a little gazebo out there, and it

1 was her sister Geiget, her ex-husband, Chartee, and
2 then when I came up, I went out there where they
3 were and told them, you know, Geiget, I was sorry
4 about her dad. And so, Deedee pulled up in the
5 parking lot, and she came over there to where they
6 were, and I was getting in my car, and I said,
7 "Well, hey, Deedee." I said, "Real sorry to hear
8 about your dad." Never said a word. That's the
9 last time I saw her. And I did say, "Love you,
10 too."

11 Q. Okay. Did you go to the funeral?

12 A. No, because of -- well, I won't go into that.

13 Q. Well, can we go into it? What happened? What ---

14 A. Well, no, I just -- that wasn't -- that wasn't --
15 she's so hateful against me for what reason, and I
16 didn't want -- that was her dad's funeral, and that
17 was not the time or the place for me to be there to
18 cause an issue, so I chose not to go.

19 Q. I'm just going -- just the last two ones and then
20 we'll be -- we should be done.

21 BY MR. SOLAR:

22 What is this going to be?

23 BY THE COURT REPORTER:

24 Seven.

25 BY MR. SOLAR:

1 Seven.

2 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT 7, TEXT
3 MESSAGES, ATTACHED.)

4 EXAMINATION RESUMED BY MR. SOLAR:

5 Q. Take a look at that.

6 A. When was this?

7 Q. Well, that's a good question. I want to talk to you
8 about it.

9 A. No, I'm talking about the date.

10 Q. Well, that's what I'm saying; I don't know. Did you
11 have text communications with with Caroline at all?

12 A. I did.

13 Q. Okay. And so I don't know what the date of this is.
14 We'll have to ask Caroline. But do you remember
15 texting with Caroline about your -- what happened to
16 you after the accident?

17 A. I did tell her that my leg was broke.

18 Q. But when you're saying, "Everything looked good, but
19 my knee is messed up" ---

20 A. Now, she may have -- this may have been -- well, no,
21 I can't -- I don't know what day that is.

22 Q. Okay.

23 A. I don't know if that was while I was in the ER,
24 texting her while I was in the ER, because I think
25 she did text me to ask me how I was doing.

1 Q. Well, I guess my -- what I'm trying to get at is ---

2 A. I don't know what day it is, or what month, or
3 whatever.

4 Q. --- is it seems you made a lot of mentions to --
5 mentioning to people that you issue -- that you
6 injured your knee, but it seems to be your knee was
7 your only focus and not the other parts of your
8 body.

9 A. Because that's what was hurting the worst at the
10 time.

11 Q. Okay. So your shoulder was hurting at this time,
12 but it wasn't the most painful, so you decided ---

13 A. Correct.

14 Q. --- not to say anything about it? Okay.

15 A. Because every time -- not every time, but most of
16 the times when we -- like when they did my hip, a
17 lot of that pain subsided, but something else would
18 hurt. In other words, I was focused more on my hip,
19 you know, just for an instance, that it was hurting,
20 that you forget about everything else. You're just
21 focused on what's hurting at the time.

22 Q. Sure. I understand. This is the last one.

23 **BY MR. SOLAR:**

24 What is this; ten? Eight; sorry.

25 **BY THE WITNESS:**

1 I'd be curious to know the date on this one.
2 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT 8, TEXT
3 MESSAGES, ATTACHED.)

4 EXAMINATION RESUMED BY MR. SOLAR:

5 Q. This one looks -- well, I'll let you look at it for
6 a second.

7 A. That's December. Okay.

8 Q. Does this -- does it look a text message that you
9 had with Caroline?

10 A. It probably is, but I just don't remember it.

11 Q. Sure. You said, "I am fine," exclamation point,
12 exclamation point, in the middle of it. Is that,
13 again, just being positive?

14 A. Being positive.

15 Q. Okay. And then you said at the last sentence of the
16 one at the bottom, "And go see my knee doctor
17 Monday." And so, you were regularly seeing a doctor
18 for your knee before this accident?

19 A. That's -- this is the 24th.

20 Q. Yes.

21 A. This is December the 19th. This is January the
22 24th.

23 Q. Yes. I'm looking at this one down here.

24 A. When is this one?

25 Q. That's January 24th, 2020, so the day of the

1 incident.

2 A. The day of the incident?

3 Q. Wasn't it January 24th, 2020?

4 **BY MS. POE:**

5 Yeah. It's on the day of.

6 **BY THE WITNESS:**

7 Yeah. I don't remember this. I mean, this is
8 -- this is the day of the accident.

9 **EXAMINATION RESUMED BY MR. SOLAR:**

10 Q. But my question, I guess what I'm trying to get at
11 is, you mentioned that you had -- you were going to
12 go see your knee doctor Monday. So you had an
13 established knee doctor at the time this had
14 happened?

15 A. Yeah.

16 Q. Okay.

17 A. Yeah, Dr., yeah, Baumgarten.

18 Q. And you were seeing that doctor regularly?

19 A. When I needed an injection.

20 Q. Okay. And how often were you getting injections?

21 A. Once a year. I hadn't had one on the left since
22 four years. I hadn't had an injection in four years
23 on it, actually.

24 Q. And when did you first start getting injections in
25 your knee?

1 A. Oh, God. I couldn't tell you. I'm gonna say maybe
2 three years, two or three years.

3 Q. Okay.

4 BY MR. SOLAR:

5 Well, I'm going to do two things. One, I would
6 like to leave this deposition open because you
7 mentioned that you're still treating, so I'm going
8 to want to bring you back at some later date and
9 talk about future treatment. The second thing is
10 I'd like to turn it over to your attorney now. She
11 probably has some questions. And then I might have
12 one or two follow-up based on a note that I might
13 have overlooked.

14 BY THE WITNESS:

15 Do I keep these or...?

16 BY MS. POE:

17 They'll go to the court reporter, but just
18 leave them here.

19 BY THE WITNESS:

20 Okay.

21 EXAMINATION BY MS. POE:

22 Q. So, these text messages, we're going to look at
23 Defendant's Exhibit 6 that they have said are text
24 messages between you and Deedee. So, it looks like
25 there's a text message from January 28th. So you

1 just got out of the doctor, said knee is cracked, no
2 surgery. That is before -- go ahead.

3 A. That was -- that was before it healed. And then it
4 didn't heal right.

5 Q. All right. And then this one in February, just
6 waiting to heal and get back up and running. And
7 then I think she texted you on February 9th, just
8 waiting on the doctor to get back to normal. At
9 this point, had you seen the doctor for the MRI for
10 your shoulder?

11 A. I can't remember. But I do want to say I did text
12 her when I come at of Dr. -- not Watford -- it's
13 that doctor over there off of -- I can't think of --
14 it's David something. He's in with that group.
15 He's the one that told me my back was broke, and I
16 texted her, and I don't see it in here. Maybe I
17 overlooked it. But I texted her and said, "I just
18 got out of the doctor's office. He said my back is
19 broke and I can't return to work anytime soon."

20 Q. Okay.

21 A. But I don't see that in here.

22 Q. And then, again, this one, I guess it was ---

23 BY MS. POE:

24 Did you mark this one? Are you wanting that
25 one marked?

1 BY MR. SOLAR:

2 Yeah, I thought that one was number -- was it 8
3 or 9?

4 BY MS. POE:

5 I think it would be -- oh, I found it. Sorry.

6 EXAMINATION RESUMED BY MS. POE:

7 Q. I'm showing you what's been marked as Defendant's
8 Exhibit 8, and we'll have to ask Caroline, because
9 these look like they're from two different phones,
10 Exhibit 8 and Exhibit 7. But on this one, that's
11 what you were talking about, the text messages from
12 the day of the accident?

13 A. Yeah.

14 Q. Again, at this point you hadn't had MRIs to your
15 shoulder or anything else, correct?

16 A. No, no.

17 Q. About your back brace, would you wear it all the
18 time?

19 A. When I worked.

20 Q. Okay.

21 A. But not at -- after I got through working, I'd take
22 it off.

23 Q. Right. So you wouldn't have worn it like just going
24 to the grocery store?

25 A. And some days I didn't wear it; some days I did. It

1 just depended. I didn't wear it all time.

2 Q. But if you thought that -- you testified earlier
3 that you would get back fatigue. Explain what that
4 means.

5 A. Well, mine would -- right up under my shoulder
6 blades, when I leaned over it would hurt, and when I
7 would sit up straight like this and then I would
8 work, it wouldn't hurt as bad. It gave -- it
9 supported it, supported my back.

10 Q. And is that pain different than the pain you're
11 having now?

12 A. Oh, God, yeah.

13 Q. Okay. How so?

14 A. Well, I guess it's muscle pain versus bone pain.

15 Q. Okay.

16 **BY MS. POE:**

17 I think that's all the questions I have for
18 you.

19 **BY THE WITNESS:**

20 But like I said, I don't see where I texted
21 her, because I texted her when I came out of that
22 doctor's office and told her that my back -- the
23 doctor said my back was broke. And I'd have to look
24 back on the records to see which one. It was David
25 something. He was out there off of Roper Mountain

1 Road. I can't think of his name right off the top
2 of my head. It wasn't Dr. Watford.

3 BY MS. POE:

4 Okay. That's all I have.

5 FURTHER EXAMINATION BY MR. SOLAR:

6 Q. Just a question about, you said you broke your back.
7 Is that -- is that your term or was that ---

8 A. That was -- well, I was in the -- I was in the exam
9 room, and what is it, a physician's assistant came
10 in, or assistant, and she said, "They're all there
11 looking at -- they're all out there looking at your
12 images because you've got one of the cleanest breaks
13 they've ever seen." And I'm sitting there going,
14 nobody ever told me.

15 Q. And you were told that the day of the incident when
16 you were at the hospital?

17 A. No, this was at a doctor's office.

18 Q. Okay. How much -- how much longer after the
19 accident?

20 A. I'm going to say, what, four or five weeks maybe.
21 But like I said, if I could get the name of the --
22 if I could remember it, which I can probably go back
23 and look, get the -- or I can drive over there and
24 look and see who it was and give you his name, but I
25 believe it was David something. I can't think of

1 his...

2 BY MS. POE:

3 David Mitchell?

4 BY THE WITNESS:

5 Yeah, that's it. I just -- I've been to so
6 many, I can't keep up with them.

7 EXAMINATION RESUMED BY MR. SOLAR:

8 Q. When your back was broken, as you're referring to
9 it, were you able to walk still?

10 A. Yeah. But like if I picked up something or even
11 used a vacuum or something, it felt like -- I mean,
12 it hurt. It felt like something was shifting. And
13 they said that it would -- it would go forward, said
14 I had spondylolisthesis. And I think that means
15 shifting, because I didn't have any support or
16 anything going on. But if I don't do nothing, I'm
17 okay. But if I try to vacuum or anything, I can't
18 even do laundry. I sit in a wheelchair if I try to
19 cook, or if I do stuff, I sit in a wheelchair and
20 run around the house in it, because I can't stand
21 for a long period of time.

22 Q. Sure. And I just remembered a couple of questions
23 during when you were talking to your attorney. Did
24 you -- I understand you can't go back to work. Is
25 there anything else you can't do as a result of this

1 injury?

2 A. How much time you got? I can't do anything that --
3 like I said, I can't even clean my own house.

4 Q. Would you participate in any like hobbies or
5 activities before this that you can no longer do?

6 A. Well, I used to ride horses, but I can't do that
7 now.

8 Q. When was the last time you rode horses before the
9 accident?

10 A. Well, that was -- I had to get rid of my horse
11 because I was taking care of my mom.

12 Q. So it's been quite some time since you ---

13 A. (Indiscernible mumbling).

14 Q. Anything else?

15 A. I used to like to travel. I can't do that.

16 Q. Okay. Where would you travel to?

17 A. Well, I liked to go see my nephews in Chicago and my
18 niece in Ohio, and I liked to go to Florida with my
19 boyfriend, because that's where he's from.

20 Q. But you were able to travel by yourself to
21 Nashville?

22 A. Yeah, but I had wheelchairs waiting on me when I got
23 there.

24 Q. Okay. And you don't want to travel with a
25 wheelchair to Florida or Ohio or wherever?

1 A. No, I want to go back -- I want -- I don't want to
2 -- I just want to be back like I was. And I wasn't
3 perfect then, but at least I could function. I just
4 can't function.

5 Q. Have you ever told -- been told you're going to
6 someday be back at what you were?

7 A. Well, I feel like Humpty Dumpty, if you want to know
8 the truth. They try to put me back together, but
9 nothing seems to fit, goes back.

10 Q. Okay.

11 A. And not that it matters, but my boyfriend and I have
12 separate beds now because I can't get comfortable,
13 and I keep him awake because I can't sleep.

14 Q. So how long after the accident did you guys get
15 separate bedrooms?

16 A. The day of. I had to go into -- because I had that
17 big ol' thing on my leg.

18 Q. Okay. I hate asking this question.

19 A. Go ahead. We're all adults.

20 Q. So, has this affected your sex life?

21 A. It has.

22 Q. Okay. Could you tell me about -- like there's been
23 no sex since the accident?

24 A. That's correct.

25 Q. Okay. And I hate myself for asking this question,

1 too, but ---

2 A. Go ahead.

3 Q. --- how often were you guys having sex before the
4 accident?

5 A. I guess normal, every Sunday. I'm just kidding. I
6 would say, oh, three or four times a month, you
7 know.

8 Q. Okay. And so has this -- other than the lack of,
9 you know, physical intimacy, has this affected your
10 relationship at all?

11 A. I'll tell you, I've never had anybody care for me so
12 much. He's waited on me hand and foot.

13 Q. And is he retired, you said?

14 A. He is. He worked at Ingles and worked at Dollar
15 General.

16 Q. Was he like a cashier or he did something in the
17 back? What did he do?

18 A. No, he did produce at Ingles, but -- and he was
19 trying to work and take care of me. So, what he
20 did, he put a camera in my room where I stayed, and
21 he said, "If you get out of bed, you have to use the
22 wheelchair." So that's what I did. I never --
23 pretty much before he'd go to work, because he'd go
24 like at 4 in the morning, he'd go to work, and I'd
25 go to the bathroom and everything, and I'd usually

1 stay there in the bed 'til he got back home. He was
2 -- he only worked like four or five hours.

3 Q. And when did he stop working?

4 A. When did he stop?

5 Q. Yeah.

6 A. He stopped because they cut his hours at Ingles
7 probably about a month and a half ago, two months
8 ago, but he's going back to Dollar General.

9 Q. Does the footage -- you said the camera, does that
10 record?

11 A. No.

12 Q. Okay. Do you have anything you would like to tell
13 me that maybe I didn't ask?

14 A. No, nothing I can think of.

15 BY MR. SOLAR:

16 Well, I think we're done. I appreciate. We'll
17 leave it open. We might come back for treatment.
18 But I appreciate your time. I know that was a lot
19 of questions.

20 BY THE WITNESS:

21 I've got nothing but time.

22 (THE DEPOSITION WAS RECESSED AT THE HOUR OF 1:53 P.M.)

23

24

25

160

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. NO. 2023-CP-23-00176
MARGIE EVETT,	)	
	)	
PLAINTIFF,	)	
	)	
VS.	)	CERTIFICATE
	)	
DESMINE SARTAIN,	)	
	)	
DEFENDANT.	)	
	)	

I, TIMMI A. PARRISH, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING **159** PAGES REPRESENT A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING DEPOSITION OF **MARGIE EVETT**, TAKEN BY ME ON THE 8TH DAY OF DECEMBER, 2023.

THAT THE DEPONENT WAS DULY PLACED UNDER OATH AND ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL TESTIMONY WAS DULY TAKEN AND TRANSCRIBED AS TO THE QUESTIONS PROPOUNDED AND THE ANSWERS GIVEN.

THAT ALL OFFERED EXHIBITS, STIPULATIONS AND OBJECTIONS, IF ANY, INVOLVED IN THIS CAUSE ARE DULY ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND THIS 22ND DAY OF JANUARY, 2024.

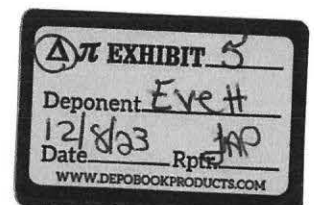
Timmi A. Parrish

TIMMI A. PARRISH
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 5/29/2028

* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.



EXHIBIT 4
Deponent Evet
Date 12/8/03 Rptr JP
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No.: 2023-CP-23-00176
Margie Evett,	)	
	)	
Plaintiff,	)	
	)	Memorandum in Opposition to
v.	)	Defendant's Motion for Summary
	)	Judgement
Desmine Sartain,	)	
	)	
Defendant.	)	
	)	

TO: JAMES P. WALSH, ESQUIRE, ATTORNEY FOR THE DEFENDANT:

This matter comes before the Court upon the Defendant's Motion for Summary Judgment. Plaintiff can undoubtedly show Defendant is liable for this action under multiple legal theories.

STATEMENT OF FACTS

Margie Evett was at the home of Desmine Sartain at 25 West Prentiss Ave in Greenville, South Carolina, on January 24, 2020, to pick up Ms. Sartain's dogs and take them to the kennel. While she was holding the leash and attempting to leave the house, one of the dogs bolted. The dog caused Ms. Evett to fall from the top step to the concrete below, a total of about nine steps down. She hit her head on a flower pot, broke her right leg, injured her shoulder and ripped all of the fingernails off her hand. She landed on her hip and back. The Defendant's dog was the sole contributor to Ms. Evett's injuries.

STANDARD OF REVIEW

In order for this court to grant a motion for summary judgment, there must be no issue as to any material facts and the moving party must be entitled to judgment as a matter of law. SCRPC 56. A trial court should only grant a motion or summary judgment when “the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” SCRPC 56 (c); see also Tupper v. Dorchester County, 326 S.C. 318, 325, 487 S.E.2d 187, 191(1997); Pee Dee Stores, Inc. V. Doyle, 381 S.C. 234, 241-242, 672, S.E.2d 799, 803 (Ct. App. 2009). The moving party must meet the burden of showing an absence of evidentiary and legal support showing there is no genuine issue of material fact for trial.

ARGUMENT

Defendant is liable under S.C. Code §47-3-110

Ms. Sartain is strictly liable for Ms. Evett’s injuries and damages under South Carolina Code Ann §47-3-110 which states:

Whenever any person is bitten or otherwise attacked by a dog while the person is in a public place or is lawfully in a private place, including the property of the owner of the dog... the owner of the dog or other person having the dog in his care or keeping is liable for the damages suffered...If a person provokes a dog into attacking him then the dog owner is not liable.

The statute imposes strict or absolute statutory liability upon dog owners for all damages suffered whenever any person is “otherwise attacked.”

The Defendant relies on the rulings in Padget v. Mercado, 341 S.C. 229, 233, 533 S.E.2d 339, 340 (SC Ct App. 2000) and Bailey v. Bly, 87 Ill.App 2d 259, 231 N.E.2d (Ill App 5 Dist. 1967) in support of their allegation that the Plaintiff was not attacked by the dog, therefore, SC

Code§47-3-110 is not applicable to these facts. In both of these cases, the dog did not have any action at all. In Padget, the Plaintiff was injured while lifting a dog for her job. She made no allegation that the dog struggled or made it hard by its actions to lift. The court ruled that because her injuries were not due to the dog's actions, but the act of merely lifting the dog, the strict liability statute did not apply. The Illinois case of Bailey cited in Padget is about a woman merely tipping over a sleeping dog. Unlike in Ms. Evett's case, the dog's actions in Bailey did not play an active part in the injury. The dogs in both Bailey and Padget could have just as easily been furniture in their fact scenario and the cases are not applicable to the case at bar.

Next, Defendant argues that because the dog did not make physical contact with Ms. Evett to cause her to fall they are not subject to strict liability. Other states' appellate courts with statutes creating strict liability for dog "attacks" have defined the term similarly to SC. In the case of Morris v. Weatherly, 488 N.W.2d 508 (Minn App 1992), review denied (Minn. Oct. 28, 1992), Morris was bicycling when a dog ran at him. Morris quickly dismounted his bike, fell, and injured his shoulder. Id. The Court found that "Morris was injured as he attempted to protect himself, and, therefore, the actions of the dog caused the injuries and met the definition of attack". In the same ruling, the Court took up the case of Hinman v. Alter, the Court found that "Mr. Hinman twisted his back because a large dog ran past or around him...Although no physical contact occurred, the dog's actions directly and immediately produced Hinman's injury." Id. at 510. The Court concluded that "[t]he actions of the dog caused the injuries without any attenuated chain of causation" Id. at 511, and therefore, met the statutory requirement for strict liability.

"Clearly [the statute applies because] the Legislature considered other injuries besides those resulting from bites; hence the inclusion of the term "otherwise attacked" in the statute. Cf.

Henry v. Lewis, 327 S.C. 336, 489 S.E.2d 639 (1997)..." Elmore v. Ramos, 327 S.C. 507, 489 S.E.2d 663 (Ct. App. 1997). In Elmore v. Ramos, the South Carolina Court of Appeals interpreted "otherwise attacked" in the statute's application to some actions by dog other than a bite. In Elmore, the plaintiff sued for injuries she received when the defendant's dog caused her to fall by bumping into her from behind. The plaintiff actually testified that the dog "wasn't attacking me." Id. 327 S.C. at 510, 489 S.E.2d at 665. Nonetheless, the Court of Appeals held the statute must be construed so that it is interpreted consistent with the purpose, design, and policy of the lawmakers and found the plaintiff's claim was within the plain language of the statute. In this regard, it is clear that the intent behind our statute is to require dog owners to maintain control of their dogs or train dogs not to injure others who have a legal right to do whatever they may be doing. So finding, the court held that the statute does not require evil intent and that "attack" "applies to any offensive action."

Therefore, liability is imposed in situations where injury is caused by a dog doing something other than biting. Here, Ms. Evett was injured as direct result of the dog's actions of pulling her down nine brick steps. It would be no different than if the dog had pushed her. It was the dog's initiative in aggressively bolting and pulling Ms. Evett that was the proximate cause of Ms. Evett's injuries. There is also no evidence that Ms. Evett acted unreasonably or provoke the dog, the Defendant is strictly liable for the injuries and damages caused by the dog.

Harris v. Anderson County Sheriff's Office, 381 S.C. 357, 673 S.E.2d 423 (2009), states that even though Ms. Evett was in charge of the dogs at the time the dog injured her, the strict liability found in the statute would still apply to Ms. Sartain as the owner of the dog. ("imposing a control requirement or other negligence principles by judicial fiat on the dog owner would

impose requirements nowhere found in the statute.” Id at 363). The Court also stated in Harris, “The owner of the dog is subject to liability for injuries caused by his dog.” Id at 363.

Ms. Sartain’s dog, through its actions, directly and immediately caused severe injury to Ms. Evett and Ms. Sartain is strictly liable for Ms. Evett’s damages as a result of the actions of her dog under current South Carolina law.

Defendant’s Negligence is a Question of Fact for a Jury

The Defendant concedes that Ms. Evett was an invitee on the Defendant’s property. Defendant claims she did not owe a duty to Ms. Evett because there were no “known latent or hidden dangers” at the Defendant’s home. In fact, the Defendant’s argument is really that they did not breach their duty.

In a negligence action, a plaintiff must show the (1) defendant owed a duty of care to the plaintiff (2) defendant breached the duty by a negligent act or omission (3) defendant’s breach was the actual and proximate cause of the plaintiff’s injury and (4) the plaintiff suffered injury or damages. Dorrell v. South Carolina Dept. of Transp., 361 S.C. 312, 318, 605 S.E.2d 12, 15 (2004). Whether the law recognizes a particular duty is an issue of law to be determined by the court. Ellis v. Niles, 324 S.C. 223, 479 S.E.2d 47 (1996).

In addressing premises liability as it relates to an invitee, although a property owner is not an insurer of the safety of those who use the property, reasonable care must be used by the owner to keep the premises used by invitees in a reasonably safe condition. Henderson v. St. Francis Community Hosp., 303 S.C. 177, 180, 399 S.E.2d 767, 768 (1990). The owner of property owes to an invitee or business visitor the duty of exercising reasonable or ordinary care for his safety, and is liable for injuries resulting from the breach of such duty. Larimore v. Carolina Power &

Light, 340 S.C. 438, 531 S.E.2d 535 (Ct.App.2000). The landowner has a duty to warn an invitee only of latent or hidden dangers of which the landowner has knowledge or should have knowledge, *unless the possessor should anticipate the harm despite such knowledge and obviousness*. Callander v. Charleston Doughnut Corp., 305 S.C. 123, 406 S.E.2d 361 (1991)(emphasis added).

This duty is an active or affirmative duty. Hughes v. Children's Clinic, P.A., 269 S.C. 389, 237 S.E.2d 753 (1977); Garvin v. Bi-Lo, Inc., 337 S.C. 436, 523 S.E.2d 481 (Ct.App. 1999), cert. granted, March 21, 2000. It includes refraining from any act which may make the invitee's use of the premises dangerous or result in injury to him. Hughes, 269 S.C. at 397, 237 S.E.2d at 756; Garvin, 337 S.C. at 444, 523 S.E.2d at 485. It is not necessary that the precise manner in which the injuries were sustained be foreseeable. Hughes, 269 S.C. at 397, 237 S.E.2d at 757; Orr v. First Nat'l Stores, Inc., 280 A.2d 785 (Me.1971). Rather, "[i]t is sufficient that there is a reasonable generalized gamut of greater than ordinary dangers of injury and that the sustaining of the injury was within this range.... It was, therefore, a jury question whether the defendant had provided reasonably safe premises ... for the use of the ... invitee." Hughes, 269 S.C. at 397-98, 237 S.E.2d at 757 (quoting Orr, 280 A.2d at 794).

In Nesbitt v. Lewis, 335 S.C. 441, 517 S.E.2d 11 (Ct.App. 1999), the Defendants filed for summary judgment on two counts. First, that the Defendant did not owe a duty to the Plaintiff because they did not own the property or dog, and second, that the Plaintiff failed to state a cause of action under §47-3-110. The Court found summary judgment was appropriate in the negligence cause of action as to one owner with a partial interest in residential property where the owner did not reside at the property or have the dogs in her care or keeping. The mother

owned three Chow dogs which allegedly bit a child in her yard. The son lived in the home with his mother and was the caregiver and keeper of the dogs. The SC Court of Appeals affirmed the circuit court's grant of summary judgment to the daughter because she had not lived in the home for five years, and she did not care for or keep the dogs. It is important to note that the Court kept the dog owners in the suit under both strict liability and a negligence theory.

There is no doubt, and the Defendant conceded, that she owed a duty to Ms. Evett. As stated in Defendant's brief, she owed Ms. Evett a duty to exercise reasonable and ordinary care for Ms. Evett's safety. As part of the duty to exercising reasonable and ordinary care, the Defendant has a duty to warn of any hidden or latent dangers. What defendant is really arguing is that they did not breach the duty they have to Ms. Evett which is a question of fact for the jury. It is a greater than ordinary danger to have a large, rambunctious dog that tears at the blinds and at things outside. Ms. Evett testified that the dog would tear up blinds and growl and become aggressive if people or other dogs passed by the house or back fence. Margie Evett's deposition, page 51-52. Even if Ms. Evett is familiar with the dog and its potential hazard that does not absolve the Defendant of her duty to exercise reasonable and ordinary care by sufficiently training her dog not to injury others or provide Ms. Evett with a safe way to get her dog out of her home and into a vehicle.

Defendant Owed a Duty to Ms. Evett Under a Simple Negligence Theory

Defendant also owed a duty to Ms. Evett under a simple negligence theory. Even if the dog had pulled Ms. Evett down the stairs at the kennel and not at the Defendant's home, the Defendant would still owe Ms. Evett of duty of reasonable and ordinary care. The duty to train her dog not to bolt and pull people on its leash. Defendant breached that duty. The dog's actions were the actual and proximate cause of Ms. Evett's injuries.

CONCLUSION

Ms. Evett respectfully requests the Court to deny the Defendant's Motion for Summary Judgment. The Defendant has failed to show any legal reason why §47-3-110 does not apply to the dog's actions. The Defendant has failed to show that the Defendant did not owe a legal duty to Ms. Evett as an invitee on the property. Finally, the Defendant has failed to show she did not owe a duty to Ms. Evett under a simple negligence theory that would apply even if Ms. Evett was not on her property. Defendant's Motion for Summary Judgment must be denied.

This 26th day of February 2025
Fountain Inn, South Carolina

s/Sheally Venus Poe
Sheally Venus Poe, Esquire
Venus Poe, P.A.
105 North Main Street
Fountain Inn, South Carolina 29644
(864) 963-0310
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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
Civil Action No: 2023-CP-2300176

Margie Evett,

Plaintiff,

vs.

Desmine Sartain,

Defendant.

**PLAINTIFF'S MOTION PURSUANT
TO RULE 59(e), SCRCP**

TO: JAMES P. WALSH, ESQUIRE, AND JON SOLAR, ESQUIRE ATTORNEYS FOR THE
DEFENDANT:

You will please take notice that the plaintiff, by her undersigned attorney, will move before the Honorable Patrick Fant, presiding judge, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, at such time and place as the Court may direct, for an Order, pursuant to Rule 59(e), *SCRCP*, altering or amending the Court's order granting the Defendant's Motion for Summary Judgment in this case, which final written order was issued on March 11, 2025.

The grounds for the motion are that the Court erred when it granted the Defendant's motion in that the Defendant has failed to show any legal reason why SC Code §47-3-110 does not apply to the dog's actions in this case; that the Defendant does not claim any provocation; what is offensive conduct is a question of fact left to the jury; the Defendant has failed to show she did not owe a duty to the Plaintiff under either a premises liability and/or simple negligence theory; that the Defendant has failed to show she did not breach that duty, and, that both duty

and breach of are questions of fact for the jury. The motion will be supported by the applicable precedents, the attached memorandum of law, and the arguments of counsel.

Rule 11 Certification

Counsel for the plaintiff hereby certifies that consultation with opposing counsel would serve no purpose in resolving the subject matter of the foregoing motion, so that no consultation would be required by Rule 11, *SCRCP*. Counsel therefore certifies that no such consultation was had nor attempted.

This 11th day of March 2025
Fountain Inn, South Carolina

S/Sheally Venus Poe
Sheally Venus Poe, Esquire
Venus Poe, P.A.
105 North Main Street
Fountain Inn, South Carolina 29644
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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

Civil Action No: 2023-CP-2300176

Margie Evett,

Plaintiff,

vs.

Desmine Sartain,

Defendant.

**PLAINTIFF'S MEMORANDUM
IN SUPPORT OF HER MOTION
PURSUANT TO RULE 59(e), SCRPC**

This matter is before the Court from an Order granting the Defendant's summary judgment. The Court heard arguments on January 26, 2025, and issued a Form 4 Order granting the summary judgment on January 27, 2025. The final written Order was issued on March 11, 2025.

Margie Evett was at the home of Desmine Sartain at 25 West Prentiss Avenue in Greenville, South Carolina, on January 24, 2020, to pick up Ms. Sartain's dogs and take them to the kennel. While she was holding the leash and attempting to leave the house, one of the dogs, Blue, bolted. Because Ms. Evett's hand was in the leash the dog pulled Ms. Evett from the top step to the concrete below, a total of about nine steps down. She hit her head on a flower pot, broke her right leg, injured her shoulder and ripped all of the fingernails off her hand. The Defendant's dog was the sole contributor to Ms. Evett's injuries.

Interestingly, the Order states that Ms. Evett would help take care of the "Defendant's German Sheperd dog, which included routinely exiting with the Defendant's German Shepherd dog through the side door of the Defendant's house, and down the Defendant's stairs to take the

German Shepard on walks.” (Order page 1). While the statement is true, Ms. Evett did take a completely different dog, Bear, for walks, Bear had been dead in 2020 when this incident happened. Ms. Evett specifically testified in her deposition that she never took the dog that injured her, Blue, on walks. (Ex. 1 Margie Evett deposition p.33, lines 10-11, attached hereto. Her full deposition is attached as exhibit 1 to the Defendant’s Memorandum in Support of Summary Judgment).

STANDARD OF REVIEW

In order for this court to grant a motion for summary judgment, there must be no issue as to any material facts and the moving party must be entitled to judgment as a matter of law. SCRCP 56. A trial court should only grant a motion or summary judgment when “the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” SCRCP 56 (c); see also Tupper v. Dorchester County, 326 S.C. 318, 325, 487 S.E.2d 187, 191(1997); Pee Dee Stores, Inc. V. Doyle, 381 S.C. 234, 241-242, 672, S.E.2d 799, 803 (Ct. App. 2009). The moving party must met the burden of showing an absence of evidentiary and legal support showing there is no genuine issue of material fact for trial.

ARGUMENT

Defendant is liable under S.C. Code §47-3-110

Ms. Sartain is strictly liable for Ms. Evett’s injuries and damages under South Carolina Code Ann §47-3-110 which states:

Whenever any person is bitten or otherwise attacked by a dog while the person is in a public place or is lawfully in a private place, including the property of the owner of the dog... the owner of the dog or other person having the dog in his care or keeping is liable for the damages suffered... If a person provokes a dog into attacking him then the dog owner is not liable.

The statute imposes strict or absolute statutory liability upon dog owners for all damages suffered whenever any person is “otherwise attacked.”

The Court, in granting the Defendant summary judgment, relies solely on the rulings in Padget v. Mercado, 341 S.C. 229, 233, 533 S.E.2d 339,340 (SC Ct App. 2000) and Bailey v. Bly, 87 Ill. App 2d 259, 231 N.E.2d (Ill App 5 Dist. 1967) in support of their allegation that the Plaintiff was not attacked by the dog, therefore, SC Code§47-3-110 is not applicable to these facts. In both of these cases the Court relies on, the dog did not have any action at all. In Padget, the Plaintiff was injured while lifting a dog for her job. She made no allegation that the dog struggled or made it hard by its actions to lift. The court ruled that because her injuries were not due to the dog’s actions, but the act of merely lifting the dog, the strict liability statute did not apply. The Illinois case of Bailey cited in Padget is about a woman merely tipping over a sleeping dog. Unlike in Ms. Evett’s case, the dog’s actions in Bailey did not play an active part in the injury. The Court in Padgett states that Padgett’s injuries were a result of his own actions of trying to lift the dog. Through no reading of the facts here can Ms. Evett’s injuries be interpreted to be a result of her own actions. The dogs in both Bailey and Padget could have just as easily been furniture in their fact scenario and the cases are not applicable to the case at bar.

The Court, in its granting of summary judgment in this case, draws a legal distinction between a dog running at someone and Ms. Evett’s case because the dog was running away. Stating that Ms. Sartain’s dog did not take “hostile offensive action” toward the Plaintiff, and,

therefore, does not fall under the strict liability statute. (Order page 4). Ms. Sartain's dog bolted at something which drug Ms. Evett down causing serious injuries. The dog's actions of bolting towards someone and bolting away from them is a difference without meaning if each causes injury. It was the dog's affirmative behavior which resulted in injury. The dog's behavior directly and immediately produced Evett's injuries. The dog initiated the struggle; the dog's conduct was not remote to the injuries; and the actions immediately caused Evett's injuries.

The direction the dog is moving does not make a difference to the application of the statute. The dog does not even have to make physical contact with Ms. Evett to cause her to fall to be subject to strict liability. Other states' appellate courts with statutes creating strict liability for dog "attacks" have defined the term similarly to South Carolina. In the case of Morris v. Weatherly, 488 N.W.2d 508 (Minn App 1992), review denied (Minn. Oct. 28, 1992), Morris was bicycling when a dog ran at him. Morris quickly dismounted his bike, fell, and injured his shoulder. Id. The Court found that "Morris was injured as he attempted to protect himself, and, therefore, the actions of the dog caused the injuries and met the definition of attack". In the same ruling, the Court took up the case of Hinman v. Alter, the Court found that "Mr. Hinman twisted his back because a large dog ran past or around him...Although no physical contact occurred, the dog's actions directly and immediately produced Hinman's injury." Id. at 510. The Court concluded that "[t]he actions of the dog caused the injuries without any attenuated chain of causation" Id. at 511, and therefore, met the statutory requirement for strict liability. See also, Couillard v. Hawkins, 285 S.C. 463, 330 S.E.2d 293 (1986).

"Clearly [the statute applies because] the Legislature considered other injuries besides those resulting from bites; hence the inclusion of the term "otherwise attacked" in the statute. Cf. Henry v. Lewis, 327 S.C. 336, 489 S.E.2d 639 (1997)..." Elmore v. Ramos, 327 S.C. 507, 489

S.E.2d 663 (Ct. App. 1997). In Elmore v. Ramos, the South Carolina Court of Appeals interpreted “otherwise attacked” in the statute’s application to some actions by dog other than a bite. In Elmore, the plaintiff sued for injuries she received when the defendant’s dog caused her to fall by bumping into her from behind. The plaintiff actually testified that the dog “wasn’t attacking me.” Id. 327 S.C. at 510, 489 S.E.2d at 665. Nonetheless, the Court of Appeals held the statute must be construed so that it is interpreted consistent with the purpose, design, and policy of the lawmakers and found the plaintiff’s claim was within the plain language of the statute. In this regard, it is clear that the intent behind our statute is to require dog owners to maintain control of their dogs or train dogs not to injure others who have a legal right to do whatever they may be doing. So finding, the court held that the statute does not require evil intent and that “attack” “applies to any offensive action.”

At oral argument for the Defendant’s Motion for Summary Judgment, the Court in this case seemed skeptical that Elmore stood for the proposition that the dog did not have to have an “evil intent” and that the Court in Elmore even addressed this issue; however, the Court in Elmore stated:

Moreover, pre-statute cases in which the plaintiff was required to make a showing of “vicious disposition,” defined this as

A propensity or tendency of an animal to do any act that might endanger the safety of the persons and property of others in a given situation. Although an animal *is actuated solely by mischievousness or playfulness, rather than maliciousness or ferociousness*, et, if it has a tendency to do a dangerous or harmful act, *it has a vicious propensity within the meaning of the rule* holding the owner or keeper liable for injuries resulting from vicious propensities of which he has knowledge.

Mungo v. Bennett, 238 S.C. 79,81-82, 119 S.E.2d 522, 523 (1961) (emphasis added)(citing 3 C.J.S *Animals* § 148, at 1250-51). **Because the common law does not require an evil motive, we think had the**

legislature intended to require a showing of evil motive, it would have specifically said so. (emphasis added)

Therefore, liability is imposed in situations where injury is caused by a dog doing something other than biting. Here, Ms. Evett was injured as direct result of the dog's actions of pulling her down nine brick steps. It would be no different than if the dog had pushed her. It was the dog's initiative in aggressively bolting and pulling Ms. Evett that was the proximate cause of Ms. Evett's injuries. There is also no evidence that Ms. Evett acted unreasonably or provoke the dog, the Defendant is strictly liable for the injuries and damages caused by the dog.

Harris v. Anderson County Sheriff's Office, 381 S.C. 357, 673 S.E.2d 423 (2009), states that even though Ms. Evett was in charge of the dogs at the time the dog injured her, the strict liability found in the statute would still apply to Ms. Sartain as the owner of the dog. ("imposing a control requirement or other negligence principles by judicial fiat on the dog owner would impose requirements nowhere found in the statute." Id at 363). The Court also stated in Harris, "The owner of the dog is subject to liability for injuries caused by his dog." Id at 363.

Ms. Sartain's dog, through its actions, directly and immediately caused severe injury to Ms. Evett and Ms. Sartain is strictly liable for Ms. Evett's damages as a result of the actions of her dog under current South Carolina law.

Defendant's Negligence is a Question of Fact for a Jury

The Defendant concedes that Ms. Evett was an invitee on the Defendant's property. Defendant claims she did not owe a duty to Ms. Evett because there were no "known latent or hidden

dangers” at the Defendant’s home. In fact, the Defendant’s argument is really that they did not breach their duty.

In a negligence action, a plaintiff must show the (1) defendant owed a duty of care to the plaintiff (2) defendant breached the duty by a negligent act or omission (3) defendant's breach was the actual and proximate cause of the plaintiff's injury and (4) the plaintiff suffered injury or damages. Dorrell v. South Carolina Dept. of Transp., 361 S.C. 312, 318, 605 S.E.2d 12, 15 (2004). Whether the law recognizes a particular duty is an issue of law to be determined by the court. Ellis v. Niles, 324 S.C. 223, 479 S.E.2d 47 (1996).

In addressing premises liability as it relates to an invitee, although a property owner is not an insurer of the safety of those who use the property, reasonable care must be used by the owner to keep the premises used by invitees in a reasonably safe condition. Henderson v. St. Francis Community Hosp., 303 S.C. 177, 180, 399 S.E.2d 767, 768 (1990). The owner of property owes to an invitee or business visitor the duty of exercising reasonable or ordinary care for his safety, and is liable for injuries resulting from the breach of such duty. Larimore v. Carolina Power & Light, 340 S.C. 438, 531 S.E.2d 535 (Ct.App.2000). The landowner has a duty to warn an invitee only of latent or hidden dangers of which the landowner has knowledge or should have knowledge, *unless the possessor should anticipate the harm despite such knowledge and obviousness*. Callander v. Charleston Doughnut Corp., 305 S.C. 123, 406 S.E.2d 361 (1991)(emphasis added). If Ms. Sartain should have anticipated the harm the dog caused to Ms. Evett is a question of fact for the jury.

This duty is an active or affirmative duty. Hughes v. Children's Clinic, P.A., 269 S.C. 389, 237 S.E.2d 753 (1977); Garvin v. Bi-Lo, Inc., 337 S.C. 436, 523 S.E.2d 481 (Ct.App. 1999), cert.

granted, March 21, 2000. It includes refraining from any act which may make the invitee's use of the premises dangerous or result in injury to him. Hughes, 269 S.C. at 397, 237 S.E.2d at 756; Garvin, 337 S.C. at 444, 523 S.E.2d at 485. It is not necessary that the precise manner in which the injuries were sustained be foreseeable. Hughes, 269 S.C. at 397, 237 S.E.2d at 757; Orr v. First Nat'l Stores, Inc., 280 A.2d 785 (Me.1971). Rather, "[i]t is sufficient that there is a reasonable generalized gamut of greater than ordinary dangers of injury and that the sustaining of the injury was within this range.... It was, therefore, a jury question whether the defendant had provided reasonably safe premises ... for the use of the ... invitee." Hughes, 269 S.C. at 397-98, 237 S.E.2d at 757 (quoting Orr, 280 A.2d at 794).

In Nesbitt v. Lewis, 335 S.C. 441, 517 S.E.2d 11 (Ct.App. 1999), the Defendants filed for summary judgment on two counts. First, that the Defendant did not owe a duty to the Plaintiff because they did not own the property or dog, and second, that the Plaintiff failed to state a cause of action under §47-3-110. The Court found summary judgment was appropriate in the negligence cause of action as to one owner with a partial interest in residential property where the owner did not reside at the property or have the dogs in her care or keeping. The mother owned three Chow dogs which allegedly bit a child in her yard. The son lived in the home with his mother and was the caregiver and keeper of the dogs. The SC Court of Appeals affirmed the circuit court's grant of summary judgment to the daughter because she had not lived in the home for five years, and she did not care for or keep the dogs. It is important to note that the Court kept the dog owners in the suit under both strict liability and a negligence theory.

There is no doubt, and the Defendant conceded, that she owed a duty to Ms. Evett. As stated in Defendant's brief, she owed Ms. Evett a duty to exercise reasonable and ordinary care for Ms. Evett's safety. As part of the duty to exercising reasonable and ordinary care, the

Defendant has a duty to warn of any hidden or latent dangers unless the Defendant should have anticipated the harm. What Defendant is really arguing is that she did not breach the duty she has to Ms. Evett which is a question of fact for the jury. It is a greater than ordinary danger to have a large, rambunctious dog that tears at the blinds and at things outside. Ms. Evett testified that the dog would tear up blinds and growl and become aggressive if people or other dogs passed by the house or back fence. (Ex. 1 Margie Evett's deposition, page 51-52, attached hereto. Her full deposition is attached as exhibit 1 to the Defendant's Memorandum in Support of Summary Judgment). Even if Ms. Evett is familiar with the dog and its potential hazard that does not absolve the Defendant of her duty to exercise reasonable and ordinary care by sufficiently training her dog not to injury others by aggressively going after people and animals walking by the house or yard or provide Ms. Evett with a safe way to get her dog out of her home and into a vehicle.

Defendant Owed a Duty to Ms. Evett Under a Simple Negligence Theory

Defendant also owed a duty to Ms. Evett under a simple negligence theory. Even if the dog had pulled Ms. Evett down the stairs at the kennel and not at the Defendant's home, the Defendant would still owe Ms. Evett of duty of reasonable and ordinary care. The duty to train her dog not to bolt and pull people on its leash. Defendant breached that duty. The dog's actions were the actual and proximate cause of Ms. Evett's injuries.

CONCLUSION

Ms. Evett's interactions with Ms. Sartain's dog clearly fall under S.C. Code §47-3-110 and the Court should reconsider its ruling granting Defendant Summary Judgment. The questions of if Ms. Sartain breached her duty of reasonable and ordinary care to Ms. Evett under premises

liability and simple negligence are questions of fact for a jury, and, therefore, summary judgment should not have been granted. Ms. Evett is requesting the Court reconsider the grant of summary judgment on all counts.

Respectfully Submitted,

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This 11th day of March 2025
Fountain Inn, South Carolina

1 A. His hip. He does.

2 Q. What's wrong with his hip?

3 A. I don't know if it's hip dysplasia, but I think he
4 was born with it. It might be hip dysplasia, but I
5 know it's painful because I had a dog with it.

6 Q. How does that affect Blue?

7 A. Well, like getting in things, you know, like getting
8 in a car and that kind of thing, I think it hurts
9 him. So I try to be as easy with him as I can.

10 Q. Did you ever take Blue on walks?

11 A. No, I did not.

12 Q. What type of leash did you usually use when you ---

13 A. They had a -- they had a leash. It was probably
14 about five foot, I think, four or five feet, and I
15 couldn't find it, because I called her and asked her
16 where his leash was, and she said it was in the
17 laundry room, but it wasn't. So I had a couple
18 leashes in the car, and I went and got those and put
19 on them. So I took Blue first.

20 Q. Okay.

21 BY MR. SOLAR:

22 This is -- this says Exhibit 2, but we'll just
23 mark this as Defendant's Exhibit 1, and then -- do
24 you still have your copy?

25 BY THE WITNESS:

1 this -- did this happen several years before the
2 incident that we're here for today or ---

3 A. Oh, yeah. I mean, that's probably when I first
4 started working for her. I needed the job.

5 Q. Okay. Well, why did you -- I mean, if she shorted
6 you a week's pay, or however many hours of pay, why
7 did you continue to work for her?

8 A. I needed the money. I needed to work.

9 Q. But you're saying she didn't pay you. So were you
10 concerned that she was going to continue not to pay
11 you?

12 A. She wasn't going to pay me because she was taking
13 that out for paying for the blanket.

14 Q. So you're saying that ---

15 A. Well, she told me she only paid a hundred dollars
16 for it at Tuesday Mornings, but she owed me close to
17 three, and she never gave me any money. She never
18 paid me anything. I guess she thought that was
19 enough for the blanket.

20 Q. Any other incidents where my client was ever upset
21 with you?

22 A. No.

23 Q. Okay. My client was never physical with you, right?

24 A. Oh, Lord no.

25 Q. Okay. You made a comment about Blue had torn the

1 blinds off at some point previously. So what blinds
2 are we ---

3 A. This door.

4 Q. Okay.

5 A. That door there.

6 Q. And so, did he do that in an aggressive way? Well,
7 let me try and rephrase it. So, I've got a -- well,
8 I don't have a dog. I kind of have a dog, but I
9 made my parents take the dog, and that dog sometimes
10 gets excited and will jump up and my -- that dog has
11 ruined the blinds. And so ---

12 A. I mean, there ---

13 Q. Was this -- did Blue ruin the blinds because he was
14 excited, or was he trying to physically get at
15 someone?

16 A. I figured he was trying to get out, because when
17 they get -- when they let them -- when they are in
18 the backyard, if anything goes by, boy, they're
19 right up there at that fence showing them teeth and
20 everything.

21 Q. Growling?

22 A. Yeah.

23 Q. Would you say Blue is an aggressive dog?

24 A. Oh, no, I don't know. That's why -- I didn't know
25 what he would do, and I didn't want to take a -- I

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEEN JUDICIAL CIRCUIT

C.A. No.: 2023-CP-23-00176

Margie Evett,

Plaintiff,

v.

Desmine Sartain,

Defendants.

**DEFENDANT'S MEMORANDUM IN
OPPOSITION OF PLAINTIFF'S
MOTION PURSUANT TO RULE 59(e),
OF THE SOUTH CAROLINA RULES
OF CIVIL PROCEDURE**

The Defendant's brief response to Plaintiff's Motion pursuant to Rule 59(e) of the South Carolina Rules of Procedure and Plaintiff's Memorandum in Support of Plaintiff's Motion.

Argument

I. The Court is Correct in its Ruling that the Facts Alleged by the Plaintiff Do Not Constitute Liability Under S.C. Code 47-3-110

The Plaintiff does not dispute that the Defendant's dog ran away from the Plaintiff rather than towards the Plaintiff, and that the Plaintiff fell because she had placed her right hand through a "loop" in the leash attached to the Defendant's dog. These undisputed facts do not constitute a cause of action pursuant to S.C. Code 47-3-110 because the Defendant's dog did not direct any "hostile offensive action" towards the Plaintiff.

Interestingly, the Plaintiff attempts to argue that "[t]he direction the dog is moving does not make a difference to the application of the statute." However, the Plaintiff cites to cases that contradict that very argument. The Plaintiff cited to Morris v. Weather, 488 N. W.2d 508 (Minn App 1992), which involved an incident where a dog ran "towards" Morris prior to Morris' injuries. The Plaintiff also cited to Hinman v. Alter, 488 N. W.2d 508 (Minn App 1992) where Hinman "saw another dog running toward him 'flying through the air'" prior to Hinman's injuries. The Plaintiff also cited to Elmore v. Ramos, 327 S.C. 507, 489 S.E.2d 663 (Ct. App 1997), which involved in incident where a

dog “jumped on [Elmore] from behind” causing Elmore’s injuries. Therefore, it is clear from the very cases cited by the Plaintiff that a dog has to direct a “hostile offensive action” towards the Plaintiff to constitute a “dog attack” pursuant to S.C. Code 47-3-110, and the facts alleged by the Plaintiff in the instant case do not constitute a “dog attack” because the Defendant’s dog did not direct any “hostile offensive action” towards the Plaintiff.

The Plaintiff also cited to Harris v. Anderson County Sheriff’s Office, 381 S.C. 357, 673 S.E. 2d 243 (2009). However, Harris is distinguishable from the instant case and not relevant because it simply stands for the proposition that a dog owner can be responsible for the acts that are allegedly committed when outside of the dog owner’s custody, and the Defendant is not contesting that legal principle. Harris v. Anderson County Sheriff’s Office, 381 S.C. 357, 673 S.E. 2d 243 (2009).

Therefore, the Court was correct in its ruling that the facts alleged by the Plaintiff do not support a cause of action pursuant to S.C. Code 47-3-110

II. The Court is Correct in its Ruling that the Facts Alleged by the Plaintiff Do Not Constitute Negligence Under A Theory of Premises liability

The Defendant did not owe the Plaintiff a legal duty under a legal theory of premises liability because there were no known dangers that the Defendant failed to disclose to the Plaintiff regarding the Defendant’s dog or the Defendant’s house. Moreover, even if the Defendant did owe a duty to the Plaintiff, the Defendant did not breach said duty since there were no hidden dangers at the Defendant’s house for the Defendant to warn the Plaintiff about.

The Plaintiff cited to Nesbitt v. Lewis, 335 S.C. 441, 517 S.E.2d 11 (Ct. App 1999) in support of her argument that the Plaintiff’s cause of action for negligence should not be dismissed. However, Nesbitt is distinguishable from the instant case and not relevant because the facts in Nesbitt involve an undisputed dog bite and whether the Defendants in Nesbitt, as owners of the

dog that bit the Plaintiff, had a duty to prevent the dog bite. Nesbitt v. Lewis, 335 S.C. 441, 517 S.E.2d 11 (Ct. App 1999)

Therefore, the Court was correct in its ruling that the facts alleged by the Plaintiff do not support a cause of action for negligence under a theory of premises liability.

III. The Court is Correct in its Ruling that the Facts Alleged by the Plaintiff Do Not Constitute Negligence under a Simple Negligence Theory

There is no legal duty for an individual to train their dog not to run down a set of stairs as evidenced by the fact that Plaintiff is not able to cite to a single case supporting that proposition. Moreover, there is no duty for an individual to train their dog “in general” as evidenced by the fact that the Plaintiff is not able to cite to a single case supporting such a proposition.

Therefore, the Court was correct in its ruling that the facts alleged by the Plaintiff do not support a cause of action under a simple negligence theory.

Conclusion

We respectfully request that the Court deny the Plaintiff’s Motion pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure.

/s/ James P. Walsh

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Greenville, SC
March 18, 2025

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE GREENVILLE COUNTY
Court of Common Pleas

Patrick C. Fant, III, Circuit Court Judge

Case No.: 2023-CP-23-000176

Margie Evett.....Appellant,

v.

Desmine Sartain.....Respondent.

CERTIFICATE OF COUNSEL

I 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.

This 12th day of August 2025

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