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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

G. D. Morgan, Jr., Circuit Court Judge

Case No. 2019-CP-23-01522

Appellate Case No. 2024-000931

Samantha Katchick Respondent,

v.

Marshall Alexander Chapman, DMD, Brooke I. Chapman, Chapman Dental, P.A., Douglas P. Schmieding, CPA, Jennings Cook & Co., CPAs, PA, and Earl A. Simmons, CPA, Defendants,

of which Marshall Alexander Chapman and Chapman Dental, P.A. are the Appellants.

RECORD ON APPEAL - VOL. 2

Bradford N. Martin, Esq. (SC Bar No. 3658)
Laura W. H. Teer, Esq. (SC Bar No. 16698)
Bradford Neal Martin & Associates, PA
Post Office Box 10410
Greenville, South Carolina 29603

Joshua S. Kendrick, Esq. (SC Bar No. 70453)
Kendrick & Leonard, P.C.
Post Office Box 6938
Greenville, South Carolina 29606

Christopher S. Leonard, Esq. (SC Bar No. 80166)
Kendrick & Leonard, P.C.
Post Office Box 886
Columbia, South Carolina 29202

**Attorneys for Appellants, Marshall Alexander
Chapman, DMD and Chapman Dental, PA**

Wesley D. Few, Esq. (SC Bar No. 15565)
Wesley D. Few, LLC
Post Office Box 9398
Greenville, South Carolina 29604

**Attorney for Respondent,
Samantha Katchick**

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1 he charged you \$4,000 to represent you in this case;
2 right?

3 A Correct.

4 Q Okay. And you have paid all that money?

5 A That is correct.

6 Q Now, later, you hired Mr. O'Shea; is that correct?

7 A Correct.

8 Q And you said that a friend put you in contact with
9 Mr. O'Shea, not David Seay; right?

10 A David Seay and I had gone through and were looking
11 through potential forensic investigators. We did find
12 Mike O'Shea, but I happened to come across him first.

13 Q Okay. And who is your friend that told you to hire
14 Mr. O'Shea?

15 A It was somebody I knew that came into my bar, one of
16 my regulars.

17 Q And why did that person know you needed a forensic
18 investigator?

19 A I asked if anybody knew one.

20 Q Did you ask if he, specifically, knew Mr. O'Shea or
21 if he just knew of a forensic investigator?

22 A I just asked if he knew of any forensic
23 investigators?

24 Q So had you told that regular customer that you had a
25 legal problem that you needed an investigator for?

1 A I did not.

2 Q So you just said, Do you know a forensic
3 investigator?

4 A Correct.

5 Q And forensic means, you know, facts to be used in
6 court. So did you specify that it was an accounting
7 expert that you needed?

8 A Yes.

9 Q Okay. When you went to meet with Mr. O'Shea, did
10 David Seay go with you to that meeting?

11 A He did not.

12 Q Did you pay Mr. O'Shea directly or through David
13 Seay's office?

14 A I have been paying him.

15 Q And I have to ask these questions because we have to
16 figure out where we're at.

17 A That's all right.

18 Q So I'm not trying to give you a hard time, I promise.
19 I need to determine what's out there.

20 So is his bill \$11,000, as in he said I will charge
21 you \$11,000 to do this or was it more, I'm going to charge
22 you hourly and you're going to have to pay that bill and
23 we're at \$11,000?

24 A I paid hourly.

25 Q How much did he charge you hourly?

1 A I don't recall off the top of my head. It's been a
2 long time.

3 Q Okay. Was it more or less than a hundred dollars?

4 A I want to say more.

5 Q So is the \$11,000 what you owe him for the work he
6 did on your criminal defense case, or is some of that for
7 the work done in this case for him to come and testify?

8 A As far as I know, that's just for what he's already
9 done. I'm not sure if I will owe him for this. I'll find
10 out about that.

11 Q Okay. And is he -- is your balance with him zero?

12 A I'm still paying on him.

13 Q So do you have an estimate of how much you have paid
14 so far?

15 A I don't off the top of my head. I just take him
16 money whenever I can.

17 Q And then you, also, hired Ryan Beasley; right?

18 A Correct.

19 Q When did you hire Ryan Beasley?

20 A I want to say around June, maybe.

21 Q Okay. And who gave you Mr. Beasley's name?

22 A Mike O'Shea.

23 Q And how much did Mr. Beasley charge you?

24 A \$20,000.

25 Q And how much have you paid him?

- 1 A I don't know. I'm still paying on him.
- 2 Q How many times have you paid him?
- 3 A A handful.
- 4 Q Okay. I mean, are you close to the 20,000?
- 5 A No.
- 6 Q Okay. So the \$20,000 is kind of still out there;
- 7 right?
- 8 A Correct.
- 9 Q And do you go and pay him in person?
- 10 A I have.
- 11 Q Okay. Because his office is -- is in the same
- 12 building as Mr. Few; right?
- 13 A Correct.
- 14 Q I think the doors are next to each other; right?
- 15 A Correct. He's down the hall.
- 16 Q Is he Mr. Few's cousin, or something? They're
- 17 related, or something?
- 18 A I don't know anything about that.
- 19 Q Is that how you got to Mr. Few, too?
- 20 A Mike O'Shea introduced me to Mr. Few.
- 21 Q So to Ryan and Mr. Few around the same time?
- 22 A Correct.
- 23 Q And -- and I'm not going to ask, I don't want to know
- 24 anything -- and I know that you got in on your direct the
- 25 kind of things you talked to lawyers about. But I don't

1 want to follow up on that. I'm not going to ask you a
2 thing about what a lawyer has told you. But the reason
3 you, initially, went to Mr. Few was so you could file a
4 lawsuit; right?

5 A Correct.

6 Q And at the same time, you went to Mr. Beasley to hire
7 him for the rest of your criminal case?

8 A Correct.

9 Q And that, you think, was in June of 2018?

10 A When I met with Ryan Beasley, yes. I met Mr. Few at
11 the same time meeting Ryan Beasley. I did not hire
12 Ryan -- or Wes Few until -- I think it was probably around
13 January. It was after my charges were dropped.

14 Q Okay. So Mr. Seay is representing you?

15 A Uh-huh.

16 Q And Mr. Seay has presented the forensic accounting
17 report from Mr. O'Shea to the solicitor's office; right?

18 A Correct.

19 Q And according to an exhibit we saw a little bit
20 earlier --

21 And I don't know why I struggle so much with this
22 little machine.

23 THE COURT: It's up here. We're going -- there we
24 go.

25 MR. KENDRICK: All right.

1 BY MR. KENDRICK:

2 Q So this exhibit that we have previously entered -- I
3 want to say it's Exhibit No. 15, but I could be wrong.
4 This is Ms. Kluska, who is the assistant solicitor, and
5 this is on June 27th of 2018; right?

6 A Correct.

7 THE BAILIFF: Judge, it's not coming on up here.

8 THE COURT: I think we can do it from up here.

9 THE BAILIFF: Maybe it timed out.

10 It's on now. Give it a second.

11 BY MR. KENDRICK:

12 Q So at this point in June of 2018, this is prior to
13 you incurring the \$20,000 obligation to Mr. Beasley?

14 A It's in June. So I'm not sure exactly what date in
15 June I hired Mr. Beasley.

16 Q At this point, the solicitor's office has been
17 provided with evidence from Mr. O'Shea, who is an expert
18 working on your behalf; right?

19 A Correct.

20 Q And the assistant solicitor in that letter,
21 essentially, says, I've gotten the accounting report from
22 Mr. O'Shea and I don't know what I'm going to do with the
23 case; right?

24 A That's what it says.

25 Q And then -- and your position is that it's very

1 obvious you didn't commit any crime; right?

2 A Correct.

3 Q But Mr. Seay and Mr. O'Shea have not been able to
4 convince the Prosecutor. So now, you have a new lawyer
5 come in; right?

6 A Correct.

7 Q And what did Mr. Beasley do on your behalf to further
8 the dismissal of the case?

9 A That, I don't know.

10 Q Did he go to any court hearings?

11 A I didn't have any court hearings, other than my
12 preliminary hearing. I don't know if he went down -- I
13 don't know what he did.

14 Q Did he make any phone calls?

15 A He might have.

16 Q And he's a -- I'm sorry. He's a very well-connected
17 lawyer; right?

18 A I don't really know too much about him, other than
19 Mike O'Shea introduced me to him. I know, I think, he
20 spoke with Mr. Seay as well. I don't know what the two of
21 them did.

22 Q And I'm not giving you a hard time. The majority of
23 your damages here appear to be a \$20,000 bill to
24 Mr. Beasley, which you're claiming in this lawsuit; right?

25 A Correct.

1 Q So I just need to figure out, number one, if that has
2 been paid or not. And it sounds like no.

3 A It has not been paid.

4 Q But you don't know how much you owe him?

5 A I don't -- I don't know.

6 Q Do you have any way of keeping track?

7 A I could probably pull some check stubs. I don't
8 know.

9 Q Basically, the payment of the \$20,000 is going to
10 come from this case; right?

11 A The majority of it, yes.

12 Q So did his involvement trigger the dismissal, or do
13 you know?

14 A I do not know. I got the call from David Seay that
15 my charges were dropped.

16 Q And, ultimately, that was a decision the solicitor
17 made; right?

18 A From what David Seay told me, yes, that Alexa had
19 contacted him and told him my charges were being
20 dismissed.

21 Q And that was in November; right?

22 A Correct.

23 Q So about five months after she sends the e-mail
24 saying, I've gotten this report from O'Shea and it sounds
25 like there's an accounting dispute; right?

1 A Correct.

2 MR. KENDRICK: Your Honor, I beg the Court's
3 indulgence.

4 (Pause.)

5 MR. KENDRICK: That's all I have.

6 Thank you very much.

7 THE COURT: Any redirect?

8 MR. FEW: No redirect, Your Honor.

9 THE COURT: All right. You may step down.

10 Next witness.

11 MR. FEW: Can I step out in the hallway and see who
12 all is out there before I --

13 THE COURT: Yeah.

14 (Pause.)

15 MR. FEW: The Plaintiff calls Sarah McGuire. She's
16 the only one out there.

17 THE CLERK: Place your left hand on the Bible and
18 raise your right hand.

19 WHEREUPON,

20 SARAH MCGUIRE,

21 after first having been duly sworn, testified as follows:

22 THE CLERK: State your name, please.

23 THE WITNESS: Sarah McGuire.

24 THE CLERK: Thank you.

25 Please be seated.

DIRECT EXAMINATION

BY MR. FEW:

Q Good afternoon, Ms. McGuire.

A Good afternoon.

Q Thank you for being here.

Tell the jury what you do for a living.

A I'm a licensed social worker with a private practice for mental health therapy.

Q So in a layperson's terms, is it fair to say primarily what you do is counseling?

A Yes, sir.

Q Okay. And part of that counseling is assessment, and so forth, so that you can figure out what type of counseling treatment to provide?

A Correct.

Q And let's go over some of your background. What's your education?

A I have a Master's in Social Work from South Carolina.

Q And where are -- what's your undergraduate degree?

A I have an undergraduate in sociology and political science.

Q And how long have you been involved in the field of -- that you're in today?

A About 24 years.

Q What type of licenses do you hold?

1 A I hold a license -- independent social worker
2 clinical practice is the only license I hold. And then I
3 hold several certifications.

4 Q Didn't you tell me that there's, also, like, a LISW,
5 a supervisor?

6 A I do. I do have my supervisor license as well.

7 Q There's a lot of acronyms in your business; right?

8 A Correct.

9 Q So if I look lost, maybe explain to us all what the
10 acronyms are.

11 A Okay.

12 Q What type of -- do you have any specialized training
13 in the field that you practice in?

14 A I do. I'm specialized in addiction and, also,
15 trauma.

16 Q And then, don't you, also, have some specialized
17 training in EMDR?

18 A Correct. That's a specific type of trauma treatment.
19 I'm certified in that.

20 Q And I believe you told me that things that you use
21 are what's called evidence based; is that right?

22 A Yes, sir.

23 Q Explain to the jury what it means when you say that a
24 treatment is evidence based?

25 A So evidence-based treatment are those treatments that

1 have been peer researched, researched by other
2 professionals. They have a standard that they meet for
3 experience and length of time they've been practicing, as
4 well as effective types of treatment across the board.

5 So EMDR is, actually, the gold standard or
6 recommended -- most recommended by the Department of
7 Veteran Affairs for trauma treatment.

8 Q And so that's -- you have EMDR training. What is
9 CBT?

10 A Cognitive Behavioral Therapy.

11 Q Is that new? Or has that been around?

12 A That's been around for a very long time.

13 Q Is that evidence based?

14 A It is, yes, sir.

15 Q What about flash technique?

16 A The flash technique has been around for about a
17 decade. It is, also, researched and evidence based.

18 Q And what is SCID?

19 A That is the booklet that's used to diagnose.

20 Q What does it stand for?

21 A That, I'm not sure off the top of my head.

22 Q Structured Clinical Interview --

23 A Yes, sir.

24 Q Or DSM-5?

25 A Correct.

1 Q What's DSM-5?

2 A The diagnostic and statistical manual fifth edition.
3 That's put out by the American Psychiatric Association for
4 diagnosing.

5 Q Do you have any -- I know these are a lot of similar
6 things, but what about certifications?

7 A I am certified as a sex addiction therapist. I am
8 certified as a clinical partner specialist for trauma,
9 betrayal trauma. And then I am certified in EMDR.

10 Q And do you -- what do you do to stay -- other than
11 just your career and your practice in counseling, what do
12 you do to stay up-to-date on updates in your profession?

13 A So for my license, I have to have 40 hours of
14 continuing education every two years. For my sex
15 addiction certification, I have to have 15 hours every two
16 years. For my clinical partner specialist, I have to have
17 20 years every two years. And for my EMDR certification,
18 I have to have 12 hours every two years of continuing
19 education. So those are educational opportunities put out
20 by various bodies that are approved for continuing
21 education in the field.

22 Q The first one you mentioned for your license, that's
23 through the South Carolina Department of Labor, Licensing,
24 and Regulation; right?

25 A Correct.

1 Q Is that the LISW?

2 A That is my LISW, yes.

3 Q And I added that up and that's -- what you just
4 described is 40 hours a year, basically, that you have to
5 do to keep up with all of those?

6 A That's minimum.

7 Q You can spread it out over two years?

8 A Correct.

9 Q And then have you written any papers or anything
10 recently?

11 A No, sir, not any that have been published.

12 Q What about presentations or any type of seminars that
13 you're involved in?

14 A I have presented on the topic of sex addiction for
15 local therapists.

16 Q And I believe you started something called the
17 Saturday series?

18 A Correct. I started that about two years ago. It's a
19 continuing education platform for other therapists and
20 social workers to get their continuing education hours.

21 Q And you work to put together the agenda and the
22 program for that?

23 A Correct. I recruit local therapists who have
24 specialties in different areas to present to other
25 therapists.

1 Q And I assume the idea is to present timely emerging
2 topics that people want to learn about?

3 A Correct.

4 Q Has that been successful?

5 A It is growing.

6 MR. FEW: Your Honor, at this time, I would offer
7 Sarah McGuire as an expert in the field of counseling and
8 trauma treatment.

9 MR. KENDRICK: No objection, Your Honor.

10 THE COURT: Counseling and trauma treatment.

11 BY MR. FEW:

12 Q What would you describe it as? Is that right?

13 A Addiction and trauma, yes. In this case, it would be
14 trauma.

15 THE COURT: So an expert in the field of counseling
16 and trauma treatment?

17 MR. FEW: Yes, Your Honor.

18 THE COURT: All right. Mr. Kendrick, no objection;
19 is that correct?

20 MR. KENDRICK: No objection.

21 THE COURT: All right. Ladies and gentlemen,
22 normally, witnesses are only allowed to testify as to
23 facts, what they saw, smelled, et cetera. We do allow
24 some witnesses to give opinions in cases. And those are
25 what we call expert witnesses.

1 And so if a witness is qualify -- they can be
2 qualified based on their education, their experience, the
3 training that they have. And so the rules of evidence
4 allow witnesses who have been qualified as an expert in
5 their field, their specialty to give opinions.

6 Now, just because they're classified as an expert
7 does not mean that their testimony is given any greater
8 weight. You give -- as judges of the facts and the
9 credibility of the witnesses, you give those witnesses the
10 weight of their testimony as you see fit. But we do allow
11 in our rules someone who has been qualified as an expert
12 to give an opinion.

13 MR. FEW: Thank you, Your Honor.

14 BY MR. FEW:

15 Q Ms. McGuire, before we go into your opinions -- you
16 do have some opinions about the Plaintiff; is that right?

17 A I do.

18 Q Let's talk about how you gathered the necessary
19 information to get you to the point where you had -- your
20 first opinion that you developed about Samantha Katchick.

21 So just start by telling the jury what you did when
22 she first came in. And just walk us through the process.

23 A Okay. So, typically, at the first session, I do not
24 have a set agenda or a set of different questions I walk
25 through. What I have realized over two decades is by the

1 time someone makes it to my office, they really need to go
2 in whatever direction they need to go in.

3 So I first assessed why Ms. Katchick wanted to come
4 in and then just talked through what she was experiencing
5 present day that she wanted to work on and what her goals
6 were.

7 Q And then I've come to understand that there are
8 various -- I'll call them protocols that can be utilized
9 to delve into those types of things; is that right?

10 A Correct. Different assessment tools.

11 Q And what assessment tools did you use in assessing
12 Samantha Katchick?

13 A I used six or seven different ones. The first one
14 was a psychosocial assessment. I used the brief trauma
15 questionnaire, the impact of events scale, trauma life
16 history, and life stressor scale. I'm missing a couple.
17 But they're all standardized assessments that are
18 recommended by the Department of Defense or the Center for
19 PTSD.

20 Q And a lot of these, my notes from meeting with you
21 say, they involve a self-report. So it's something --
22 what does that mean?

23 A That means Ms. Katchick went through each of the
24 self-reports and answered the questions and did the
25 assessments.

1 Q And then she would bring that information and give it
2 back to you?

3 A Correct. I would periodically go in and out and
4 collect the assessments as she was doing them.

5 Q So you said you used the biopsychosocial history?

6 A Correct.

7 Q The life stressor checklist?

8 A Yes.

9 Q The trauma screening questionnaire?

10 A Correct.

11 Q The brief trauma questionnaire?

12 A Yes.

13 Q The trauma history screen?

14 A Yes.

15 Q The inventory of psychosocial functioning?

16 A Yes, sir.

17 Q The impact of event scale?

18 A Yes.

19 Q And the PTSD checklist for DSM-5?

20 A Correct.

21 Q And then, also, the structured clinical interview?

22 A For diagnostic.

23 Q So in respect to the -- I'll call them normal
24 patients, but have you done more or less than you would
25 normally do in assessing Samantha Katchick?

1 A I did more standardized assessments with her.

2 Q And -- and to be clear, there's a -- you've been
3 retained by her for counseling and she pays you for that;
4 right?

5 A Yes, she does.

6 Q And you've, also, been retained by my office to
7 prepare an expert report and testify in this case?

8 A Correct.

9 Q And you've given us a breakdown of what that is. And
10 we would stipulate it as an exhibit.

11 I'm not going to go into putting this up. This is
12 just an invoice. Samantha Katchick has paid you
13 approximately \$2,550?

14 A For individual therapy.

15 Q And my office has retained you on, like, an hourly
16 basis. And I think we've paid you \$2,700 up to this
17 point?

18 A Through October, yes, sir.

19 Q And what's the hourly rate that you're charging my
20 firm for your expert testimony?

21 A \$150 per hour.

22 Q Okay. So I learn something every time I meet with
23 you. Is there anything else that you would want to tell
24 somebody that's trying to understand what you've done with
25 Samantha Katchick that would help them better understand

1 why you have the opinions that you have?

2 A Typically, I do not give as many assessments as I do.
3 One of the reasons I gave so many assessments to
4 Ms. Katchick was to make sure that across all of the
5 scales her answers were reliable and valid, meaning they
6 were consistent across each of the checklists she gave and
7 each of the answers was consistent across the board as
8 well.

9 Q And then something popped in my head. Is it fair to
10 say that people -- everybody has experienced some trauma
11 in their life?

12 A I would say, yes, sir.

13 Q Even if it's as little as not catching a red light;
14 right?

15 A Correct.

16 Q But that probably wouldn't make it to the DSM, not
17 catching a red light, would it?

18 A No.

19 Q So did you identify other traumatic events that
20 Samantha Katchick had experienced in her life?

21 A She did identify several, yes, sir.

22 Q And did you do any work to differentiate those from
23 the arrest that is the subject of this lawsuit?

24 A Yes, sir. We did trauma treatments, specifically,
25 around the birth of her second son to rule out that any of

1 that trauma was exacerbating the current trauma that she
2 was reporting based on the accusations and everything that
3 came after.

4 Q And so what's your opinion about -- what is your
5 opinion about what Ms. Katchick has endured in
6 professional terms, based on being arrested and going
7 through everything that she went through and getting the
8 charges dismissed?

9 A It was traumatic. I would consider that a trauma for
10 her.

11 Q And do you give it a terminology?

12 A In terms of?

13 Q I think you've -- is it a major depressive episode or
14 how -- what do you call it?

15 A Yes. So the initial diagnostic was adjustment
16 disorder unspecified, which I assign to every client who
17 comes through the door until further assessment can be
18 done.

19 Based on the results of the SCID, I diagnosed her
20 with major depression. And then, also, she had
21 characteristics or symptoms of PTSD, and then
22 characteristics and symptoms of panic disorder.

23 Q And did you -- the PTSD criteria, there's several --
24 there's a -- there's like a criterion in A, B, C, D, and
25 E; is that right?

1 A Correct. There's several more, but, yes, sir.

2 Q And so did she meet the highest -- does she have
3 PTSD?

4 A She does not. For PTSD -- unfortunately, it is a
5 term that gets thrown around a lot. For PTSD, you have to
6 meet criterion A, which specifies the event that occurred.
7 So although a lot of people who experience trauma have
8 symptoms similar or related to PTSD, if the event does not
9 meet criterion A, you cannot assign that diagnosis.

10 Q And tell the jury what the thresholds are for
11 criterion A? It's like death --

12 A So criterion A, you have to be exposed to death or
13 threatened death, exposed to, threatened or actual
14 physical injury, or exposed to threatened or actual sexual
15 violence in the following ways: You have to, actually,
16 experience the event. You have to witness the event. You
17 have to have the event -- or you have to have known about
18 the event that happened to a loved one or it has to be
19 repetitive exposure to the event. And that is most likely
20 reserved for job-related events, firefighters, law
21 enforcement, military personnel, things like that.

22 Q So did you have any opinions about Ms. Katchick and
23 the symptoms from the criterion B on the PTSD?

24 A Yes. She met several of those.

25 Q Do you recall what those were?

1 A I can give you the list. I'm not sure where in the
2 criterion they fit. But she met irritability, flashbacks,
3 intrusive thinking, depression, anxiety.

4 Q If I showed you a copy of your report, would that
5 help you?

6 A Yeah, it would.

7 Q I'm just going to hand you this. This is for
8 illustrative purposes. Is that a copy of your most recent
9 diagnostic analysis?

10 A Yes, sir.

11 Q And so does that refresh your memory about some of
12 the specifics of your opinions regarding the criteria B,
13 C, D, and E?

14 A Correct.

15 Q Okay. And so tell the jury anything else in
16 criterion B that you diagnosed?

17 A So criterion B are intrusion symptoms. Those are
18 repeated disturbing or unwanted memories of the stressful
19 experience, which she met. Feeling very upset when
20 something reminded you of the stressful event, which she
21 met. And having strong physical reactions when there was
22 a reminder of the stressful event. For example, heart
23 pounding, trouble breathing, sweating, things like that.

24 Q What about criterion C? And tell the jury what
25 criterion C, if it has a category description, what that

1 would be.

2 A Persistent avoidance of the stimuli.

3 Q And did -- what were your opinions regarding
4 criterion C?

5 A The two that she met in that was avoiding memories,
6 thoughts, or feelings related to the stressful experience,
7 and avoiding external reminders of the stressful
8 experience. For example, avoiding people, places,
9 conversations, or activities.

10 Q And about how long did it take you to -- how many
11 counseling sessions did it take before you were able to
12 reach these conclusions?

13 A Four or five, not many.

14 Q Okay. Tell us about -- did she meet anything in
15 criterion D of the PTSD?

16 A She did, negative alterations in cognition and mood,
17 blaming yourself or someone else for this stressful event
18 or what happened after it, having strong negative
19 feelings, such as a fear, horror, anger, guilt, or shame.
20 We saw that come up a lot. And then loss of interest in
21 activities that she used to enjoy.

22 Q And there's another criterion, I'm guessing?

23 A Criterion E.

24 Q And what's that one?

25 A Irritable behavior, anger outbursts, acting

1 aggressively, having difficulty concentrating, and trouble
2 falling or staying asleep.

3 Q And it's your -- those are your opinions that she --
4 those were things that she experienced?

5 A Those are all things that she reported consistently
6 across the assessments that were provided to her.

7 Q And is there any other criterion?

8 A Criterion F, which is duration and causing clinically
9 significant distress or impairment.

10 Q And what -- can you kind of explain what -- how that
11 affected her or why?

12 A Yes. So the duration of the disturbance in each of
13 the criteria has to be more than a month. And because I
14 did not meet Ms. Katchick until about five years after the
15 original that -- those were, obviously, still met.

16 And then clinical significant distress or impairment
17 in social, occupation, or other important areas of
18 functioning. So we look at relationship, family, work,
19 social, what each of those areas are and how those have
20 been affected by the traumatic event or events.

21 Q And so any other opinions of what she's been through
22 before that? I want you to tell us about what you did to
23 help her out with it in terms of treatments.

24 A All of her criteria that she reported or
25 self-supported, I would see show up in sessions when she

1 would talk about the events, tearful, fearful. She would
2 sometimes shrink back or slump on the couch. So all of
3 the symptoms that she reported, she consistently reported
4 in session with me as well.

5 Q Any instance, in particular, that you can remember
6 that was particularly traumatic for her?

7 A I think the one that she described the most was after
8 the charges had been dropped, she was texted by
9 Dr. Chapman and asking to go grab a beer after the charges
10 were dropped. That's what gave her the panic disorder
11 symptoms, or what I describe as panic disorder symptoms.

12 Q What types of -- have you used this EMDR in your
13 treatment with Sam?

14 A I have.

15 Q Has it been helpful?

16 A I believe so. She has reported a decrease in some of
17 the intrusive symptoms.

18 Q Do you think -- how long do you think she would have
19 to use -- go through -- receive the EMDR in order to get
20 back -- to overcome it, if that's even possible?

21 A It is possible. We have talked. But because of the
22 ongoing nature of what she has been going through, a lot
23 of times we had to pause EMDR treatment to work on the
24 immediate need, upcoming court dates, fear of facing
25 Dr. Chapman in court, things like that. So EMDR would be

1 put on hold or pause.

2 I would probably say -- at the conclusion of this, I
3 would probably say six to eight more sessions based on
4 what comes out of this, and anything else that may have
5 come up.

6 Q And so EMDR, actually, requires the person receiving
7 the treatment to kind of revisit the thing that they're
8 wanting to bury; is that right?

9 A Correct.

10 Q Whereas, the flash technique does not require the
11 client to consciously engage with the traumatic memory; is
12 that right?

13 A Correct. We bring it up to discuss it. But then
14 they engage with a positive focus, instead of the
15 emotional negative focus.

16 Q And then -- so other than EMDR and the cognitive
17 behavioral -- those are different; right?

18 A They are.

19 Q And then flash is different from each one of those as
20 well?

21 A Correct.

22 Q Anything else that you -- any other techniques that
23 you've used to help Samantha get past what she's dealing
24 with?

25 A Those were the three big ones.

1 Q Is there -- I hate to ask a question like this. But
2 is there anything else that you've done in your treatment
3 that you think is -- that I haven't asked you about that
4 would be important for those of us in this room to
5 understand what she's been through? And I guess -- let me
6 scratch that and put it another way.

7 You and I have talked about the -- how what you do
8 with people is analogous to someone recovering from a
9 broken arm. My wife broke her ankle mowing the lawn
10 yesterday. But explain to the jury, like, what -- and if
11 you can, you know, how it's comparable to recovering from
12 an emotional injury with a physical injury, something that
13 we can grasp a little bit better.

14 A Sure. I think a lot of times with a physical injury
15 because you can see it, there's a connection between what
16 has happened and the effect of what has happened. A lot
17 of times with emotional or phycological trauma, there's
18 not that direct connection. So a lot of times, you see
19 people walking around or semi-functioning, but internally
20 they are crumbling.

21 So it's almost kind of a disease from the inside out
22 is another way to look at trauma, which is opposite of
23 physical trauma, which you want to heal from, but you can
24 see it. So emotional and psychological trauma is
25 sometimes more damaging because it is internal that you're

1 processing it.

2 Q Again, you feel like y'all have made progress in
3 helping Sam recover from her emotional trauma related to
4 being arrested?

5 A I do, based on what she has reported, yes, sir.

6 MR. FEW: Thank you, Ms. McGuire.

7 That's all the questions I have for now.

8 THE COURT: Cross.

9 CROSS-EXAMINATION

10 BY MR. LEONARD:

11 Q Good afternoon, Ms. McGuire.

12 How are you doing this afternoon?

13 A I'm good. How are you?

14 Q I'm doing well. I've just got a couple questions to
15 go over about the treatment of Samantha. You started
16 seeing her in October of 2022; is that right?

17 A Yes, sir.

18 Q So that was about four and a half years after the
19 breach of trust arrest?

20 A Correct.

21 Q And Samantha was referred to you by her attorney?

22 A Correct.

23 Q And so you spoke to Mr. Few shortly after your first
24 session with Samantha; is that right?

25 A I believe it was a couple weeks after, yes, sir.

1 Q So you were retained by Mr. Few, as well as by
2 Samantha at roughly the same time?

3 A Yes.

4 Q And you've been keeping her attorney up-to-date on
5 her progress. I think there was a meeting, about a
6 two-hour meeting back in October?

7 A Yes. That was to prepare for the November court
8 date.

9 Q So testimony preparation?

10 A Correct.

11 Q And I think as of that date, you've charged \$2,700.
12 Is that what was the testimony, for the court preparation
13 and testimony?

14 A Correct.

15 Q And that doesn't include today?

16 A Correct. It doesn't include anything after that
17 October date.

18 Q And that's more than Samantha has, actually, incurred
19 for the treatment?

20 A The rate is lower, yes, sir.

21 Q But Samantha makes those payments for her treatments?

22 A She does.

23 Q And Mr. Few makes the payments for today?

24 A Yes.

25 Q And you've -- you said you've had about 20 or so

1 sessions with Samantha at this point?

2 A Yes.

3 Q That initial session you did with Samantha, you
4 talked about the assessment protocols?

5 A Uh-huh.

6 Q And there were seven of them?

7 A Standardized assessments, yes, sir.

8 Q These protocols, we use the term self-report.
9 That's, basically, where Samantha provides the answers on
10 the written questionnaire?

11 A Correct.

12 Q And some of these questionnaires are as simple as
13 "yes" or "no" questions?

14 A Yes, sir.

15 Q And then some kind of go on to give scales of zero to
16 10, zero to five; is that right?

17 A Yes, sir.

18 Q But all of these answers are provided by Samantha?

19 A Correct.

20 Q So there's not an objective basis on those protocols?
21 This is purely Samantha's answers to the questions?

22 A Correct. That's why I administered more than one.

23 Q Right. And at the time Samantha came to you, you
24 understood what she believed to be the traumatic event in
25 her life that was causing her condition; right?

1 A Correct.

2 Q And you spoke to her attorney about this case and the
3 underlying facts?

4 A Correct.

5 Q And one of those protocols that you did with Samantha
6 was the life stressor checklist; is that right?

7 A Uh-huh.

8 Q And that's about 30 questions, "yes" or "no," have
9 you experienced these things?

10 A Uh-huh.

11 Q And Samantha, like a lot of people, but especially
12 Samantha, she's been through some fairly traumatic events
13 in her life. Did she respond "yes" to that?

14 A Correct. She identified several.

15 Q She identified that she was involved in a natural
16 disaster; correct?

17 A Uh-huh.

18 Q Death of friends?

19 A Correct.

20 Q Car accidents?

21 A Correct.

22 Q Two divorces?

23 A Correct.

24 Q Severe money issues? Issues with the birth of her
25 children?

1 A Her second child.

2 Q Her second child. And then in high school, I think
3 her father passed?

4 A Correct, when she was 17, I believe.

5 Q So, obviously, there's a lot of trauma-based events
6 that she's endured?

7 A That she identified, yes.

8 Q But you're able to hone in on just one as the cause
9 of her anxiety and her condition?

10 A Yes, sir.

11 Q And you do that with these self-reported assessments
12 that she completed?

13 A Correct.

14 Q And because the outcome of all those protocols is the
15 same, you feel confident that that's the reason?

16 A Correct.

17 Q But you base that outcome on the reports; right?

18 A The outcome of?

19 Q You base your conclusion on what she's stated in her
20 reports, in her protocols?

21 A Correct.

22 Q And so -- and I'm not suggesting anything about
23 Samantha. But a client who was intent on misleading you
24 could falsify or exaggerate those answers?

25 A Yes. But then the trauma treatment would be

1 ineffective.

2 Q Absolutely. And you don't believe that -- Samantha
3 doesn't have the requirements of PTSD. But she's,
4 obviously, been through trauma; right?

5 A Correct.

6 Q And in reaching this outcome, did you review any of
7 Samantha's previous medical history?

8 A I did not, only what she reported.

9 Q Had she sought treatment for any of these conditions
10 before?

11 A Are we talking about specific traumas? Or what
12 conditions are you referring to?

13 Q The panic, anxiety, all the conditions that you kind
14 of list out as --

15 A I believe she is and has been seeing a doctor for
16 medication management, yes, sir.

17 Q So she's on medication for these issues?

18 A For the anxiety and depression.

19 Q Does that affect the outcome of these protocols?

20 A No.

21 Q Did you note any of these in your report that Ativan,
22 Xanax, Klonopin, Prozac, any of those have any affect on
23 these protocols?

24 A No, sir.

25 Q You use a type of therapy, EMDR. What does that

1 stand for?

2 A It stands for Eye Movement Desensitization and
3 Reprocessing.

4 Q But it's very successful; right?

5 A Absolutely.

6 Q I read some of the research that in single-trauma
7 victims, three sessions can cure 85 percent of patients?

8 A If that is what the research you read says, yes.

9 Q This is provided by you?

10 A I don't know what study you're looking at, but, yes.
11 It is highly effective, which is why it's recommended by
12 top organizations.

13 Q Another one you note is a hundred percent after six
14 sessions. And then even with combat veterans with PTSD,
15 77 percent. When you say cured, is it processed? Is that
16 the word?

17 A Processed is more effective, yes, sir.

18 Q 77 percent of combat veterans with PTSD after 12
19 sessions. So highly effective?

20 A Uh-huh.

21 Q And you mentioned that there were other trauma issues
22 with Samantha that had to be addressed prior to being able
23 to deal with her current conditions?

24 A They didn't have to be addressed, but I wanted to
25 address the birth of her second son. Because she was

1 reporting that as the highest level of trauma after this
2 one. So I wanted to make sure the symptoms and traumatic
3 effect of that was not exacerbating this.

4 Q And that has been processed?

5 A Correct. And there was no effect determined.

6 Q So she still, based on her own answers, says that
7 this arrest four and a half years ago is the main trauma
8 in her life?

9 A Correct.

10 Q Causing these conditions?

11 A Correct.

12 Q You've now had 21 sessions with her?

13 A Roughly.

14 MR. LEONARD: No further questions.

15 THE COURT: Any redirect?

16 MR. FEW: No redirect, Your Honor.

17 THE COURT: All right. You may step down.

18 Thank you.

19 THE COURT: Next witness.

20 MR. FEW: May I step out in the hallway again?

21 THE COURT: Yes.

22 (Pause.)

23 MR. FEW: The Plaintiff calls Althea Holland.

24 MR. KENDRICK: Your Honor, can we approach for just a
25 second?

1 THE COURT: Yeah.

2 (WHEREUPON, a bench conference was held.)

3 THE COURT: We've just got to take care of something
4 for just a few minutes. Okay.

5 (Pause.)

6 THE COURT: Come on up here, Ms. Holland.

7 THE CLERK: Ms. Holland, please place your left hand
8 on the Bible and raise your right hand.

9 WHEREUPON,

10 ALTHEA FAITH HOLLAND,
11 after first having been duly sworn, testified as follows:

12 THE CLERK: Please state your full name for the
13 record.

14 THE WITNESS: Althea Faith Holland.

15 THE CLERK: Thank you.

16 You may be seated.

17 DIRECT EXAMINATION

18 BY MR. FEW:

19 Q Good afternoon, Ms. Holland.

20 How are you?

21 A I'm fine.

22 How are you?

23 Q You and I met in person for the first time just a
24 minute ago; right?

25 A Uh-huh.

1 Q We've spoken on the phone a few times?

2 A Yes.

3 THE COURT: Pull that microphone down just a little
4 bit.

5 Thank you.

6 BY MR. FEW:

7 Q Tell the jury what your profession is.

8 A I'm a dental hygienist.

9 Q And how long have you been a dental hygienist?

10 A 43 years.

11 Q And that's a license with LLR?

12 A Yes, sir.

13 Q And at any point in time, did you work at Chapman
14 Dental?

15 A Yes.

16 Q Do you remember the dates of your employment?

17 A I don't quite remember the date I started. But I
18 worked there about six and a half, seven years.

19 Q And to kind of put things in a timeline because we've
20 been hearing evidence that you haven't heard, was Samantha
21 Katchick working at the practice when you started working
22 there?

23 A Yes.

24 Q So she was already there?

25 A Uh-huh.

1 Q And what did she do at the practice?

2 A She was the front desk person.

3 Q And who else was working there when you first started
4 working there?

5 A Angie Hawthorne, Dr. Chapman, when I first started --

6 Q It's not a test, or anything.

7 A I was just thinking. I don't know if Brooke was
8 there yet or not.

9 Q Brooke, eventually, became involved somehow in the
10 practice?

11 A Yes.

12 Q What -- what do you recall about Brooke Chapman's
13 involvement at Chapman Dental prior to Samantha being
14 terminated?

15 A She came in and helped with the bookkeeping and
16 accounts.

17 Q What's Eaglesoft?

18 A It's what people in the dental field use for their
19 computers. It -- it's a program that -- that we all use.
20 There's a couple different ones, but a lot of dental
21 offices use Eaglesoft.

22 Q And you used Eaglesoft when you worked at Chapman
23 Dental?

24 A Uh-huh.

25 Q Have you ever used it at any other places that you've

1 worked?

2 A Yes.

3 Q And you're still working now every Wednesday; right?

4 A Uh-huh.

5 Q As a dental hygienist?

6 A Yes, sir.

7 Q And did you -- what did you do with Eaglesoft when
8 you were working at Chapman Dental?

9 A Well, my responsibility was to put notes in the
10 chart, do perio charting, do my notes on the patients, go
11 over medical history, just check out what I did that day.
12 I put it in the computer. Like, if I did a cleaning,
13 X-rays, and exam, I would put that in and it would be
14 checked out at the front.

15 Q So I'm guessing over 90 percent of what you did had
16 to do with your role as a dental hygienist?

17 A Yes.

18 Q Did you ever enter payments in Eaglesoft?

19 A No.

20 Q Do you know if Eaglesoft had the capability to take
21 in payment information?

22 A I'm pretty sure it did. That's how everything was
23 logged in.

24 Q Do you know anything about what's called these
25 end-of-day reports?

1 A Not -- not really, other than I just -- I didn't deal
2 with that kind of thing. But I think it's just what they
3 ran at the end of the day to see if what you did on the
4 patient matched up with what you brought in or what went
5 out to insurance. I mean, that's kind of my thought and
6 opinion on it.

7 Q And so do you recall Samantha's work schedule when
8 you were at Chapman Dental?

9 A I think she had the same work hours that we all did,
10 except I think it was on Wednesdays that she left early
11 because she had another job that she went to.

12 Q And that was pretty much every Wednesday, as far as
13 you know?

14 A I think so.

15 Q About what time did she leave on Wednesdays?

16 A I couldn't tell you. It was sometime in the afternoon,
17 like, maybe after lunch.

18 Q Did the practice shut down when she left?

19 A No.

20 Q Do you recall her ever taking vacation?

21 A I don't recall.

22 Q What about work on Saturday, did you ever work on
23 Saturdays?

24 A Yes.

25 Q Was that on the schedule or was that something that

1 would have been per a specific request from Dr. Chapman?

2 A It was per a request from him.

3 Q And do you know who would enter payments on Saturdays
4 when you and he were working?

5 A I don't know.

6 Q Was Samantha ever there on Saturdays?

7 A Samantha was not there on Saturdays.

8 Q Do you know who all would enter payments in the
9 Eaglesoft system during the time period you were working
10 at Chapman Dental?

11 A It would have been either Samantha, or it would have
12 been Dr. Chapman himself. It would have been Brooke or,
13 possibly, Angie Hawthorne. And I forgot to say Angie
14 Hawthorn. She worked there. I just remembered.

15 Q Angie Hawthorne?

16 A Yes.

17 Q You mentioned her?

18 A Yes.

19 Q Very confusing because you're AH and she's AH in the
20 initials. Was there ever a break in your employment from
21 the time you started until the time you quit working
22 there?

23 A No.

24 Q And were you ever made aware of the fact that Sam was
25 arrested?

1 A I -- I don't think I knew that until, like, way
2 later. I -- I didn't know that.

3 Q Do you recall the -- go ahead.

4 A I knew there was a problem, but I didn't know she had
5 been arrested.

6 Q Had you ever been told that there was a reason for
7 why she was terminated?

8 A I -- I don't know if I recall, specifically.

9 Q Okay. At some point in time, you did learn that Sam
10 had been arrested. And then you, also, learned that this
11 lawsuit was pending; right?

12 A Yes.

13 Q Did you ever have any communications with Dr. Chapman
14 about what your testimony would be in the lawsuit?

15 A He -- he came to us -- when I say "us," he came to
16 Angie and I one day and said that Samantha had a lawsuit.
17 And that he would tell us -- if we were called to testify
18 that he would tell us what to say.

19 Q And how did you -- how did you take that?

20 A Well, I don't know that I said anything to him at the
21 time. But I remember saying to Angie later, I said, Well,
22 you know, number one, I think for myself. And I'm not
23 going to let somebody else tell me what to say. I'm going
24 to say what I think is true and fair. So I just -- I said
25 to Angie -- I said, Angie, If we get called, then we have

1 to tell the truth, plain and simple.

2 Q Are you aware of whether any cash payments were kept
3 in the practice?

4 A I think we had, like, a petty cash drawer.

5 Q Do you know if it was locked?

6 A I don't know.

7 MR. FEW: Just one second.

8 (Pause.)

9 BY MR. FEW:

10 Q Did you ever see anybody -- do you have any knowledge
11 of anybody doing anything with the cash that was in that
12 envelope at the practice?

13 A Huh-uh.

14 Q Do you have any knowledge or have you ever heard
15 anything about Dr. Chapman or anybody taking any of the
16 cash out to use?

17 A I mean, well, he would have had access to it. I
18 mean, I never -- I never saw anything personally.
19 Because, usually, I was busy with a patient. But, I mean,
20 anybody would have had access to that.

21 Q So when you say "anybody," anybody that worked there?

22 A Uh-huh.

23 MR. FEW: That's all the questions --

24 THE WITNESS: I mean, I've seen the drawer open
25 before when I'm dismissing a patient. But as to what's in

1 that drawer, you know, any amount, or whatever, I don't
2 know.

3 MR. FEW: Thank you so much.

4 That's all the questions I have.

5 THE COURT: All right. Cross.

6 MR. KENDRICK: No questions, Your Honor.

7 Thank you.

8 THE COURT: All right. You may step down Ms. Holland.

9 Thank you.

10 MR. FEW: The Plaintiff call Mike O'Shea.

11 THE CLERK: Mr. O'Shea, please place your left hand
12 on the Bible and raise your right hand.

13 WHEREUPON,

14 MICHAEL FRANCIS O'SHEA

15 after first having been duly sworn, testified as follows:

16 THE CLERK: Thank you.

17 Please state your full name for the record.

18 THE WITNESS: Michael Francis O'Shea.

19 THE CLERK: Thank you.

20 You may be seated.

21 DIRECT EXAMINATION

22 BY MR. FEW:

23 Q Now, I know what your middle name is.

24 A After all these years.

25 Q Good afternoon, Mr. O'Shea.

1 You and I have known each other for over 20 years;
2 right?

3 A We have.

4 Q Through, initially, a professional relationship;
5 right?

6 A Yes.

7 Q Occasionally, we get together and play in a charity
8 golf tournament together; right?

9 A Every so often.

10 Q Tell the jury what you do for a profession.

11 A I am a -- for the last 33 years have a forensic
12 accounting practice which, basically, involves everything
13 from corporate due diligence to records inspections. I,
14 also, regularly serve as a court-appointed receiver in a
15 number of counties in South Carolina, also, in Florida.

16 Q And to be clear, you're not a CPA; right?

17 A I am not, no.

18 Q What -- what's your educational background?

19 A I have an Associate's in Business Administration from
20 Union College and a Bachelor's in Management Accounting
21 from [inaudible] University from many, many years ago.

22 Q Is that more than 10 years ago?

23 A Absolutely.

24 Q Have you ever been identified, recognized as an
25 expert witness in the field of forensic accounting in any

1 court?

2 A Yes, in a number of courts, federal, state,
3 bankruptcy, federal bankruptcy court, but on numerous
4 occasions, yes.

5 Q And one case I remember you working on, I believe, is
6 you were involved in the Home Gold?

7 A I was. Excuse me. My apologies. I was the U.S.
8 trustee's lead investigator on that case that lasted
9 several years.

10 Q And what type of -- do you hold any licenses?

11 A I maintain a private investigator's license. We
12 normally don't do that type of work, but it's required in
13 order to subscribe to certain proprietary law enforcement
14 data bases that we use in our work. And I'm a member of a
15 number of organizations, Certified Fraud Examiners,
16 Certified America College of Forensic Examiners in
17 Accounting. I've served on the board or as an officer of
18 everything from Legal Medical Investigators Association,
19 Association of British Investigators, things like that.

20 Q Now, I'll ask you if -- I asked you if you were
21 qualified. Have you been disqualified as an expert
22 witness in the field of forensic accounting?

23 A No, I have not.

24 Q Have you ever been denied expert certification in any
25 case where you've been offered as an expert in the field

1 of forensic accounting?

2 A No.

3 Q What do you do to stay current with advancements and
4 just --

5 A Well, for starters, a PI license requires a certain
6 number of CEUs. And I attend some of those and teach some
7 of those. SLED gives me credit for that. And then I take
8 continuing education courses through Certified Fraud
9 Examiners or American College of Forensic Examiners on a
10 regular basis.

11 MR. FEW: Your Honor, at this time, I'd offer Mike
12 O'Shea as an expert in the field of forensic accounting.

13 THE COURT: Any objection to or voir dire?

14 MR. KENDRICK: No, Your Honor.

15 THE COURT: All right. The witness will be qualified
16 as an expert in the field of forensic accounting.

17 Ladies and gentlemen, the same instruction I just
18 gave to the last expert applies to this one.

19 BY MR. FEW:

20 Q Mr. O'Shea, tell the jury -- well, do you know
21 Samantha Katchick?

22 A Yes, I do.

23 Q How do you -- tell the jury about how you came to
24 meet her.

25 A My office is in Mauldin and within walking distance

1 of a great little restaurant that's no longer there called
2 the Slow Turtle. And I used to be a regular there for
3 lunch over a number of years. I used to take a lot of
4 clients there, a lot of law enforcement when we were
5 meeting in my office. It became kind of everybody's
6 favorite spot.

7 And one day, the manager approached me and said, I
8 have a friend or a sister of a friend that needs a
9 forensic accountant. And my first thought was sort of a
10 matrimonial thing, which we don't do. And he said, No,
11 no, no, it's a criminal issue.

12 So I made an appointment to meet Ms. Katchick. And,
13 initially, she told me, generally, what had happened.
14 That she had been arrested and that the charges stemmed
15 from the theft of approximately -- I think it was \$3,500
16 over a period of three years. And she told me she worked
17 at a dental office. And that's where the accusations came
18 from and the report to the sheriff's office.

19 And I, basically, told her that that size case wasn't
20 something we would normally handle. Number one, my hourly
21 rate is fairly high. And, number two, my experience is a
22 lot of times it's better to just try to work out a
23 settlement and move on. But she was truly insistent that
24 she didn't care if it was a dollar. She had been
25 arrested. She had been embarrassed in front of all of her

1 friends.

2 I said, Look, who is your criminal attorney?

3 She said, It's David Seay. A gentleman here in town.

4 I said, Let me talk to him. And he sent over some
5 paperwork.

6 And it so happened it was a lot of material -- or
7 some materials, I should say, from a software called
8 Eaglesoft, which is a dental software. And I've had
9 probably, at least, six cases in my career that have
10 involved dental practices and either Eaglesoft or Dentrrix,
11 which is another dental-type software.

12 So I took a quick look at it. And a lot of things
13 just kind of didn't add up. I said to her, Look, I'll
14 tell you what, I'll look at this paperwork. I gave her an
15 engagement letter for a dollar just so that my work could
16 be given to her attorney.

17 And I wrote a little report just indicating what I
18 felt was more than likely inaccurate on the moving papers
19 that were used to cause an arrest. And I gave it to her
20 attorney and, quite frankly, I didn't think anything of
21 it.

22 But part of my little report, it was on a couple of
23 pages, was that I didn't have enough information to form a
24 complete opinion. We can't -- when we do our work, we
25 kind of have to see everything to do with a particular

1 matter. We can't just look at one page from here and
2 another page from two months later, or something like
3 that.

4 So I kind of thought that would be the end of it.
5 And I guess maybe it was in May, maybe around August, her
6 attorney called me and said, Well, I sent your report to
7 the solicitor's office and said you didn't have enough
8 information. We've now got a substantial amount of
9 information and, apparently, they want to pursue the case.

10 So at that point, I kind of in for a penny, in for a
11 pound. And I started working on it and did what I said I
12 would do and came up with a report, did comparisons that,
13 basically, had to do with getting all the bank statements
14 for all three years, all of the Eaglesoft end-of-day and
15 the month reports that we used in preparation of the
16 complaint. And excuse me. I drew my conclusions and sent
17 it over to her attorney.

18 And he called me about a week later and said that
19 Ms. Sylvia Harrison, who's an assistant solicitor here in
20 Greenville County, who I've worked with a number of times,
21 wanted to meet with me, along with the assistant solicitor
22 who was handling the matter.

23 And we met and I explained what I had found and how I
24 came up with it. I don't remember the exact timeline, but
25 it probably wasn't too long after that that the charges

1 were dismissed. And then they moved for an expungement,
2 which she did get.

3 And at that point in time, or, perhaps, a little
4 before that was done, she was still adamant about what she
5 had lost because of this matter that had now been
6 dismissed. And I called -- I saw Mr. Few at a golf outing
7 or something and said, hey, would you, please, meet this
8 woman and take a look at what we have? And that kind of
9 brings us here today.

10 Q And so you prepared a report sometime around May of
11 2018?

12 A My initial report, yeah, yes.

13 Q And what is the fee arrangement between you and
14 Samantha Katchick?

15 A As I mentioned, I signed a typical engagement letter.
16 And I told her I'd charge her a dollar. At that point in
17 time, I felt bad for her and felt that the way the charges
18 were brought were probably based on unreliable numbers.

19 So I just told her I'd help her out. I said, But if
20 it ever goes any place or becomes a civil suit, you know,
21 then you can pay me something.

22 Q At that point in time, had you received any
23 documentary information from either Samantha Katchick or
24 her attorney in support of the allegations of the breach
25 of trust?

1 A Yes. Her criminal attorney had his paralegal come by
2 my office and drop off what records they had at the time.
3 This was for the initial report that was the basis for the
4 complaint that culminated in the arrest.

5 Q Is it fair to say that that consisted of comparing
6 Eaglesoft to the bank statements?

7 A I believe I received several bank statements and
8 several Eaglesoft reports that kind of listed the three
9 categories of receipts for either a day or a month. Those
10 categories are normally cash, check, and other.

11 And so I looked at those, initially. And as I
12 mentioned, I just felt -- in other words, I had -- I don't
13 remember and you probably have them. I had January of
14 2017 and then it jumped to October of 2017. So I didn't
15 have every month. So I could not form an opinion as to
16 what happened without looking at all of the documentation.
17 But what I saw --

18 Q Let me ask you this, would it assist you or refresh
19 your memory if I could hand you the pages that you
20 attached to your May 2018 report?

21 A Sure.

22 Q And these are marked 6 through 13. And tell us what
23 you see there and how it related to the work that you did
24 on this matter. The first page is a bank statement;
25 right?

1 A The first page is a bank statement for the period
2 ending January 31st, 2017 from Southern First Bank. And
3 the --

4 Q It indicates the amount of cash and everything else;
5 right?

6 A Yes. Initially, that's what I did, just the number
7 of credits or deposits. And then, also, attached to that
8 was the January day sheet recap from Eaglesoft and the
9 three categories, among others, was cash payments, check
10 payments, and other payments.

11 So the first thing I did was just total those three
12 categories on Eaglesoft. And they, in this particular
13 instance, totaled \$72,279.25. And then I went to the bank
14 deposits for the same period. And they totalled
15 \$73,000 -- excuse me, \$70,351.85.

16 So that particular month, the bank received \$2,972.40
17 less than what Eaglesoft indicated it should have
18 received.

19 Q Now, let me stop you right there. So that was an
20 analysis you did of cash, checks, and debits, and credits;
21 right?

22 A Yeah. That -- that was one of the first things I
23 noticed on the initial complaint. As I mentioned, there
24 were three categories of Eaglesoft, which is cash, check,
25 and other. However, the complaint only used the cash

1 number, which in this case was \$706.50, according to
2 Eaglesoft. But they were --

3 Q Let me stop you right there. The Eaglesoft page,
4 Page 2 of what I've handed you, it has a number in the
5 upper right-hand corner, which would seem to indicate when
6 it was printed?

7 A Yeah. That was April 16th of 2016, so several months
8 after.

9 Q Look at the one for February and see when it was
10 printed.

11 A It was, also, printed on April 16th, 2017.

12 Q And is there another -- what I've handed you is a
13 series of bank statement, and an Eaglesoft report, and a
14 bank statement, and an Eaglesoft report?

15 A Correct. And the Eaglesoft day sheet for April 17
16 was dated April 16th.

17 Q Of?

18 A 2017.

19 Q And what about the last one?

20 A And the last one was, also, for -- excuse me, the one
21 before that was March for April. And that was printed on
22 August 18, 2017 from April 2017.

23 Q You didn't have the ability to print those Eaglesoft
24 reports, did you?

25 A No. I only received the hard copies.

1 Q From -- from Samantha Katchick's lawyer?

2 A Yes. That's correct.

3 Q And he received them from -- through the discovery
4 process, that's your understanding?

5 A Yeah. Her -- my understanding is her attorney --
6 when she came to see me, she told me he already had these
7 documents. So when I agreed to look at them, I asked him
8 to send them over. And this is, basically, what I
9 received.

10 Q Okay. Do you have an opinion about the reliability
11 of Eaglesoft data as it was used in this case?

12 A Yes. My experience, in general, with Eaglesoft is
13 it's an amazing tool. It's mainly used for everything
14 from keeping appointments to storing X-rays to scheduling,
15 all of that, everything that a dental practice would need.
16 And then it, also, has these reports and sheets. And
17 there's hundreds of reports you can custom tailor it to
18 deliver.

19 But these basic ones, generally, are, in my
20 experience, to show the dental practice -- or I had one
21 practice where there was probably 12 dentist to track each
22 one and let them see what their production is per day, how
23 their collections are going. But it does produce those
24 numbers in dollars and cents.

25 But, historically, most practices -- now, I did not

1 see as in this practice, they don't rely on -- it's not
2 going to tell you what your accounts receivable are in
3 total. It's not going to tell you what your expenses are.

4 So most dental practices will use this for what I
5 just mentioned. And they'll, also, keep normally
6 QuickBooks. And then they'll manually enter on a cash
7 basis. If we get \$120, they'll enter that as today's
8 receipts. So, historically, at least, most practices keep
9 a separate accounting software.

10 Q So tell the jury about your analysis of -- what were
11 your opinions when you did the first report as it related
12 to cash?

13 A Well, firstly, all I had was the Southern First Bank
14 statements that just list the total amount of the deposit
15 in any given month. So I couldn't tell from that what was
16 cash. The only thing I could tell is there was a whole
17 series of merchant services, which, normally, would be
18 credit cards. So I could kind of look at the credit
19 cards, but I had no way of looking at cash.

20 In my initial report, I said I would need all the
21 bank statements for all the periods. And I would need
22 with those copies of the checks and the deposit tickets.
23 And that would give me the ability to look because,
24 normally, you split out cash in a deposit ticket and list
25 the checks.

1 So I did not have that. So I really had nothing to
2 compare it to, except the total deposits that Eaglesoft
3 indicated it should have been and the deposits that the
4 bank statement indicated, actually, took place.

5 Q So you, basically, had that information for the
6 months that were in question? One page from Southern
7 First Bank's statement and Eaglesoft --

8 A That's correct.

9 Q -- end-of-month report is what it amounted to; right?

10 A Yes. It was a recap of what Eaglesoft indicated
11 happened during the month.

12 Q So you then -- your first report said that you needed
13 more information; is that right?

14 And I'll take that back.

15 A Sure. Yes. I indicated, as with any case, if we
16 were going to do a complete workup, we had to have all the
17 months for all of the years in question. And, as I said,
18 all of the Eaglesoft reports, and the bank statements with
19 the deposit tickets, and the checks.

20 Q You needed more information. Did you, eventually,
21 get that information?

22 A Yes, I did, probably, I'm thinking, about mid to late
23 July of 2018. The solicitor's office through
24 Ms. Katchick's criminal attorney provided, basically,
25 everything I asked for.

1 Q And you prepared another report?

2 A I did.

3 Q And isn't it true that the real problem here is that
4 the data that's in the -- when you try to compare
5 Eaglesoft with bank statements is that someone can go in
6 and make changes to the Eaglesoft data at any point in
7 time?

8 A If they have the administrative ability to do that.
9 Normally, there's different levels of access. Depending
10 on if you own the practice, if you're the practitioner, or
11 someone at the front desk, you can you adjust the levels
12 of what any individual in the company can access, or do,
13 or change.

14 Q For example, in these Eaglesoft reports, there's a
15 figure here of negative 660 for deleted services. You
16 don't know what that is, do you?

17 A No, not at all.

18 Q Then on the next --

19 A And there's no back up for it.

20 Q February of 2017, this Eaglesoft report says,
21 Deleted services are \$935. And then, also, it had credit
22 adjustments and deleted credits; right?

23 A Correct.

24 Q So even once you got the additional data, isn't it
25 true that the problem is that you're working off a flawed

1 premise that the Eaglesoft data for cash is accurate?

2 A Flawed or unreliable. But what I was really trying
3 to do when I asked for all the records is to say what --
4 under a microscope, the original complaint looked at
5 certain Eaglesoft documents and certain bank documents.

6 So I worked on the premise that, okay, if that
7 indicates that Ms. Katchick took this money, this cash,
8 then let's see all of them and let's do an analysis of
9 them. So I didn't really worry about credits. I mean, I
10 know those things can be deleted, you know. You can
11 change anything in there. But I thought the basic is we
12 know for sure what went in the bank. Now, let's look at
13 what Eaglesoft said should have gone in the bank and let's
14 do an analysis for all three years plus, I think, four
15 months of another year.

16 Q And you did that analysis?

17 A I did.

18 Q And not only -- and you compared -- you did the
19 analysis on cash. And what was your conclusion on the
20 cash?

21 A That just looking at the cash numbers as was done in
22 the initial complaint, I believe it was 3,500 and some
23 odd, but if you added all the cash deposit differences, it
24 wasn't that much. It was, I believe, \$2,015. That's
25 assuming that we're only looking at cash. But as I

1 mentioned --

2 Q Hold on. Let me guide you along. So your analysis
3 was that when you got all the data that it wasn't
4 \$3,505.19. It was, actually -- it looks like your report
5 says \$2,109.97?

6 A Yes, if you just took the cash.

7 Q Did you do a similar analysis of checks that were
8 deposited?

9 A I did, yes.

10 Q Okay. And did -- did the data -- did it match up?

11 A No, it did not.

12 Q Was it close?

13 A No. Again, without my report in front of me, but
14 I -- I think I mentioned the last four months right after,
15 I believe, she was terminated or just left, just those
16 four months, I took the cashed checks and other and there
17 was 9,000 some odd more indicated in QuickBooks than what
18 ends up at the bank.

19 Now, I don't know what happened to it. QuickBooks
20 may be right. But that amount of money did not make it
21 into the bank.

22 Q So not only did the Eaglesoft cash records not match
23 the Southern First cash records, but the Eaglesoft check
24 records didn't match the bank statement check records?

25 A That's correct, and the others. And I produced a

1 multipage spreadsheet.

2 Q Did you do an analysis comparing debits other than
3 checks -- I mean, credits, like, credit cards? Did you
4 compare the credit cards as well?

5 A Yes. I -- and each month, I took the three
6 categories in Eaglesoft and compared them to the category
7 for the bank, which was the deposits. But when I analyzed
8 the cash, once I had all the bank deposits -- bank
9 statements with the deposit tickets, that's how I
10 determined the cash amount when a deposit ticket said
11 \$314.12 cash. So I took the actual bank record of the
12 cash deposit.

13 Q For each deposit, not for the monthly summary on the
14 statement?

15 A Well, some months, there would be several deposit
16 tickets that had cash on them. So I would total those for
17 the bank and compare it to the Eaglesoft printout.

18 Q So your conclusion -- is it fair to say that your --
19 your -- not so much your opinion, but your research showed
20 it was not 3,500, it was, actually, 2,100?

21 A Yes. And I'm not saying that it was missing. I'm
22 saying that was the amount of the difference on the cash
23 side.

24 Q Right.

25 A However, just to clarify, there was 2,000 less cash

1 in the bank than Eaglesoft indicated. However, if you
2 take all the numbers that Eaglesoft says should have been
3 in the bank, I believe for the three years, it was some
4 55,000 short.

5 Q Looking at --

6 A Looking at cash, checks, and other.

7 Q So Eaglesoft -- the Eaglesoft records you were,
8 finally, provided didn't match the overall bank records?

9 A That's correct, by 55 some odd thousand. And the
10 other thing I had a problem with, I just should have
11 mentioned at the beginning with the cash is there's always
12 a chain of custody issue. And I, initially, asked her,
13 Where is the cash kept?

14 Well, it's kept in an open drawer in the front desk
15 that anybody had access to.

16 Ms. Katchick told me that she did accept cash, but,
17 also, other people did. So that's the other thing that
18 made it difficult to quantify.

19 So the only thing I could do was fall back on the
20 total. And, as I say, it was \$2,009 less than what should
21 have been there. But I have no idea why -- if Eaglesoft
22 was correct, if it was correct, then I have no idea who
23 took the \$2,000. But it wasn't the amount that was in the
24 complaint.

25 Q It could just be that the data that was entered in

1 the Eaglesoft was incorrect; right?

2 A It, certainly, could have been, sure.

3 Q And pretty much everybody that worked at Chapman
4 Dental had access to the Eaglesoft data and could have
5 made changes before they printed the reports that you
6 received; right?

7 A That's my understanding. I mean, we had another case
8 with a practice where if a patient wound up paying cash,
9 the practitioner would just enter a credit in Eaglesoft
10 and take the cash. I'm not saying at all that that's what
11 happened here. But I'm saying it could happen. It's a
12 very loose system.

13 I had another major practice a number of years ago
14 where their CPA firm, they felt there was about a \$10,000
15 difference. And they said, look, give Mike a call. It
16 wound up in criminal charges. And they were out over
17 \$400,000 just by maneuvering all the numbers in Eaglesoft.
18 So it can happen. I'm not saying everybody does it all
19 the time. But it's not locked in. Once you put that
20 number in, you can change it.

21 Q At any point in time prior to the date that that
22 Eaglesoft report is printed, somebody with access could
23 have gone in and made changes to the data in Eaglesoft?

24 A That's correct.

25 MR. FEW: Thank you.

1 I have no further questions for this witness.

2 THE COURT: Ladies and gentlemen, before we get into
3 cross, let's take our afternoon break. Please don't
4 discuss the case.

5 (WHEREUPON, the jury was excused from open court at
6 approximately 3:47 p.m.)

7 THE COURT: Mr. Few, I'm just -- logistics-wise, I've
8 got to let the jury know -- the jury panel. So how many
9 more witnesses in your case?

10 MR. FEW: I have one more really short one. I was
11 going to make sure he's out there. It's the guy that
12 wrote those e-mail that we were going to stipulate to.
13 But I, finally, decided I needed to just get him in here.

14 THE COURT: And in your case, I'm not holding you to
15 it. But how many do you, generally, anticipate?

16 MR. KENDRICK: Two maximum.

17 THE COURT: Two max.

18 MR. KENDRICK: Probably -- my thought was that if --
19 and it's your courtroom, I don't mean to impose. But if
20 Mr. Few got done with his case today, which it sounds like
21 is realistic, and we argued the motions today, if I put my
22 case up at 9:30 tomorrow or whenever, I think we'd be done
23 well before lunch.

24 THE COURT: Okay.

25 MR. KENDRICK: But it's probably not a secret, if I

1 call witnesses, they're the ones sitting with me. So my
2 schedule is flexible.

3 THE COURT: I just wanted to get an idea. Because
4 I've got to figure out what I'm going to do with the rest
5 of the jury. So that's why I wanted to know.

6 MR. KENDRICK: Yes, sir.

7 THE COURT: Sir, you are still on the witness stand,
8 so you cannot speak with anybody about your testimony or
9 the case.

10 THE WITNESS: I understand.

11 Is it okay if I just sit here?

12 THE COURT: You can stay there, walk around, go to
13 the restroom, whatever you like.

14 (WHEREUPON, a break was taken.)

15 MR. FEW: Your Honor, my next witness doesn't appear
16 to be here. I may have to forego --

17 THE COURT: Well, we'll give it some time. We've got
18 cross. If we have to wait to allow him to get here, we'll
19 do that.

20 MR. FEW: He's going to be really short.

21 THE COURT: All right. Anything before we bring them
22 back in?

23 MR. KENDRICK: No, sir.

24 MR. FEW: No, Your Honor.

25 THE COURT: All right. Bring the jury in.

1 (WHEREUPON, the jury came into open court at
2 approximately 4:11 p.m.)

3 THE COURT: All right. Cross.

4 MR. KENDRICK: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. KENDRICK:

7 Q Good afternoon, Mr. O'Shea.

8 A Good afternoon.

9 Q My name is Josh Kendrick. I don't believe you and I
10 have ever met before.

11 A I don't believe we have met.

12 Q I'm not going to keep you very long. I know it's
13 late in the afternoon. Two areas I want to talk to you
14 about. The first one is it sounded like from your
15 testimony that -- this was very generous of you, but you
16 only charged Ms. Katchick \$1 to do these reports for her
17 criminal case?

18 A Yes. Initially, I said that I would do that. And
19 I've kind of kept track of, you know, what I've been doing
20 in case something ever came about. But, initially, \$1. I
21 just told her I'd give her a hand.

22 Q So is it fair to say -- I mean, she hasn't made any
23 more payments to you; right?

24 A No. I mean, I got the dollar.

25 Q You got the dollar. And every dollar counts, as you

1 know better than any of us.

2 So there hasn't been another payment besides the
3 dollar?

4 A No, sir, not at all.

5 Q And it sounded like you told her, you know, if
6 something ever comes of this, like, a civil case, then
7 maybe I'll get some money out of that.

8 A Yeah, but that was it. There's been no payments and
9 no formal agreement.

10 Q Have you -- have you given her a bill?

11 A No, I have not.

12 Q So she would know what that number would be?

13 A I believe when it came to this civil matter, I sat in
14 on a number of depositions, did some other work. And I
15 think we ball parked it at about \$10,000.

16 Q But to be fair, that's a litigation cost; right?

17 A I'm sorry. When you say "litigation cost" --

18 Q So if I called you and hired you to help me with a
19 lawsuit as an expert witness, then that would be part of
20 the cost of the lawsuit; right?

21 A Yeah. Yeah, I would suppose it would be had we not
22 come to this civil suit. And if she does realize
23 something out of it, yeah, then there would be a payment.

24 Q And I'm just trying to make the distinction between
25 the fact that we're in a trial where she's alleged damages

1 caused by the arrest and that number would be a dollar.
2 The rest of the number would be numbers related to things
3 that happened after the lawsuit was filed; right?

4 A Yes, as far as I'm concerned. But I don't know what
5 other damages she's alleging.

6 Q Sure.

7 A Other than the dollar for me.

8 Q Fair enough. When you reviewed the records, it
9 sounds like what you did was compared the Eaglesoft
10 records to the bank records; right?

11 A Correct.

12 Q And those are the two sources of information that you
13 were given in this case; right?

14 A Initially, that's what I was given. And then I
15 indicated if all we were doing was comparing Eaglesoft to
16 the bank that I didn't have complete sets of either. And
17 then I was provided with those.

18 Q And when those were provided to you, they were
19 still -- and I'm just trying to clarify so I understand.
20 What you have is accounting software -- let me use a
21 better term. You have practice management software in the
22 office; right?

23 A Correct.

24 Q And then you have bank records at Southern First;
25 right?

1 A That's correct.

2 Q And then I understood your testimony that the bank
3 records at Southern First are pretty accurate; right?

4 A Accurate to the extent of what transpired in that
5 account in that given month, yes.

6 Q Right. But your concern with Eaglesoft is that you
7 don't -- it doesn't sound like you know whether that would
8 be an accurate representation of the money taken in?

9 A Well, what I -- what I indicated was that Eaglesoft
10 was used, initially, as the source of funds. So that's
11 all I had to go on. My testimony was that my experience
12 with Eaglesoft or a lot of other medical practice
13 softwares is that they can be manipulated. So all you can
14 go by is what was presented.

15 As I mentioned, there's -- you can change credits.
16 You can adjust balances. And the only real way that you
17 totally get involved is to go into Eaglesoft and go
18 through an audit trail and track who used it on any given
19 day and what they entered, and whether it was ever
20 changed, which would be a monumental task.

21 But since the initial complaint was based on
22 end-of-day or end-of-month records and bank records,
23 that's what I chose to work with.

24 Q And I want to talk to you about what you just said.
25 Because, essentially, when this case is brought to the

1 Greenville County Sheriff's Office, it's -- it's -- we use
2 the term complaint, but there's not a formal pleading or
3 process like a lawsuit; right? It's a citizen going and
4 telling the police information; correct?

5 A That's my understanding. I wasn't involved,
6 initially. But I understand that your client presented
7 some material to the solicitor's office and they assigned
8 an investigator. This was before I had anything to do
9 with it.

10 And that the investigator did what investigators do
11 and, ultimately, a complaint was issued. I did not meet
12 Ms. Katchick until after she had been arrested.

13 Q And I can tell you this because you're an expert and
14 because I want to make sure you have full information.
15 But we had testimony yesterday that it was, actually, the
16 Greenville County Sheriff's Office white collar
17 investigator who got the initial information from
18 Dr. Chapman.

19 A Okay.

20 Q And what was brought to him was a discrepancy between
21 Eaglesoft records and bank deposits. Now, that is the
22 same thing you did even though albeit, you did it on a
23 much more detailed scale. But what you were, ultimately,
24 looking at was Eaglesoft records versus bank deposits;
25 right?

1 A Correct.

2 Q And when you did that, you found a discrepancy
3 between the two?

4 A I did.

5 Q And I got from your resume that you are not in any
6 way unfamiliar with the legal system, or law enforcement,
7 or investigations; right?

8 A That's accurate, I would think, yes.

9 Q You seem like a very experienced -- I don't know if
10 accountant is the right word. You're well beyond that;
11 right?

12 A Yeah. It's been 30 some odd years, so you see a lot.

13 Q Absolutely. So the money that is missing or
14 unaccounted for between Eaglesoft and the bank deposits,
15 you don't have an explanation for where that is, do you?

16 A No, I don't. I was working strictly with the
17 printouts from the two sources.

18 Q And there is no dispute that the two sources show
19 that there is a difference between the money that is
20 recorded in Eaglesoft and the money that makes it to
21 Southern First Bank; right?

22 A Yes, in all three categories. Initially, it was
23 presented to me just as cash missing. But when I analyzed
24 them, I did cash, checks, and other. And there was,
25 actually, a substantial difference.

1 Q And that money could be different because someone put
2 it into Eaglesoft wrong; right?

3 A That could be one explanation, yes.

4 Q It sounds like you said that someone could change the
5 entry in Eaglesoft to manipulate the total; right?

6 A If you had the access to that.

7 Q And somebody could have stolen that money; right?

8 A I imagine anybody who had access, number one, to the
9 cash drawer and, number two, to Eaglesoft could have done
10 that.

11 Q So what it sounds like is we would need to get to the
12 bottom of whether or not a crime occurred here and is
13 someone, actually, asking some questions of the people
14 that might have had responsibility for Eaglesoft; right?

15 A Well, that's still a potential issue only because
16 we're talking cash. That was the initial basis here, cash
17 being fungible. Somebody is going to say I took \$50 in
18 and another person is going to say, no, she didn't. So I
19 honestly don't know. Again, the whole matter was
20 presented based on two set of records. So that's what I
21 limited my review to.

22 Q But you would agree with me that it was the
23 responsibility of the sheriff's investigator to ask those
24 questions, whether he found the answers out or not; right?

25 A I would think if I was the investigator, I would ask

1 questions of a number of people in the office, yeah.

2 Q And that would give you the context of the
3 discrepancy; right?

4 A It could, depending on whether the investigator had
5 experience. Eaglesoft, you can't log into it or
6 something unless you have access. It's a very complicated
7 software.

8 I had a case a number years ago where Pickens County
9 had a complaint against a dentist. They went in and
10 seized all the computers. And then they called me and
11 said, How do we turn this thing on? What do we do with
12 it? Well, they had disconnected it all.

13 So, yeah, I don't know that that investigator would
14 have had that ability to go and look at it.

15 Q Because the responsible thing to do to get to the
16 bottom of it is to do what Pickens County did; right?
17 Call someone who does know; right?

18 A Yeah. That could be one solution.

19 Q Because it's unlikely that -- I mean, it's possible
20 that even the customers of Eaglesoft don't know that
21 information you just said; right?

22 A Oh, that could be. I've -- there's one particular
23 representative with Eaglesoft, she's a CPA. And we've
24 worked together over the years. And, I mean, I've had
25 dental practices where there's massive disconnects between

1 insurance claims and disallowed insurance.

2 It's a very complicated software, which is what
3 caught my attention in the first place, that we're using
4 this as gospel to say there's \$3,000 over three years.
5 That's what, initially, caught my eye. Could be.

6 Q Sure.

7 A But how do we just pick that category.

8 Q Right. But could be; right? I mean --

9 A Could be.

10 Q -- if someone took money in and didn't put it in the
11 bank, there would be a discrepancy; right?

12 A Of course.

13 Q But the question is we've got to do more work beyond
14 that initial step; right?

15 A Again, it depends on how you're looking at it. What
16 was presented to me was -- initially, in the criminal
17 matter was we know that Ms. Katchick took this money and
18 here's how we know it. Because we took the cash in
19 Eaglesoft and the cash in the bank and there's a
20 difference.

21 So, to me, that narrowed the scope in terms of had
22 they -- had that not occurred then, presumed, she would
23 not have been arrested or the investigator would not have
24 delivered his report to the solicitor's office. Because
25 it was based on a number of other things. So here the

1 scope was very narrow. It was cash and bank.

2 Q But you would agree with me, the investigator had a
3 part to play in this investigation; right?

4 A Well, I'm assuming so. I mean, I wasn't there. But
5 the solicitor didn't just decide to press charges.

6 Q One would hope not.

7 A Well, I will say not.

8 Q We'll talk about that another time. When the -- when
9 the investigator gets information, I mean -- and I
10 guess -- I'm not going to be coy with you. I mean, it's
11 very possible that Dr. Chapman thought money was missing;
12 right?

13 A Oh, I'm not saying that he didn't believe that there
14 was.

15 Q But the question, really the heart of it is, is once
16 that report is made, there were more questions to be
17 asked; right?

18 A There, certainly, could have been, yeah.

19 Q Well, in your expert opinion -- you didn't say my
20 expert opinion is, no money was missing, no money was
21 taken. What you're saying is this isn't the way to figure
22 it out; right?

23 A Initially, yes. My report said that I could not draw
24 a conclusion with a reasonable degree of accounting
25 certainty, based on the lack of fullness of the data. And

1 I suggested that the only way to do it would be to get the
2 additional data.

3 Now, I don't know if Dr. Chapman provided it to the
4 Solicitor or the investigator, if the investigator went
5 back out and asked for it. But it was my recommendation
6 that here's what would be needed. And a few months later,
7 it was presented to me. So then I did my analysis of
8 that.

9 Q And what you found was that the records don't point
10 fingers, specifically, at Ms. Katchick; right?

11 A No. It could have been somebody. But there's
12 nothing that I saw -- and, again, it was cash. It's, of
13 course, hard to say, especially when everybody had access.
14 But there was nothing that, specifically, said
15 Ms. Katchick had access to these records and altered them
16 or changed them.

17 Q And that's my ultimate question is that you are here
18 to give -- you know, you can give an expert opinion,
19 unlike a lot of witness. And while you can reach an
20 opinion that we can't determine if Ms. Katchick took the
21 money or not, you're not going to offer an opinion that no
22 money was ever taken; right?

23 A No. As I said, I just offered a -- an opinion as to
24 the accuracy of the records that we used throughout.

25 MR. KENDRICK: Thank you, Mr. O'Shea.

1 I appreciate it.

2 THE COURT: Any redirect?

3 REDIRECT EXAMINATION

4 BY MR. FEW:

5 Q Mr. O'Shea, if we really wanted to investigate,
6 someone could get the Eaglesoft software and run audit
7 trail reports and look at every single change or deletion
8 that was made; isn't that true?

9 A Yes.

10 Q And they can do that looking at a week. And they
11 could take a week and they could see what the changes
12 were. And they could compare that to the bank statements
13 on a short timeframe basis over and over if that's what
14 they wanted to do; isn't that right?

15 A That's correct.

16 Q And Chapman Dental had the ability to print those
17 audit reports and show who made changes to the Eaglesoft
18 data and when?

19 A Yes, they would have.

20 Q But that would only be accurate to the extent that it
21 showed who was logged in when they made the changes. It
22 wouldn't necessarily prove who made the changes; isn't
23 that right?

24 A That's correct.

25 MR. FEW: That's all the questions I have.

RECROSS-EXAMINATION

BY MR. KENDRICK:

Q So, Mr. O'Shea, even if you were to undertake the monumental task of the audit trail, you still wouldn't have a definitive answer whether or not a person had taken money; right?

A Yes and no. And the reason I say that is with cash, it's questionable. I mentioned before about a dental practice that suffered a huge loss. And they're accounting firm thought it was a few thousand. Ultimately, after months, what we found was their office manager was using software to print a check and was entering it as paying Patterson Dental who owns Eaglesoft.

When I started going into all the detail, I found out that he was coming in the morning and making a check payable to himself. Then he would go back in and alter it to show that it was made -- the accountants would mark it as dental supplies. Then we had to go to the bank. We had to subpoena his bank records and compare them.

So, yeah, if we wanted to spend a year and a half on this. But, again, as I said, I was just working on the information that was presented as the basis for the claim.

Q So in the story that you just told, when the accountant brought you the records, the initial belief by a CPA was that a few thousand dollars was missing; right?

1 A That was the thought.

2 Q But then it turns out it was close to half a million
3 dollars?

4 A Yes. Once -- and the only way to do that, I,
5 actually, took an office in that practice for about two
6 months and just sat there going through every single
7 record.

8 Q So in that case, even the CPA couldn't untangle the
9 discrepancy or the missing money; right?

10 A Well, in that case, they didn't try to. Most CPAs --
11 with all due respect, CPAs, they don't do audits. They do
12 quarterly reviews. They prepare taxes. They give trend
13 reports to practices about, you know, your expenses are
14 going up or this is coming down. But it's kind of, you
15 know, the numbers tick and tie.

16 That's where forensic accounting changes if you
17 really feel -- I mean, honestly, in two hours, I figured
18 out what he was doing. And it took me two months to
19 quantify it.

20 Q This is the story we're talking about?

21 A Yes, exactly. I picked up on one and it didn't look
22 right. And I picked up on another and said to the docs,
23 okay, here's what we've got. And in that case, I did
24 present it to the solicitor's office here. And they had
25 to have every -- just they ticked and tied and carried it

1 across.

2 Q But you did the work in that case; right?

3 A I did.

4 Q And you took the steps that it took to verify whether
5 what you were seeing was, in fact, what a layperson
6 thought it was; right?

7 A Exactly.

8 MR. KENDRICK: Thank you.

9 THE COURT: Anything else, Mr. Few?

10 MR. FEW: Nothing further, Your Honor.

11 THE COURT: All right. You may step down.

12 Thank you, sir.

13 Has the witness arrived?

14 MR. FEW: The Plaintiff calls Earl Simmons.

15 Up there by the green chair.

16 MR. EARL SIMMONS: I can recognize green.

17 THE CLERK: Place your left hand on the Bible and
18 raise your right hand.

19 WHEREUPON,

20 HARVEY EARL SIMMONS,

21 after first having been duly sworn, testified as follows:

22 THE CLERK: State your name, please.

23 THE WITNESS: Harvey Earl Simmons.

24 THE CLERK: Thank you.

25 Please be seated.

DIRECT EXAMINATION

BY MR. FEW:

Q Good afternoon, Mr. Simmons.

I hope you're doing well.

Can you hear me?

A Yes.

Q How are you doing this afternoon?

A I'm okay.

Q You, I believe, are a certified public accountant?

A Yes.

Q And have been since 19 --

A Since time began. Since 1976.

Q I almost guessed that. Well, I remembered it,
actually.

So -- and you know these people over here; right?

A Yes.

Q And do you have a familial by blood or marriage
relationship with Brooke Chapman?

A Yes, I do.

Q And tell the jury what that is.

A Brooke is my wife's niece.

Q So she's your niece as well?

A Yes.

Q And how long have you known Brooke Chapman?

A First time I can remember meeting Brooke was when --

1 at my and Donna's wedding.

2 Q What year was that?

3 A About 10 and a half years ago.

4 Q She was Brooke Ingram back then, wasn't she?

5 A Yes.

6 Q And I'm guessing she knew you were a CPA?

7 A I would hope so.

8 Q And let's just get right to the point. Did you ever
9 have any involvement in doing any calculations or doing
10 any work related -- for Chapman Dental?

11 A Do you mean -- I don't understand quite the question.

12 Q All right. Let me try again. You weren't there --
13 you didn't do their tax returns or you didn't service
14 Chapman Dental as a CPA, did you?

15 A No.

16 Q But in October of 2017, I believe you were asked to
17 look into some graphs, and some things of that nature. Do
18 you remember that?

19 A Yes.

20 Q Before I show you the e-mails and exhibits that went
21 back and forth, what do you remember about that? And,
22 specifically, why were you doing it?

23 A Well, I'm not -- I somehow -- it was communicated to
24 me that either Alex, or Brooke, or one of them thought
25 there was some money missing, cash.

1 Q That's what they told you. Was that in or about the
2 time you started e-mailing back and forth with Brooke
3 Chapman about it?

4 A Yes.

5 Q And then what do you recall that you did in regards
6 to that issue?

7 A I went over to the Chapman Dental office and compared
8 some printouts and compared bank records to -- hard copies
9 of bank records to a printout from Eaglesoft.

10 MR. FEW: Your Honor, may I approach the witness?

11 THE COURT: Yeah.

12 MR. FEW: I'm going to hand him the hard copies of
13 Exhibit Nos. 4, 5, and 6.

14 BY MR. FEW:

15 Q We're using technology nowadays, but I'm probably
16 going to have you look at only the first couple of pages.

17 But for right now, take a minute and look at this
18 Exhibit No. 4 and tell me if you recognize it?

19 MR. FEW: If I can, Your Honor, I'd like to put it on
20 my Elmo.

21 THE LAW CLERK: It's off.

22 MR. FEW: Oh, I cut it off.

23 THE WITNESS: Yes. I recognize them.

24 BY MR. FEW:

25 Q That is an e-mail that was sent from

1 ChapmanDentalGreenville@gmail to your e-mail on October
2 22nd of 2017; right?

3 A Yes.

4 Q And you just looked through it and you recognize the
5 exhibits. Does that look like what you received?

6 A Yes.

7 Q And I'm going to show you Exhibit No. 5, which you
8 can flip over to that as well. You can -- Exhibit No. 4
9 is back up and there's Exhibit No. 5.

10 Does that look like an e-mail you sent back to
11 Chapman Dental on October 31st of 2017?

12 A Yes, it does.

13 Q And you make a comment in paragraph one about the
14 graphs, you think they're confusing. Do you see that?

15 A Yes.

16 Q And then -- then in the second paragraph, you say if
17 not prosecuted by the DA, they can still be taken to small
18 claims court. Do you see that?

19 A Yes.

20 Q And then your e-mail says your main purpose is to be
21 able to tell employers about her behavior without being
22 sued for defamation. Do you see that?

23 A Yes.

24 Q Who -- when you say "her," who are you referring to
25 when you sent that e-mail?

1 A I can't remember her name.

2 Q Samantha Katchick?

3 A Yes.

4 Q And -- and why based on your review of these records
5 or your e-mail back and forth with Brooke Chapman on
6 October 31st of 2017 -- y'all are talking about having
7 her -- DA means district attorney; right?

8 A Yes.

9 Q That's the same thing as a solicitor that we have
10 here; right?

11 A I would assume so.

12 Q So do you recall why you were talking about having
13 Samantha Katchick prosecuted by the DA on October 31st of
14 2017?

15 A Nah. It was just on the list of possibilities. I
16 mean, I don't know anything about the minimum
17 requirements, or anything like that. I mean, I'm not
18 familiar with those statutes.

19 Q Had you had any conversations at this point in time
20 with Brooke or Alex Chapman about having Samantha Katchick
21 arrested for -- having her arrested?

22 A No.

23 Q And had you had any conversations with them prior to
24 this about going and calling her employers and telling
25 them about her behavior without being sued for defamation?

1 A No.

2 Q Take a look at Exhibit No. 6, if you would, please,
3 the hard copy. Or you can look at it on the screen. But
4 it looks like you're doing well with the hard copies up
5 there.

6 So you've got Exhibit No. 6. Does that look like an
7 e-mail you sent back to Chapman Dental on November 13th,
8 2017?

9 A Yes.

10 Q And can you recall any conversations or
11 communications you had with Alex or Brooke Chapman between
12 the previous e-mail that you sent on October 31st and this
13 one that you sent on November 13th?

14 A I believe there was probably some. Because the
15 report I gave, the cover page that I included with this,
16 it -- it wasn't -- it was unsigned.

17 Q And you even say, Here is everything. A signature is
18 not going to determine if the authorities choose to take
19 action. Were you being asked to prepare a CPA report by
20 them?

21 A No, not in my opinion.

22 Q Okay. But you say, Everything is laid out perfectly
23 if they care to look at documentation. As I have told
24 Alex, this is not, typically, a police issue at this
25 level. It will give him a basis to call her current

1 employer and inform him of her behavior. Do you recall
2 sending that e-mail?

3 A Yes.

4 Q And, ultimately, do you know if she got arrested?

5 A Yes.

6 Q And then you say, He just needs to tell them that
7 they pass due to the amount of money involved. Now, the
8 Chapmans, I mean, you didn't go to the Chapmans. They
9 came to you with this issue; right?

10 A Yes. It just came out in conversations, the to best
11 of my recollection.

12 Q Do you remember where you were when those
13 conversations occurred?

14 A No, I don't.

15 Q Now, I want to look at Page 3 of Exhibit No. 6. Do
16 you see that? You can just look at this one on the
17 screen.

18 A I'm not sure I can see that on the screen. I can see
19 this.

20 Q This is a -- this is procedures used to gather and
21 verify data related to the currency deposited to the bank
22 account. Do you see that?

23 A Yes.

24 Q Now, I'm going to show you -- and then you, also,
25 said at the bottom of this final e-mail that you sent,

1 Please, read over everything. If it is okay, I will print
2 several copies on extremely heavy bonded paper. Do you
3 see that?

4 A Yes.

5 Q And what was the purpose of doing that?

6 A Just to put it on nice looking paper.

7 Q Before it was taken to law enforcement?

8 A Before it was taken anywhere.

9 Q Now --

10 A I would do that with anything at that time that I
11 gave to a client.

12 Q So they were a client of yours?

13 A Not in the context of a paying client, but...

14 Q Take a look --

15 A For the purpose of doing this -- for the purpose of
16 doing this, they, certainly, were. I mean, I did that for
17 anyone that I printed a tax return for.

18 Q Yes, sir. Now, on the screen now is Page 20 out of
19 Exhibit No. 12, which is the solicitor's information. And
20 it appears to me that Alex Chapman took your procedures
21 and modified them just a little bit, and signed it himself
22 to say that this is what was done. Do you see that?

23 A Yes.

24 Q It's pretty much identical to your six procedures,
25 isn't it?

1 A Yes.

2 Q So did you believe your work was accurate?

3 A Yes.

4 Q So why wouldn't you sign it?

5 A It wasn't reviewed by anyone. I didn't feel like it
6 was appropriate for me to sign it.

7 Q Who needed to review it? You're a CPA; right?

8 A Yes.

9 MR. FEW: Mr. Simmons, that's all the questions I
10 have.

11 THE COURT: All right. Cross.

12 MR. KENDRICK: Could I have just one minute, Your
13 Honor?

14 THE COURT: Yes, sir.

15 (Pause.)

16 MR. KENDRICK: Your Honor, I don't have any
17 questions.

18 THE COURT: You may step down, Mr. Simmons.

19 Next witness.

20 MR. FEW: Your Honor, the Plaintiff rests.

21 THE COURT: All right. Ladies and gentlemen, the
22 Plaintiff has rested. They have put in their evidence --
23 or presented their evidence. So that's the end of their
24 case. So we will end for the day. So, please, report
25 back here tomorrow morning at 9:30.

And as I have previously directed you, please, don't discuss the case amongst yourselves or with friends, family, or anyone else. So we'll see you tomorrow morning at 9:30. I hope you all have a good night.

(WHEREUPON, the jury was excused from open court at approximately 4:50 p.m.)

MOTIONS

THE COURT: At this point, are there any motions from the Plaintiff?

MR. FEW: Your Honor, while it occurred to me in overestimating any ability that I may have that we might, actually, have a motion for directed verdict affirmatively, I don't think that we're to that point because of the nature of some of the elements in our four claims.

So nothing from the Plaintiff.

THE COURT: Anything from the Defendant -- Defendant
at this time?

MR. KENDRICK: I do.

THE COURT: All right.

MR. KENDRICK: So if I could start, Your Honor, broadly with a motion for directed verdict. I'm going to just base it on the testimony you've heard. So there are a couple of critical things. Number one, the information that was brought to law enforcement is truthful.

1 So there's no witness who disputed the critical piece
2 of that information, which was that Ms. Katchick was
3 responsible for collection and deposit. Nobody disputed
4 that. But at the same time, there were discrepancies
5 between the money that was -- appeared to have been taken
6 in --

7 THE COURT: Which cause -- are you addressing this to
8 any particular cause of action?

9 MR. KENDRICK: Well, here's the thing, Your Honor, I
10 think that these facts apply to all four causes of action.
11 So if I can tell you, kind of, the broad view, then I'll
12 tell you why it meets each four.

13 And I'm trying to just be --

14 THE COURT: I understand.

15 MR. KENDRICK: -- efficient, not because I'm doing
16 this for the record and I don't think I have a good
17 argument, you've probably heard enough of me talking.

18 So we've got the second part of it is, you know,
19 there are discrepancies in the record. So if you link
20 that together with what Mr. O'Shea testified to -- and if
21 you'll remember what he said was that -- and I can't
22 remember the exact wording. But it was, essentially, that
23 Chapman very well could have believed there was money
24 missing because it's very complicated to get past that
25 initial thing.

1 Now, it appears that Investigator Turner with the
2 Greenville County Sheriff's Office just didn't do anything
3 else. So if there's no dispute that there was a
4 discrepancy with the records, there was a person that was
5 responsible for that, and that information was given to
6 law enforcement. And then every other contact between my
7 client and law enforcement is in response to Turner asking
8 questions. And he is short circuiting his investigation,
9 Your Honor. I get it. He's trying to figure out what
10 else could I use to make my case. He calls the Chapmans
11 and they respond, which is okay. They're allowed to do
12 that.

13 So I think we get into an issue of -- on malicious
14 prosecution and false imprisonment. Between O'Shea's
15 testimony and the pure math, it's reasonable for the
16 Chapmans to think that money is missing.

17 And if you remember, Your Honor, what we -- we don't
18 have them pushing the issue. I do a lot of these cases on
19 the Plaintiff's side. And what distinguishes sort of the
20 Sunshine Recycling witness from the malicious prosecutor
21 is the actions you are taking to get the police to do
22 something, to influence their investigation. And all the
23 information they're giving Investigator Turner is, in
24 fact, accurate.

25 Now, if he had done a wider investigation and gained

1 some context, would he have come to a different
2 conclusion? Maybe. But that isn't where my clients
3 responsibility lies. We are placing a responsibility on
4 them to fully investigate this crime before they tell the
5 police what they think happened. And what they do is
6 simply go to the police and say, we think she took this
7 money.

8 And even O'Shea says his expert opinion is that these
9 records don't definitively point to her. But he, also,
10 can't -- I think he was honest, Your Honor, it doesn't
11 clear her either.

12 So in that circumstance, it's not the Chapmans that
13 are responsible for a probable cause determination. They
14 didn't manipulate the police. If you read the cases, when
15 we get past an officer -- so if you look at the case --
16 the big case has to do with the arrest warrant, facially
17 valid arrest warrant.

18 And, essentially, what the Courts keep saying is that
19 when the complainant gives misleading information, gives
20 false information, and, basically, the sheriff relies on
21 something that it was within their right to rely on is
22 false, then they can make their own decision. That didn't
23 happen here.

24 I think what happened is Turner didn't do anything.
25 So they bring the information to him. Even this last

1 witness puts up an exhibit that is now in evidence which
2 suggest that everyone understood the police were just
3 going to pass on it. They weren't going to do anything.
4 And there's just -- I think that's a big problem, Your
5 Honor.

6 I will, also, say that the defamatory statement that
7 we -- and I think the one we're talking about is the call
8 to Mr. Nasim that doesn't create any damages. Because he
9 already knew what had happened. And he knew what had
10 happened based on the police seeking to serve their
11 warrant on Ms. Katchick. And all the testimony says that.

12 THE COURT: Did he testify that he was -- was he
13 clear about that, though?

14 MR. KENDRICK: He was clear because he didn't know --
15 if the arrest happened on the 7th, I think -- he and, I
16 think, Ms. Katchick said that they knew why she took that
17 day off.

18 THE COURT: He testified he wasn't sure which came
19 first. He said he received information about the same
20 time. And he wasn't sure what happened first, whether he
21 found out that she was arrested or Dr. Chapman's call to
22 him. He didn't know. He wasn't sure.

23 MR. KENDRICK: But he was talking about -- there's
24 testimony that the knowledge of the arrest came from her
25 not being at work the day she turned herself in. So

1 she -- so he -- there couldn't have been a call about an
2 arrest prior to the arrest.

3 THE COURT: What about Mr. Smith's testimony that
4 Dr. Chapman told him that she stole from him?

5 MR. KENDRICK: I don't -- that's not defamatory, Your
6 Honor.

7 THE COURT: That's not defamatory? It's accusing her
8 of a crime.

9 MR. KENDRICK: He's describing a lawsuit. And I
10 don't think that Mr. Smith --

11 THE COURT: I don't think that's what was his
12 testimony was, was it?

13 MR. KENDRICK: I don't think he disagreed with me
14 when I had him clarify what is in the interrogatory
15 response, that there was stress about a lawsuit. And in
16 that lawsuit, the allegations were stealing.

17 THE COURT: I don't think that was made clear. I
18 mean, you tried to cross him on it. And I know what your
19 strategy was in trying to. But I don't think he bit on it
20 as much as you wanted him to bite on it.

21 MR. KENDRICK: Sure.

22 THE COURT: I think he testified -- hold on just a
23 minute. I take pretty good notes. Let me just see.

24 Yeah. The testimony I've got is over by the pool and
25 that she had -- that he told Mr. Smith that she had stolen

1 money from him.

2 MR. KENDRICK: My other problem, Your Honor, if
3 you'll remember, is that's not an allegation in the
4 complaint. That was an allegation that came up right
5 before the last trial, which was why I was arguing that
6 it's pattern evidence, as opposed --

7 THE COURT: But it did come up before the last trial,
8 which was back in November; right?

9 MR. KENDRICK: I think you have to amend your
10 complaint. I mean, this complaint got amended a lot. So
11 don't you have to include the allegation in the complaint
12 to get it to a jury?

13 THE COURT: Well, you can in some circumstances. And
14 you can try by consent, also. But I hear your argument.

15 MR. KENDRICK: I don't consent to that.

16 THE COURT: I understand.

17 MR. KENDRICK: I think maybe --

18 THE COURT: When you try an issue by consent, as you
19 know, in a trial, you can amend -- a pleading can be
20 amended in the trial if it's trial by consent. And it
21 doesn't mean that you, specifically, say I consent to this
22 issue being tried. But it gets tried and the motion to
23 amend under 15 is made, based on the evidence that's been
24 submitted.

25 But I hear your argument. I understand your

1 argument.

2 MR. KENDRICK: As a secondary matter, too, related to
3 all those causes, Your Honor, there has not been a shred
4 of evidence that Brooke Chapman said anything about money
5 being stolen. So if --

6 MR. FEW: She's not in the suit for defamation.

7 MR. KENDRICK: Maybe I'm looking at the complaint
8 incorrectly. So I thought I had all this mapped out based
9 on your order, Your Honor. But just let me make sure I'm
10 right. I wouldn't want to argue about something that's
11 already off the table.

12 THE COURT: Mr. Umbriano pulled it up and said
13 defamation per se as to Simmons, Maddox, and Brooke.

14 MR. KENDRICK: I'm sorry. You granted it.

15 So I, also, think, though, that if we're going -- and
16 I have made my argument on why I don't think malicious
17 prosecution or false imprisonment stand up in this case.
18 But at the same time, if you were to deny those, which I
19 don't agree that's what the law requires, it doesn't
20 appear Ms. Chapman has done anything that could be
21 considered malicious prosecution or false imprisonment.

22 It seems like the Plaintiff's complaint is
23 Dr. Chapman brought this information to the police. Once
24 they have the information and start asking questions, all
25 we have from Ms. Chapman is answering those questions. So

1 she's answering police questions, which I think that is,
2 clearly, in the Sunshine Recycling world of a witness
3 cooperating with police in good faith.

4 The concern is the practical concern. I'd like to,
5 at least, talk about how appellate opinion has some
6 practical affect. But if I was worried about someone's
7 responsibility or culpability and the police asked me
8 questions and I said, well, I don't know if this is the
9 correct -- I don't know if this is right or not, so I'm
10 not going to cooperate with you anymore. I mean, that's
11 not what we intend to happen. I think Sunshine reflects
12 that. If we don't want to --

13 THE COURT: To some degree, Sunshine does. I don't
14 disagree with that.

15 MR. KENDRICK: So I think that Ms. Chapman is not --
16 she didn't instigate any kind of arrest. She didn't get
17 involved in any kind of malicious prosecution. She's not
18 the one pushing this.

19 So if you disagreed with me on my first set of
20 argument, I think the secondary thing is we would ask
21 Ms. Chapman be dismissed from the malicious prosecution
22 and false imprisonment, which I think, in turn, creates
23 the civil conspiracy for both parties goes away. Because
24 there has to be an agreement that we're up to no good.

25 And I believe what Mr. Few was arguing in opening was

1 that it was the slander and the filing of a false police
2 report that was sort of the object of the conspiracy. But
3 I don't think you can slander someone by just simply --
4 she's responding to police questions.

5 So I've made my motion on all of the malicious
6 prosecution for everybody and false imprisonment. I think
7 there's a secondary motion for just Ms. Chapman on those
8 two, which then makes the civil conspiracy go away. And
9 I've made my argument on the defamation for Dr. Chapman.

10 THE COURT: Mr. Few, let me hear your response.

11 MR. FEW: Thank you, Your Honor.

12 May it please the Court.

13 On that most recent issue, Exhibit No. 12 at Page 12,
14 how did Elliott Turner know about the Burras'? Because he
15 was told about it in this timeline that was provided.
16 Elliott Turner testified in no uncertain terms that the
17 Chapmans wanted my client arrested.

18 Now, I'm going a little bit backwards there, Your
19 Honor. Let me address what my esteemed colleague said,
20 initially. Everything in the report is truthful. Well,
21 not true. Mike O'Shea testified that it was not
22 \$3,505.19. It was, actually, \$2,109.75. And, Your Honor,
23 that's -- that's an objective issue.

24 We've put up so much evidence that there is no
25 possible way that my client was solely responsible for --

1 let's look at what the warrant says for taking -- for
2 collecting money from patients. That's just -- it's not
3 even possible.

4 But, yet, Elliott Turner testified that despite his
5 inquiry -- so he did do something. Despite his inquiry of
6 Alex Chapman, Alex Chapman convinced him that it couldn't
7 have possibly been anybody else. So that's the critical
8 part of the false analysis. Because even if it was
9 \$2,100, instead of \$3,500, then I guess they could have
10 proceeded with the charge.

11 THE COURT: I think what he's probably talking
12 about -- and I may be wrong. When he's saying everything
13 is true, he's talking about there's a discrepancy, which
14 is the whole issue about -- the whole issue in this case.
15 If there's a discrepancy, therefore, the charges are
16 brought and, therefore, the defamation occurs based on
17 discrepancies and stealing money.

18 I think what he's -- and I may be wrong, but I
19 think -- Mr. Kendrick may correct me. Obviously, I'm
20 saying what I think he argued. But when he's saying it's
21 true, that there was a discrepancy, the amount may be
22 different, but that his argument is that there's no -- no
23 question or no testimony that has been put forth that
24 there was not a discrepancy. Everybody agrees. Even
25 Mr. O'Shea agreed there was a discrepancy.

1 MR. FEW: Well, we have to look at the whole thing.
2 Because the rest of it says --

3 THE COURT: All right. Now, what are you reading
4 from?

5 MR. FEW: The warrant. The document -- The affiant
6 has documented evidence implicating that the Defendant is
7 the subject who took the cash. Every single person,
8 specifically, my client, as well as both the current and
9 former employee have testified that everyone had access to
10 that cash.

11 So that's the -- that's the other false statement is
12 to point the finger at my client, Your Honor. And the
13 thing is Elliott Turner didn't know that, but Alex Chapman
14 did.

15 And we just went through the evidence of the e-mails
16 with Earl Simmons, the CPA. And those e-mails indicate
17 that there was absolutely an ongoing discussion about what
18 they could do to have Samantha Katchick arrested. This
19 was not a situation of someone going down to the police
20 department and saying here's what I've got. Let me know
21 if you want to prosecute. They continued to follow up.
22 Again, Turner, specifically, testified that they wanted to
23 do it.

24 And, Your Honor, probable cause is -- this -- from
25 case law -- I can't remember. I don't know if I have the

1 case cited, but I think this is pretty well established.
2 A good faith belief that a person is guilty of a crime
3 when this belief rests on such grounds as would induce an
4 ordinarily prudent and cautious man.

5 Mr. Kendrick wants the Court and the jury to believe
6 that if Alex Chapman subjectively believed that somebody
7 stole money, then that is probable cause. And it's just
8 not under the circumstances to believe likewise.

9 He knew the circumstances. He knew he worked on
10 Saturdays. He knew that she wasn't there on Wednesdays.
11 He knew they had access to Eaglesoft and those records
12 could be manipulated. He knew all of these things. And
13 he went to great lengths to contrive Earl Simmons to put
14 his name on something that they had already done.

15 You saw when I had Mr. O'Shea up there, that's why I
16 had him look at the printouts. So they didn't wait. They
17 could have concluded she stole long before.

18 THE COURT: What about the testimony that -- and as I
19 recall from the warrant and I -- just from my recollection
20 having to read it up there. I don't have it in front of
21 me. But didn't the warrant say the arrest was made -- or
22 the language of solely responsible was taking the money
23 from the dental practice to the bank?

24 Wasn't that really the issue that the testimony has
25 been brought out in the case so far, that -- and, again,

1 I'm just sort of trying to remember what the warrant said
2 off the top of my head. But I think I recall the warrant
3 saying that it's based on taking the money from the dental
4 practice to the bank.

5 Who's got the warrant?

6 MR. FEW: I've got it right here.

7 THE COURT: Where's the exhibit? Let me see the
8 exhibit.

9 MR. FEW: It's a conjunction. It's collecting the
10 money and making deposits.

11 THE COURT: So the warrant says that Alexander
12 Chapman reported that the Defendant, who is a previous
13 employee that was solely responsible for collecting money
14 from patients and making bank deposits from January
15 of 2014 to February of 2017, took \$3,505.19 from the
16 practice.

17 So isn't that really the issue? It's not necessarily
18 who had access to the accounts or to Eaglesoft, is it?

19 MR. FEW: No, Your Honor. But that statement is just
20 false on its face. Because she couldn't have been solely
21 responsible for collecting payments from patients because
22 every Wednesday, and on Saturdays, and when she was on
23 vacation, she wasn't there. So there's no way that she's
24 responsible for the first part. And that hasn't been very
25 clear solely -- primarily is not solely --

1 THE COURT: Let me ask you this, is there testimony
2 that the bank deposits were made every day or once a week?

3 MR. FEW: They were made -- she testified that they
4 were about once a week. And they were sometimes twice a
5 week. They were not made every day.

6 THE COURT: Well, that's why -- the reason I bring
7 that up is because I remember the testimony of her saying
8 that the bank deposits were made once a week. So would
9 that cut against your argument that other people could
10 have made the deposits if it's made -- even though she may
11 have not worked on Wednesdays or may not have worked on
12 Saturdays?

13 Is it arguable or is it -- is there an argument that
14 can be made that even though she may not have worked on
15 those two days, she still could make the deposits once a
16 week on Monday, Tuesday, Thursday. And Friday.

17 MR. FEW: She did, Your Honor. She absolutely made
18 the deposits based on what was there. But she didn't have
19 sole custody and control of the envelope, even on a daily
20 basis. All the witnesses testified that anybody could
21 have gone into that envelope at any point in time and
22 taken some cash out. It's the same way anybody that had
23 an Eaglesoft log-in could have gone in there and changed
24 the data in Eaglesoft.

25 THE COURT: So your argument is that even though the

1 issue and the warrant is that she's solely responsible for
2 collecting it and taking it to the bank is that before she
3 gets to the part of collecting it that somebody could have
4 come in there, taken the money out, and then she takes it,
5 and then that's why the numbers don't match up. And,
6 therefore, there is evidence that somebody else did have
7 access?

8 MR. FEW: I lost you on that one -- on that a little
9 bit, Your Honor. Because, also, let me say, she
10 testified -- not only she, but Angie Hawthorne testified
11 that Dr. Chapman made deposits, too. And Josh was
12 inquiring of witnesses suggesting that the money was taken
13 between the time that they left. And that presumes that
14 they were filling out the deposit slips at the bank, which
15 is not the case.

16 Sam testified that the deposits were filled out based
17 on what was in the envelope. And what was in the envelope
18 was what was left in the envelope after all these other
19 people had access to it. And so that is even different
20 from collecting money and depositing money.

21 That's why we were clear that she was primarily
22 responsible for depositing the money. She didn't make all
23 the deposits. And there's no human way possible that she
24 could have been solely responsible for collecting the
25 payments.

1 And, Your Honor, so -- I'm sorry. I'll answer any
2 other questions.

3 THE COURT: What about as far as Brooke Chapman?
4 Let's maybe address the defamation first. Is there any
5 testimony that Brooke Chapman defamed her?

6 MR. FEW: Your Honor, in my notes, I don't -- and I
7 was looking at my pleading. I don't think that we sued
8 Brooke Chapman for defamation.

9 THE COURT: That's right. And that was granted
10 anyway.

11 MR. FEW: And, Your Honor, I would make a motion to
12 amend my complaint to include the statements from Brian
13 Smith. In a case of defamation and the spreading of
14 defamation, particularly, by slander, it would be an
15 onerous burden on anybody to have to amend their complaint
16 every time they were able to find out about it.

17 We let them know immediately as soon as I found out
18 about it with the discovery response, Your Honor. And I
19 would say the thing is, if it were a completely different
20 defamatory statement, then they might have a better
21 argument. But it's the exact same statement, she stole
22 from me. And that's what those witnesses testified to.

23 And that's what they told law enforcement, Your
24 Honor. They told law enforcement she stole from me.
25 That's what Elliott Turner said. Here's a discrepancy and

1 she's the only one that could have possibly been -- that
2 could have possibly been responsible for it. And they
3 knew that that was not true because she didn't have sole
4 custody, nor was she the one that took the payments in.

5 And then the other premise of the documented
6 evidence, again, we don't even need to get into the fact
7 that Eaglesoft could be manipulated at any point in time.

8 So I hope I've answered your questions on that, Your
9 Honor.

10 So -- and then the defamation was made. They told
11 Angie Hawthorne that she stole. There could be an
12 argument that that's privileged. But that's what they
13 told her, that she stole from them. They told her that
14 Sam stole from them. Before they brought any accountants
15 in, before they did any of this other stuff, they reached
16 this conclusion. They told her they were firing her for
17 stealing.

18 And, Your Honor, every single person that works in
19 that law enforcement office at one point in time thought
20 that she had done this because they were given false
21 information. And the false information is that she was
22 solely responsible for collecting money from patients.

23 THE COURT: Let me ask you this, what -- what is the
24 argument that the Defendants instigated the proceeding,
25 which is one of the elements of malicious prosecution?

1 Obviously, most of the time in these cases, it's
2 instigation of the proceedings and probable cause. What
3 about the instigation of the proceedings? What is the
4 evidence that the Defendants instigated the proceedings
5 that would be defined under the elements of malicious
6 prosecution?

7 MR. FEW: Well, Your Honor, it's the exact same thing
8 in terms -- it follows the Sunshine case. The Sunshine
9 case involved, really, just a bunch of gross negligence,
10 honestly.

11 But in this situation, it was very different. They
12 instigated it and the claim exists. And the Sunshine case
13 says -- I've got a copy of it here somewhere -- one who
14 provides false information to law enforcement is going to
15 be responsible and held liable for it.

16 And the Sunshine case was not some kind of
17 groundbreaking case, Your Honor. It cites a couple of
18 cases from decades before that held the exact same thing.
19 So this is a long recognized principle, as it should be,
20 that you can't go over to law enforcement and give false
21 information and -- and be immune from liability.

22 THE COURT: Sunshine did deal with the issue of the
23 Defendants in that case providing false information. That
24 was really what a big focus of that case was.

25 What is the false information in this case?

1 MR. FEW: I just read it to you, Your Honor, that she
2 was solely responsible for collecting money from patients.
3 She was not solely responsible for collecting money from
4 patients.

5 THE COURT: That's not what the -- she's solely
6 responsible for collecting it and taking it to the bank.
7 What's the evidence that somebody else was taking it to
8 the bank?

9 Because the warrant says, Solely responsible for
10 collecting the payments and making the deposits at the
11 bank. So the conjunction is "and." So what is the
12 testimony that that's false? She testified she made the
13 deposits once a week.

14 MR. FEW: Well, I said it a minute ago. Angie
15 Hawthorne, unsolicited by me, a current employee of the
16 practice, said that Dr. Chapman would make the deposits.
17 So he on several occasions, according to her, would take
18 the deposits down there.

19 We don't really dispute that -- we're talking about,
20 also, over a three-year period for somebody to be solely
21 responsible for everything is -- they convinced them that
22 she was the only one taking money. And when she wasn't
23 there, the business just refused to take any cash.
24 There's no testimony to that.

25 And she then held the bag of cash and let no one else

1 touch it, took it to the bathroom with her while she was
2 working there, took it home, kept it on her person for
3 three and a half straight years. It's just not possible.
4 She didn't do that, and Dr. Chapman knew that.

5 So, Your Honor, you're right. The conjunctive is not
6 true either because of Angie Hawthorne's testimony that
7 Dr. Chapman took the money to the bank.

8 THE COURT: What about that, Mr. Kendrick?

9 Because after the reading of the warrant -- and I
10 remember some cross-examination about that. But there was
11 then testimony that Dr. Chapman, also, took money -- took
12 the deposits to the bank. Is that -- I mean -- you know,
13 we're at directed verdict stage. So viewing the evidence
14 most favorable to the non-moving party, which is the
15 Plaintiff in this case.

16 And we're concerned, not of the weight of the
17 evidence at this point. I'm not weighing the evidence
18 necessarily at this stage of the game. But is there
19 evidence, though, that gets you around -- gets the
20 Plaintiff around the directed verdict?

21 Now, you, certainly, have your arguments. And I know
22 what your argument is going to be by listening to your
23 cross-examination. But from a directed verdict
24 standpoint, is it -- is there enough evidence that gets
25 you around, at least?

1 MR. KENDRICK: So, Your Honor, I think where we're
2 at -- and the reason I understand all this is because I'm
3 always on the wrong side of these cases. Because I
4 usually bring them. And the law is harsh and I don't like
5 it. But this time, I'm on a different side.

6 And I will tell you what we're arguing over right now
7 is, could she have been convicted for breach of trust?
8 And the answer is probably not. Probably a mediocre
9 lawyer could have won this case. That's not the question
10 that gets us to the verdict with the jury on this case.

11 The question on this case is, is there something that
12 was said to the police that was false so that we knew from
13 giving information -- and this is the thing. You can go
14 down to the police and make a report. And you can be
15 wrong. And that has always been the law. That's why when
16 I bring these cases, I bring the police in, too, so that
17 we can evaluate their position, too.

18 So what has happened here is we are, basically,
19 saying that the police take a complainant's version of
20 events as is, period. And there's nothing else to be
21 done. And that's simply not true.

22 So the answer to your question is the language that
23 keeps coming up is solely responsible. So if one was --
24 like, you know, I am solely responsible for what happens
25 inside my office at 7 Mills Avenue. I have not been there

1 since Thursday morning, but that doesn't change my
2 responsibility for it. And what was happening -- the
3 reason Dr. Chapman argued it matters is because
4 Dr. Chapman is reporting missing money. He didn't take it
5 himself or he would have known where it went.

6 And I think what happens is we have to assign motives
7 to people to get where we're going. That -- you're
8 correct -- isn't what we would do here. What we're
9 looking at is the pure evidence.

10 And I may be -- I guess we'd have to look at the
11 transcript. But I take issue that Investigator Turner
12 said they really wanted her arrested. And there's nothing
13 in the documents that reflect that. I think they made a
14 report. And I think that they're allowed to make a
15 report.

16 And I think -- I don't know, Your Honor, that I would
17 be making this detailed of an argument if not for O'Shea
18 testifying the way he did. And that's what I keep saying.
19 When we talk about the truth of the discrepancy, what I'm
20 saying is the information provided to the sheriff's office
21 was accurate.

22 And I think what -- what the standard we're kind of
23 throwing in here is, but did it reach the level of a crime
24 where you could convict somebody? But that's Investigator
25 Turner's job. So Investigator Turner, according to

1 O'Shea, certainly, had the ability to investigate the case
2 and determine if there was something beyond the
3 information that Dr. Chapman gave him.

4 And he could have said to Dr. Chapman, for example,
5 is there a place in here where Dr. Chapman says I have
6 eliminated all possibilities? No, he didn't say that.
7 That's a conclusion Investigator Turner reached.
8 Investigator Turner is not on trial. He's a step past my
9 client.

10 Even when we talk about this Burras issue, that
11 information was provided to Investigator Turner. And then
12 the solicitor's office said that was relevant to probable
13 cause.

14 So, you know, these are reports being made. And they
15 are true. I mean, I think that's my problem. This idea
16 that she -- you know, for his statement to be accurate,
17 she would have had to have kept custody and control of the
18 money 24 hours a day for three and a half years, that
19 isn't what he reported.

20 I admit the language on each written thing says she
21 was responsible -- solely responsible for maintaining and
22 depositing the money, collecting and depositing the money.
23 And I think what -- what they're adding into that language
24 is what it means is she was the only person that ever
25 collected or deposited the money. That isn't what it

1 says.

2 And the reason that matters at the directed verdict
3 stage in a case like this is because what you're really
4 doing right now is looking at two, sort of, levels.
5 Number one, the existence of probable cause. And that --
6 I get what Mr. Few is arguing. But even O'Shea says
7 there's just no way to tell if the money has been taken
8 without further investigation.

9 So when you suspect something is taken from you, can
10 you go to the police? And if so, do the police have some
11 responsibility to investigate? Or do they serve as a
12 conduit where they take the citizen's words, type it into
13 a complaint, bring it to a magistrate, and then absolve
14 themselves of further responsibility? And that's not the
15 law.

16 THE COURT: Yes, sir.

17 MR. FEW: Your Honor, a couple of things. Doug
18 Schmieding testified that he has no idea why there's a
19 discrepancy. Mike O'Shea, also, has no idea why there's a
20 discrepancy.

21 Mr. O'Shea was just humoring opposing counsel by
22 furthering the discussion about what could you figure out
23 from this. You can't figure out anything from this.
24 Turner said that he pressed Chapman and wanted to make
25 sure that there weren't three or four other people that

1 could have done this. Okay. So that -- the whole
2 question to Mike O'Shea is under a false premise that
3 somebody, actually, took money.

4 Your Honor, financial records always have
5 discrepancies. But, also, I want to remind the Court this
6 is what the Judge said, Okay -- this is Page 20 -- 18 of
7 the transcript that we made from the preliminary hearing
8 transcript on March 26th of 2018, Exhibit No --

9 THE COURT: Are you talking about the magistrate
10 judge?

11 MR. FEW: Yes, sir.

12 THE COURT: Okay.

13 MR. FEW: He says, Okay, being that it stated that
14 Ms. Katchick is and has sole control of receiving and
15 making deposits, I deem that probable cause has been met
16 today. Exact same thing. You can't separate -- they
17 didn't say that she made the deposits. The warrant says
18 that she took the -- that she took in all the money.

19 And, obviously, what that warrant is limited to is
20 cash. Because the warrant has nothing to do with checks
21 or -- or other credits, which Mike O'Shea testified were
22 off by \$55,000. So Eaglesoft is just an unreliable
23 provision, that's a fault.

24 But the problem with what Chapman did is he
25 convinced, and went to great lengths to do it, Elliott

1 Turner that she's the only person that could have done
2 this. And the testimony before the Court has been
3 overwhelming that she was not the only person that took
4 payments, and that she didn't have continued access to it.
5 Anybody could take the money out of those envelopes.

6 And, further, with respect to those end-of-day
7 things, Chapman didn't require his staff to do an
8 end-of-day reconciliation. So, you know, they just went
9 and grabbed Eaglesoft.

10 And they had -- as Mike O'Shea used the word
11 "manipulate." It doesn't have to be manipulate. It could
12 just be a bunch of mistakes. Clearly, they had a ton of
13 mistakes in the checks and credit card charges. So not
14 surprisingly, there's \$3,505 over, I think it was
15 39 months.

16 THE COURT: It was February -- or January 2014 to
17 February 7th, 2017?

18 MR. FEW: It's over three years.

19 THE COURT: From what I recall is January 2014 to
20 February 27, 2017 -- or 2014 to 2017, January or February,
21 one or the other. I can't remember which it is.

22 Anything, Mr. Kendrick, in response?

23 MR. KENDRICK: I'll just say one thing, then I'll
24 stop, Your Honor.

25 THE COURT: What about the magistrate judge finding

1 probable cause?

2 MR. KENDRICK: Generally, that's the thing that
3 causes me some concern in these cases is that the
4 magistrate just made a decision based on Turner's
5 testimony. So I guess their argument is that Turner
6 repeated what he was told by Chapman. But it just
7 absolves the police of any investigative responsibility.

8 So I think that because so many people are okay with
9 probable cause, it, certainly, seems strange that Alex
10 Chapman doesn't get to make those same judgment calls,
11 right or wrong.

12 And I only say this because I think it wraps things
13 up nicely. Under the Plaintiff's theory, if there is a
14 discrepancy in the deposits of any business and it was, in
15 fact, money that was stolen, the business owner would be
16 well advised to just ignore it and eat it. Because what
17 we're advancing is the idea that police have no role to
18 play in the concept of theft. And I know that's not the
19 law. Because I -- I wouldn't want it to be, but when I'm
20 vetting things, I'm looking at the role everyone played.

21 And I just -- you know, I'm not going to go into
22 things I have done in my career. But I just know
23 successful cases have someone who has truly manipulated an
24 investigation to where the -- but the investigator always
25 has some responsibility, too. And I just feel like in

1 this case, we're saying he had no -- he had no role to
2 play. And I don't think that's right.

3 MR. FEW: Your Honor, a couple things that irony
4 cannot be lost on us all. Their argument is that Turner
5 should have figured out that Chapman was lying to him
6 about whether or not she was solely responsible.

7 Furthermore, it's not my argument that Turner was
8 relying on what Chapman told him. All throughout Exhibit
9 No. 13, the preliminary hearing transcript, and his
10 testimony here today, he relied on what he was told by
11 Chapman. And that's in the preliminary -- we haven't gone
12 over it in the trial, but it's here that Turner relied on
13 what Chapman gave him.

14 And, of course, we, also, have the testimony where he
15 manipulated Turner to believe that the -- that there was a
16 second page to Doug Schmieding's letter.

17 And, by the way, Your Honor, as far as that goes, I
18 want a picture that's not lost on us. The cover letter
19 from Alexa Kluska, Page 1 of Exhibit No. 12 --

20 THE COURT: What is that, the e-mail?

21 MR. FEW: No, sir. This is the Brady response
22 letter. She tells you what she's giving you. And item
23 nine is a letter from Douglas Schmieding, CPA, two pages.

24 THE COURT: All right. Anything else?

25 MR. KENDRICK: No, Your Honor. I'm not -- I'm not

1 going to keep going back and forth.

2 THE COURT: As to the defamation, I deny the motion
3 at this time. I mean, there is testimony in the record
4 that Mr. Smith said that Dr. Chapman did tell him that she
5 had stole the money.

6 As to the issues, I'm going to take a look at it when
7 we adjourn. I just want to look back at my notes as to
8 the other causes of action. And I will e-mail you
9 shortly. I'm going to take a look at my notes just to
10 confirm everything in my mind. And I'll e-mail y'all
11 probably within the hour just to let you know my decision
12 on that.

13 Anything else before we adjourn for the day?

14 MR. FEW: Nothing from the Plaintiff, Your Honor.

15 MR. KENDRICK: No.

16 Thank you.

17 THE COURT: See you at 9:30.

18 Logistics, we're going to, obviously, argue and close
19 tomorrow. So if y'all want to submit some charges, I need
20 to get those. And I suggest, too -- of course, it depends
21 on the rulings and all. But depending on my rulings, I'd
22 like for you to -- of course, we've got a directed verdict
23 stage coming up after the Defense puts their case on. I
24 recognize that. But I want you to be considering a
25 verdict form. And then any charges that you want to

1 submit to me, if y'all would e-mail Mr. Umbriano. And
2 it's GMorganlc@sccourts.org. Y'all probably have his
3 e-mail already.

4 MR. FEW: Your Honor, without making substantial
5 revisions, I'll go ahead and send what I had previous
6 times so he'll, at least, have it. And I think all that
7 needs to be done to the verdict form is eliminate the
8 punitive damages. And then I have my charges. I may
9 have -- by tomorrow morning, I may tweak a couple of them.
10 But that way, you'll, at least, have it and Josh will have
11 it as well. Well, I think he already does.

12 THE COURT: Okay. We'll be adjourned.

13 (WHEREUPON, the proceedings were concluded at
14 approximately 5:35 p.m., to be reconvened on
15 Wednesday, April 24, 2024.)
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1 WEDNESDAY APRIL 24, 2024

2 THE COURT: Any matters we need to take up before we
3 bring the jury in?

4 From the Plaintiff?

5 I do want to put on the record as to the directed
6 verdict at the end of the Plaintiff's case, of course, the
7 standard is viewing the evidence and the inferences in the
8 light most favorable to the non-moving party, which would
9 be the Plaintiff in this case. If there is evidence as a
10 whole that is susceptible to more than one reasonable
11 inference, then the directed verdict is to be denied at
12 that stage. And I so find at this stage on the
13 Plaintiff's evidence.

14 So the motions are denied at this time.

15 All right. Anything we need to take up from the
16 Plaintiff?

17 MR. FEW: Nothing from the Plaintiff, Your Honor.

18 THE COURT: All right. Anything from the Defendants?

19 MR. KENDRICK: No, Your Honor.

20 THE COURT: All right. Bring them in, Mr. Smith.

21 (WHEREUPON, the jury came into open court at
22 approximately 9:38 a.m.)

23 THE COURT: All right. Good morning, ladies and
24 gentlemen.

25 I hope you all had a good night last night.

1 We are ready to continue on with the trial. As I
2 told you yesterday, the Plaintiff has presented her case.
3 And now, it's the Defendants turn to present their case.

4 With that, I call on Mr. Kendrick.

5 MR. KENDRICK: Thank you, Your Honor.

6 The Defense first calls Ms. Brooke Chapman.

7 THE CLERK: Place your left hand on the Bible and
8 raise your right hand.

9 WHEREUPON,

10 BROOKE CHAPMAN,
11 after first having been duly sworn, testified as follows:

12 THE CLERK: State your name, please.

13 THE WITNESS: Brooke Chapman.

14 THE CLERK: Thank you.

15 Please be seated.

16 DIRECT EXAMINATION

17 BY MR. KENDRICK:

18 Q Good morning, Ms. Chapman.

19 A Good morning.

20 Q Would you tell this jury what your relationship to
21 Dr. Chapman is?

22 A We are -- we're married.

23 Q And how long have you been married?

24 A We have been married for seven years.

25 Q And what's your relationship to Chapman Dental

1 practice?

2 A I began working at Chapman Dental, my husband's
3 practice, in 2017 -- early in 2017.

4 Q Okay. Before we kind of get back to that, will you
5 tell this jury, after high school, what kind of education
6 you got?

7 A Sure. I attended Clemson University for my
8 undergraduate in biochemistry. And then I, also, attended
9 Clemson for my Master's. I have a Master's in Education.

10 Q What did you do after you finished your Master's
11 Degree?

12 A I taught high school biology and chemistry at
13 Greenville High. And then I, also, did corporate training
14 at Spartanburg Regional.

15 Q What did corporate training involve?

16 A I trained on an electronic medical records system,
17 specifically, a system called Epic.

18 Q And then after that, where is the next place you were
19 employed?

20 A Chapman Dental.

21 Q Okay. You said early 2017. Do you remember what
22 month?

23 A January. But I don't remember exactly when in
24 January.

25 Q Okay. Were you ever aware before you got to Chapman

1 Dental if there were any accounting discrepancies?

2 A I wasn't.

3 Q What was your role when you came to Chapman Dental?

4 A Sure. I joined Ms. Katchick at the front desk just
5 doing normal front desk responsibilities, answering phone
6 calls, scheduling patients, filing insurance claims,
7 collecting payments, sort of those typical front desk
8 things.

9 Q Were you Ms. Katchick's boss?

10 A No.

11 Q Were you there to take her place?

12 A I was not.

13 Q What was her role?

14 A Her role was the office manager. And at the time
15 that I joined the practice, the office was growing. We
16 just needed more support up-front.

17 Q Did you get along with Ms. Katchick?

18 A I did. I considered us friends.

19 Q Okay. Did you become aware after starting working
20 there of any accounting discrepancies?

21 A Yes. Very early on in my employment, I was preparing
22 a bank deposit, then I ran a payment reconciliation in
23 Eaglesoft. And then I was trying to compare that to the
24 funds that I had physically in my possession at that time.
25 And I could not get them to balance out. I couldn't

1 reconcile the difference.

2 Q And we've heard a lot about Eaglesoft this week. And
3 I -- we don't need to go deep into it. But if you could
4 just broadly tell us what Eaglesoft is.

5 A It's a practice management system. It sort of has
6 two sides. There's the, sort of, front desk,
7 administration side, which allows you to file insurance
8 claims, post payments, generate statements for patients,
9 that sort of thing. And then there's a clinical side that
10 houses the patient's chart, notes, X-rays, that type of
11 thing.

12 Q If you didn't have Eaglesoft, how would you do all of
13 that stuff?

14 A I don't think it would be possible. There is a
15 competitive system called Dentrrix. But I think you would
16 have to have one of the two.

17 Q Who manufactures Eaglesoft?

18 A Patterson Dental.

19 Q And what is Patterson Dental?

20 A Patterson Dental is a major dental supplier.
21 Patterson and Henry Schein are the two places that you can
22 buy, to my knowledge, dental equipment. And Eaglesoft is
23 Patterson's product.

24 Q Do you remember when Ms. Katchick was terminated?

25 A I do.

1 Q Did you have any involvement in that decision?

2 A I did not.

3 Q And did your husband talk to you about it?

4 A No. So one thing that allows my husband and I to
5 work together is maintaining very clear boundaries at
6 work. So at work, we have a very defined
7 employee-employer relationship. And that doesn't
8 necessarily exist inside of our household. But we have to
9 differentiate here's where we are at work and here's where
10 we are in our home life.

11 Q So you didn't have any involvement with that
12 decision?

13 A No.

14 Q After Ms. Katchick left, did your role change?

15 A Yes and no. So I just became completely responsible
16 for the front desk, instead of sharing those
17 responsibilities with her.

18 Q Prior to her leaving, what was her responsibility as
19 it related to the money at the practice?

20 A So before I joined the office, she was the only front
21 desk person. She was responsible for collecting all the
22 payments and taking those monies to the bank.

23 Q And were you aware of whether other people ever took
24 on any of those tasks?

25 A No.

1 Q And then after she was terminated, that became your
2 responsibility?

3 A Correct.

4 Q Were there any discrepancies when you took over?

5 A Once I started taking over, no. I would run a
6 payment reconciliation. I would compare that to the bank
7 deposit. And they always matched up.

8 Q Okay. Now, that happened in March. If we
9 fast-forward to October, did you have any involvement in
10 contacting any of the accountants that we have heard from
11 this week?

12 A I did not.

13 Q Did you provide them information?

14 A Yes. If I was asked to provide documents, I would
15 send the documents.

16 Q When -- when you -- sometime in December, do you
17 remember your husband going to the police?

18 A He did go, yes.

19 Q Did you have any involvement in making the decision
20 to go to the police?

21 A No.

22 Q Did you go to the police?

23 A I did not.

24 Q After he went to the police, did you ever proactively
25 reach out to contact law enforcement?

1 A No.

2 Q Were you contacted by law enforcement?

3 A No.

4 Q Did they ever ask you any questions or ask for any
5 further information from you?

6 A I don't believe they asked for any information from
7 me. I believe they asked for information from Alex. And
8 then Alex asked me to provide that documentation, which I
9 sent an e-mail.

10 Q Did you have any particular position on what should
11 happen with that investigation?

12 A No.

13 Q Did you have any ill will towards Ms. Katchick?

14 A No.

15 Q Did you desire for her to be arrested?

16 A No.

17 Q After she was arrested, did you have any contact with
18 the Prosecution?

19 A I did not. I spoke with a victims advocate once,
20 really, just in my capacity as a front desk employee. She
21 called the office phone number. "She" being the victim
22 advocate. And I answered the office phone. But that was
23 my only contact.

24 Q Did you go to the preliminary hearing in this matter?

25 A I did.

1 Q Did you testify at that hearing?

2 A No.

3 Q Did -- did you talk to the Prosecutor or the
4 investigator?

5 A No.

6 Q Did anyone ask you any questions?

7 A No.

8 Q Was there any particular reason you went?

9 A The victims advocate said that a lot of times people
10 would go. And I believe she asked if Alex could go. And
11 he had patients scheduled at the time, so I went in his
12 place.

13 Q Did you have any -- any particular position on what
14 should happen at that hearing?

15 A I didn't.

16 Q Did you understand what would happen at that hearing?

17 A Honestly, not totally. I've never been involved in
18 anything like this before.

19 Q After that hearing, did you reach out to the
20 Prosecutor ever?

21 A No.

22 Q Did the Prosecutor ever consult with you about the
23 case?

24 A No.

25 Q Did the Prosecutor ever ask you for any additional

1 information about the case?

2 A No.

3 Q Did you ever provide any of that information?

4 A No.

5 Q Do you remember being told the charges would be
6 dismissed?

7 A Yes. I believe Investigator Turner informed Alex and
8 then Alex told me. Or maybe it wasn't Investigator
9 Turner. It might have been the Prosecutor. I'm not sure
10 who informed Alex, but then Alex told me the charges were
11 dropped.

12 Q Did you have any position on that?

13 A I didn't.

14 MR. KENDRICK: Your Honor, if I could beg the Court's
15 indulgence.

16 (Pause.)

17 BY MR. KENDRICK:

18 Q Have you ever heard Dr. Chapman tell anybody about
19 what happened with Samantha?

20 A I have not.

21 MR. KENDRICK: Okay. Thank you.

22 That's all I have, Your Honor.

23 THE COURT: All right. Cross.

24 MR. FEW: Thank you, Your Honor.

25 May it please the Court.

CROSS-EXAMINATION

BY MR. FEW:

Q Good morning, Ms. Chapman.

A Good morning.

Q I'm going to get you to take a look at Exhibit No. 7.
And I'm going to hand you the hard copy.

A Sure.

Q This is your e-mail to Mr. Simmons dated November
13th. But I'm just going to go ahead and flip it on over
to the pages that purport to reconcile the year 2017, and
ask you to take a look at that while I put it on the
screen.

You just testified that you started working at
Chapman Dental in January of 2017; right?

A Yes.

Q And this is the information that you sent to Doug
Schmieding as well. This is, actually, the e-mail you
sent to Doug Schmieding; right?

A (There was no response.)

Q November 13th, 2017?

A Yes.

Q Please let us know if you need anything further.

A I just wanted to see that page to make sure before I
answered your question. But, yes, it looks like I sent
that.

1 Q So this shows that there was \$200.50 in missing cash
2 in the month of January of 2017, doesn't it?

3 A Yes. That's what it looks like on this document.

4 Q And it shows that \$589.35 in cash was missing for the
5 month of February, doesn't it?

6 A Yes.

7 Q And you were working at the front desk that whole
8 time, weren't you?

9 A I don't feel that that's accurate. Because I don't
10 remember exactly when I started in January. But I was
11 working there in January and February.

12 Q I'll take that back from you.

13 A Sure.

14 Q Well, you can hang on to it. I'm going to come back
15 to it.

16 A Okay.

17 Q I'm going to ask you to look at Exhibit No. 12. I'm
18 going to flip over to Page 10. This is the information
19 that was provided in discovery. And just hold your --
20 hold this open, if you don't mind, so you can see it.

21 A Okay.

22 Q And I'm going to ask you about that. Because you
23 just testified before this jury that the only person you
24 spoke to at law enforcement was the victim's advocate;
25 right?

1 A Yes.

2 Q That's what you testified to?

3 A Yes.

4 Q So Elliott Turner says on this page, incident report,
5 I then spoke with Brooke Chapman who advised that she
6 could provide the history of invoices that were not paid
7 for both Katchick's cousin and mother-in-law for services
8 that were provided from 2014 to 2017 with no payment being
9 made to the office.

10 A I see that that is stated there. I'm not -- if he
11 says that I spoke with him, I'm not going to say I didn't.
12 But I don't have any recollection of speaking with him,
13 other than via e-mail.

14 Q What are the names of these people that are being
15 referred to here?

16 A I believe that would be Robert and Kelsey Burras.
17 But I don't know that that's -- if the relationship is
18 cousin or mother-in-law for those. I'm not -- I know they
19 were related to her ex-husband. But I'm not exactly sure
20 about the -- maybe her ex-brother-in-law, I believe. I
21 don't think they were cousins.

22 MR. FEW: Your Honor, may I approach?

23 THE COURT: Yeah.

24 Y'all don't need to ask me permission. Y'all can
25 approach.

1 BY MR. FEW:

2 Q I'm going to hand to you what I represent to you is a
3 judgment in the Burras case and ask you to take a look at
4 that. Have you ever seen that before? Are you familiar
5 with the --

6 A I'm familiar with the Burras case, yes, sir.

7 Q And what were the results of the Burras case?

8 A The Burras' were able -- the Burras' -- our
9 collections attorney helped us take the Burras' to court
10 because they were not paying for services that we had
11 provided. And the Judge did, you know, say they had to
12 pay their bill. But he allowed them to continue it on a
13 \$25 a month payment plan.

14 Q That payment plan had already been in place, hadn't
15 it?

16 A It had been previously in place. But the Burras'
17 stopped paying at all for a time period.

18 Q So the -- Elliott Turner says that he spoke with you
19 and you told him about -- you said these people had not
20 paid for services. That's what he says in this report,
21 isn't it?

22 A It -- that is written there, yes. But I don't
23 believe I said that to him.

24 Q And then there was some questions earlier in the
25 trial that suggested that that was the case. But the

1 reality is, Judge Ford said the parties agree that the
2 Defendant would pay \$25 a month until the \$2,014.80 was
3 paid in full. If they don't pay or stop paying, then they
4 can -- y'all can notify the Court and get a judgment; is
5 that right?

6 A Yes. That's what it says there.

7 Q And you worked the front desk and you took over
8 working the front desk after my client was terminated,
9 didn't you?

10 A Yes -- well, before, but then I continued after her
11 termination.

12 Q I'm going to hand you what is marked as -- we'll mark
13 it as Plaintiff's Exhibit No. 34 for identification
14 purposes. And that judgment would be Plaintiff's Exhibit
15 No. 33 for identification purposes.

16 (WHEREUPON, Plaintiff's Exhibit Nos. 33 and 34 were
17 marked for identification.)

18 THE COURT: Has the judgment been admitted into
19 evidence?

20 MR. FEW: Not yet, Your Honor.

21 THE COURT: Take it off. Take it off the screen.

22 MR. FEW: Go ahead?

23 THE COURT: Take it off the screen.

24 MR. FEW: Oh, okay. Sure. I would move that it be
25 admitted, Your Honor.

1 THE COURT: Any objection?

2 MR. KENDRICK: No objection.

3 THE COURT: What exhibit number is it?

4 MR. FEW: Plaintiff's Exhibit No. 32, Your Honor --
5 hold on, please. Plaintiff's Exhibit No. 33.

6 THE COURT: Plaintiff's Exhibit No. 33 is admitted
7 into evidence without objection.

8 Just a reminder, please, don't present any documents
9 until it's been admitted.

10 (WHEREUPON, Plaintiff's Exhibit No. 33 was admitted
11 into evidence.)

12 BY MR. FEW:

13 Q Do you recognize the document that's before you
14 that's been marked as Exhibit No. 34 for identification
15 purposes?

16 A We're talking about this document I'm holding right
17 here?

18 Q The one-page document, yeah.

19 A Yes. I do recognize that.

20 Q And it says, A monthly payment of \$25 until services
21 have been paid in full. Do you see that?

22 A Yes.

23 Q And y'all had their name, and their credit card
24 number, and their expiration date, and the little SCC on
25 the back, and their zip code on there; right?

1 A That is written on there, yes.

2 Q And, in fact, after Samantha Katchick had been
3 terminated, these Burras people continued to make payments
4 on this \$25 a month, didn't they?

5 A I do not recall when they stopped making payments, if
6 that was before or after her termination.

7 Q Okay. Well, look up above at the top here. This is
8 a document produced by your lawyers in this case. And it
9 appears that on June 16th, 2017, that a phone order for a
10 credit card ending in 3724 was declined. Do you see that?

11 A I do see that.

12 THE COURT: Counsel, Plaintiff's Exhibit No. 33 is
13 in. Has Plaintiff's Exhibit No. 34 been submitted?

14 MR. FEW: This is Exhibit No. 34, Your Honor.

15 THE COURT: The judgement is Exhibit No. 33?

16 MR. FEW: Yes, Your Honor.

17 THE COURT: And that's one that's been admitted.

18 Now, you're referencing Exhibit No. 34. Has that one been
19 admitted into evidence?

20 MR. KENDRICK: No. But I don't object to it.

21 MR. FEW: I'll move Exhibit No. 34 into evidence as
22 well, Your Honor.

23 THE COURT: Plaintiff's Exhibit No. 34 is admitted
24 into evidence without objection. However, I want the
25 credit card number redacted.

1 (WHEREUPON, Plaintiff's Exhibit No. 34 was admitted
2 into evidence.)

3 MR. FEW: Oh, yes, Your Honor. Can I just go to the
4 last four since I've already done that?

5 THE COURT: Well, we can do it at break.

6 MR. FEW: I'll just put a sticky over it.

7 THE COURT: If you're going to present it to the
8 jury, redact that.

9 MR. FEW: Is that good right there?

10 THE COURT: Yes, sir.

11 BY MR. FEW:

12 Q So this is Plaintiff's Exhibit No. 34. You were the
13 one that was taking the payments at that time; right? So
14 you would have been the one that would have prepared this;
15 isn't that right?

16 A This payment plan was not prepared by me.

17 Q Yeah. But you would have been the one that was
18 working the front desk in June of 2017; right?

19 A As it was already prepared, I was probably attempting
20 to collect what money we were authorized to do, which,
21 according to this, was \$25 a month. But I did not prepare
22 this payment plan.

23 Q So you knew that that was the agreement with the
24 Burras' is that they were paying \$25 a month?

25 A For -- yes. They were paying \$25 a month for a

1 time.

2 Q And they continued to pay, didn't they?

3 A After the hearing, or court, or whatever we term this
4 in November of 2017, yes, they did. But for a while, they
5 were not.

6 (WHEREUPON, Plaintiff's Exhibit No. 32 was marked
7 for identification.)

8 BY MR. FEW:

9 Q I'm going to hand to you what we'll mark as
10 Plaintiff's Exhibit No. 32. I represent to you this is a
11 document that was produced by your lawyers in this
12 lawsuit. If you'll take a look at that and tell me if you
13 recognize it?

14 A Yes. This appears to be an account history for
15 Robert Burras.

16 MR. FEW: Your Honor, I would move that Plaintiff's
17 Exhibit No. 32 be entered into evidence.

18 THE COURT: Any objection from the Defendants?

19 MR. KENDRICK: No objection, Your Honor.

20 THE COURT: All right. Plaintiff's Exhibit No. 32 is
21 admitted into evidence.

22 (WHEREUPON, Plaintiff's Exhibit No. 32 was admitted
23 into evidence.)

24 MR. FEW: They're all three in; right, 32, 33 and 34?

25 THE COURT: They're all in.

1 BY MR. FEW:

2 Q This is the Burras gentleman that we've been speaking
3 about; right?

4 A Yes.

5 Q And your own records show that on 2/27, they made a
6 payment of \$30. On 3/10, which was after Sam was fired,
7 they made a payment of \$25. You got insurance, it looks
8 like, in the amount of \$121.85, also, in March of 2017.

9 They continued to make payments up until the time
10 that, apparently, that debit account, whatever it is, just
11 didn't have any money in it, that one day that you ran the
12 phone record; isn't that right?

13 A They did. And I attempted to contact them multiple
14 times. Once payments were not being made any more, I
15 attempted to contact them multiple times to arrange
16 further payment.

17 Q Well, you sued them; right?

18 A After they were unresponsive to me, I turned over
19 their information to our collections attorney, yes.

20 Q And then when that judgment that we just went over
21 came through, someone came in and made a credit adjustment
22 of \$340 to their account?

23 A Yes. I believe we were just trying to align the
24 balance to what was -- what Judge Ford in this document
25 where he said that they could pay 200 -- excuse me, \$25 a

1 month until the balance of \$2,014.80 was paid in full. So
2 I think that's what that \$340 is referencing.

3 Q So why is Elliott Turner making a note in the
4 incident report that he spoke to you about a history of
5 invoices that were not paid for services with no payment
6 being made to the office when that's not true?

7 A I can't speak to why Investigator Turner put that in
8 his report.

9 Q Let me put a sticker on that Exhibit No. 34.

10 A Do you need to put a sticker on that one?

11 Q Yeah.

12 A Do you want to put a sticker on this one, too?

13 Q I think I've already got that one.

14 30 -- which one is the judgment?

15 THE COURT: That's Plaintiff's Exhibit No. 33.

16 BY MR. FEW:

17 Q Let's take a look at some of these other exhibits.

18 We don't have to go through all of them. But do you
19 acknowledge -- you don't deny you sent those e-mails back
20 and forth to Earl Simmons before you then sent the e-mail
21 to Doug Schmieding that's up there before you as
22 Exhibit No. 9, I believe; right?

23 A Can we clarify what e-mails?

24 Q Sure. Let's look at Exhibit No. 6. Take a look at
25 that and let me know if you recognize it.

1 A This looks like an e-mail that Earl has addressed to
2 me. But I don't think that I sent anything to Earl.

3 Q Didn't you use the e-mail Chapman Dental@
4 Greenville -- at Gmail.com?

5 A I did use that e-mail, but I was not the only user of
6 that e-mail. I may have -- are you referring to the
7 e-mail that says, Original summary attached that was sent
8 to Earl on November 13th at 11:15?

9 Q Not November 13th. We're still -- you should be
10 looking at his -- do you have Exhibit No. 5 or Exhibit No.
11 6 right now?

12 A I have Exhibit No. 6.

13 Q Exhibit No. 6 should be his response to you.

14 A Yes. I do see where he says, Brooke, here is
15 everything, and continues on. I'm just -- I did not -- I
16 do not know if I sent this e-mail that says, Original
17 summary attached. I don't have a recollection of doing
18 that.

19 Q You sent the e-mail to Doug Schmieding; right?

20 A If Doug asked for documents or something, I would
21 provide those.

22 Q We'll get to that in a minute. Brooke -- this is
23 what he says here on November 17th. Brooke, here is
24 everything. A signature is not going to determine if the
25 authorities choose to take action. Do you remember

1 receiving that?

2 A I -- I do.

3 Q Do you know that -- I think with less than an hour
4 after receiving this, you removed a couple of these
5 exhibits and forwarded all that content to Doug
6 Schmieding.

7 A If I was asked to send something to Doug, I would
8 have done that. But I just -- I'm not sure. I think
9 you're asking me about this e-mail where it says, Original
10 summary attached. I'm not sure if I sent that or not.

11 Q We're on Exhibit No. 6. It's an e-mail -- that's the
12 bottom of it?

13 A Yes. And I think you -- could you just clarify? Are
14 you asking me if I sent an e-mail or if I received an
15 e-mail?

16 Q Well, you had access to this -- because your husband
17 used this leveladrummer e-mail?

18 A That is his personal e-mail, yes.

19 Q And this is the dental practice's e-mail; right?

20 A Correct, which isn't limited to one user.

21 Q Who else has access to that?

22 A Right now, just Alex and myself.

23 Q At this time, who would have had access to it?

24 A I think probably just Alex and myself. There's been
25 various points where we've had other front desk people

1 that used that e-mail. In November of 2017, I don't think
2 we had another front desk employee right then.

3 Q Nobody else that ever worked for you was sending
4 e-mails back and forth to Earl Simmons and Doug Schmieding
5 about having Samantha Katchick arrested, were they?

6 A Well, I don't know that this e-mail is about having
7 Samantha Katchick arrested.

8 Q You don't? Well, let's read it. Everything is laid
9 out perfectly if they care to look at documentation. As I
10 have told Alex, this is not, typically, a police issue at
11 this level. Isn't that talking about taking this to the
12 police?

13 A Sure. But that's what Earl was sending. I -- what's
14 your -- can you clarify your question?

15 Q Well, you received this e-mail; right?

16 A Yes. I received that e-mail.

17 Q And less than an hour after receiving this e-mail,
18 you took the content of the spreadsheet file, which is the
19 exhibit I just showed you when we first started your
20 cross-examination, and you forwarded it to Doug Schmieding
21 because you wanted him to write a letter on his
22 letterhead; isn't that true?

23 A I didn't really have any intention for Doug to do
24 anything. I provided documents to Doug when I was asked
25 to do so. That was kind of part of my role as being at

1 the front desk, providing documentation, and sending
2 e-mails, and things like that. But I didn't ask Doug to
3 write a letter, like, personally ask him to do that.

4 Q So when he testified on that witness stand under oath
5 yesterday that you told him it would look better coming
6 from him, you deny that ever happened?

7 A I do.

8 Q Let's go back to Exhibit No. 7. That's the one that
9 I was just -- I handed you at the start of the
10 examination, I believe. Are you there?

11 A Yes. I've got it.

12 Q Okay. Now, this is an e-mail -- I'm sorry -- it
13 says, Thanks, Brooke Chapman. Did you send this e-mail?

14 A It appears that I did, yes.

15 Q And then you say, Please see attached. Let me know
16 if you need any additional information or documentation;
17 right?

18 A Yes.

19 Q And then attached to that is this -- is -- because
20 you didn't make changes to what Earl Simmons sent, did
21 you? You just forwarded the spreadsheet data that he sent
22 you?

23 A Yes. That's what it looks like.

24 Q So you were more involved in all this than you've
25 told this jury earlier today, weren't you?

1 A No.

2 Q You weren't?

3 A No.

4 Q None of this ever happened?

5 A I mean, I forwarded these documents.

6 Q You went to the preliminary hearing?

7 A I did.

8 Q What do you recall happening there?

9 A I remember Investigator Turner testified. And that's
10 really about all I recall from it.

11 Q Let's take a look at Exhibit No. 13, which is the
12 preliminary hearing transcript.

13 A Thank you.

14 Q So Investigator Turner, the gist of what he said
15 under cross-examination at the preliminary hearing was
16 that your husband told him that Samantha Katchick was
17 solely responsible for all receipts and deposits of cash
18 from 2014 until the end of February in 2017; isn't that
19 true?

20 A I -- without reading this over, I think that's,
21 basically, what was said.

22 Q That's what you remember -- because, I mean, we can
23 go through every line, if you want to?

24 A I mean, I don't know that that's necessary. But I
25 think that was the gist of it, yes.

1 Q But, yet, you just told this jury that you were
2 working at the front desk in January and February of 2017.
3 So how could she be solely responsible if you were right
4 there and had access to everything as well?

5 A Samantha was the office manager. She was making all
6 of the deposits.

7 Q When was the first time that you can recall ever
8 going to the Chapman Dental office?

9 A The first time I ever went was sometime probably in
10 April of 2014 if I had to venture a guess. I don't,
11 specifically, remember.

12 Q All right. Did you ever have access to go down there
13 and prepare your work when you were a teacher at
14 Greenville High, like, your curriculum, and things like
15 that?

16 A Would I sometimes sit in the back of the office and
17 do work?

18 Q Right.

19 A Yes.

20 Q And you would have had access to the cash envelope
21 where the cash and checks were kept at the front desk;
22 right?

23 A I was in the building with the money, yes.

24 Q Just the same way Angie Hawthorne was in the building
25 with the money?

1 A Uh-huh.

2 Q Just the same way that your husband was in the
3 building, probably more often than anybody, with the
4 money?

5 A Yes. We were all in the building.

6 Q And Althea Holland?

7 A Yes. I don't remember exactly when Althea started.
8 If we're still referencing this time period in 2014, I
9 don't think Althea had started then.

10 Q Did your husband ever host social functions at the
11 office with his friends and his car show friends?

12 A I don't think so, no.

13 Q Was there ever a time period when you had your code
14 removed -- your access code removed to get into the
15 building?

16 A No.

17 Q You don't recall that?

18 A No.

19 Q Maybe you weren't aware of it. Are you aware if your
20 husband ever took cash out of that envelope?

21 A No.

22 Q He never took a \$10 or \$20, or anything?

23 A No.

24 Q But friends would be in the office, also, on the
25 weekends, as well as the patients that were being treated

1 on Saturdays; right?

2 A Like, were people coming to just hang out in the
3 office?

4 Q Well, your husband, he didn't have, like, a barbecue
5 or some social functions with his car friends down there?

6 A No. The only barbecue I can ever remember us having
7 is the day of the 2017 Eclipse. But that was during the
8 work day.

9 Q Do you know if your husband had given Samantha
10 Katchick a nickname?

11 A Sam, maybe. But that's really the only thing I know.

12 Q You never heard him call her "Panther"?

13 A Oh, I did, yes. I'm sorry. I didn't remember that.
14 But, yes, now that you mention it.

15 Q So tell the jury when you first got your access code
16 to get into Eaglesoft?

17 A I don't, specifically, remember, but probably
18 sometime in early 2017.

19 MR. FEW: Just one minute, Your Honor.

20 (Pause.)

21 BY MR. FEW:

22 Q Did you ever run, like, an audit trail of who went
23 into Eaglesoft and made revisions and adjustments?

24 A I haven't.

25 Q You're aware that that's something you can do; right?

1 A Well, no. I am not sure that that's something you
2 can do. Eaglesoft has a lot of reporting features. I'm
3 not personally aware of being able to run a report that
4 would show an audit trail, specifically.

5 Q So when Mike O'Shea, who's handled six different
6 dental practice forensic accountings, took that stand
7 yesterday and said that you can do that, he was mistaken?

8 A I'm not sure. I'm personally not aware of that
9 capability. I'm not saying, definitively, it doesn't have
10 it. I just don't know of it.

11 Q Have you ever gone into Eaglesoft and made any
12 adjustments?

13 A Yes.

14 Q Anyone with a log-in can do that; right?

15 A No.

16 Q Who had authority to do it?

17 A At the -- pretty much anybody that has -- office
18 manager or front desk user. You can honestly personalize
19 anybody's profile, I guess is the word, in Eaglesoft.
20 But, like, the clinical staff don't have the ability to
21 make adjustments.

22 Q Angie Hawthorne testified she had the ability to
23 enter payment information?

24 A A payment is not an adjustment.

25 Q That's what I meant.

1 A You asked me if I ever made adjustments.

2 Q So who could make adjustments?

3 A Myself, Alex, and at the time of her employment,
4 Ms. Katchick.

5 MR. FEW: That's all the questions I have.

6 THE COURT: All right. Any redirect?

7 MR. KENDRICK: Just briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. KENDRICK:

10 Q The payment plan that the Burras' were on, Mr. Few
11 showed you the judgment; right?

12 A He did, yes.

13 Q Do you still have that up there, Plaintiff's
14 Exhibit No. 33?

15 A I do. I've got a lot of papers up here.

16 Q And if you look under the notes, the amount they owed
17 was a balance at the time of \$2,014.80?

18 A Yes. That's what it says.

19 Q So the \$25 a month would be roughly six or seven
20 years to pay off; right?

21 A Correct.

22 Q So is that a normal time period that you would assign
23 to a payment plan?

24 A Absolutely not.

25 Q And the outcome of that case, essentially, was that

1 they had to make the payments they weren't making; right?

2 A Correct.

3 Q And if they stopped making the payments, the Judge
4 says here, he's just going to enter a judgment for the
5 amount; right?

6 A Yes.

7 Q And what happened is that in June, as Mr. Few showed
8 you, the card had been declined; right?

9 A Yes.

10 Q You're not just going to keep running a declined card
11 over and over again; right?

12 A Right. That's kind of a futile attempt.

13 Q But you want to reach out to the customer?

14 A Absolutely. I mean, it's not in my best interest to
15 have to go to a collections attorney and have a big
16 rigmarole. I'd rather just call the patient and say, Hey,
17 you've got an account balance, can we, please, make an
18 arrangement and let's get this taken care of.

19 Q And we, also, looked at some e-mails from your Uncle
20 Earl to you. And I call him "uncle." Are y'all close?

21 A No. We're not close at all. We, actually, don't
22 really -- he is married to my dad's sister. But we do not
23 have a relationship.

24 Q When did he get married to your dad's sister?

25 A I think 2013.

1 Q He wasn't your uncle when you were a little kid?

2 A No, no.

3 Q And I think Mr. Few showed you an e-mail where he
4 says, This is not a police issue. Do you remember that?

5 A Yes. I think that's in one of these. Yes, he did
6 say that.

7 Q So you're not talking about having anybody arrested;
8 right?

9 A No.

10 Q You're talking about the opposite; right?

11 A Correct.

12 Q So this idea of making adjustments, is it something
13 that you would commonly do, just go into Eaglesoft and
14 start making adjustments?

15 A No. It's something that -- honestly, the most common
16 reason that we would do it is if, like, we received an
17 insurance check from somebody and there's, like, \$3 their
18 insurance didn't pay. It's not really worth the stamp to
19 send someone a statement for \$3. And it's just kind of --
20 it feels a little rude to be like, you owe us \$3. So we
21 would adjust off small amounts like that is the most
22 common reason.

23 Q So since Mr. Few asked you, did you or Dr. Chapman
24 steal money from yourselves?

25 A We did not.

1 Q Did you make adjustments and then blame it on
2 Ms. Katchick?

3 A No.

4 Q Did you get any benefit from her being prosecuted in
5 this case?

6 A None.

7 Q Were you seeking any benefit?

8 A No.

9 Q Did you want her prosecuted?

10 A No.

11 Q Have you stolen money from yourself?

12 A No.

13 MR. KENDRICK: That's all I have.

14 THE COURT: All right. Any recross?

15 RE CROSS-EXAMINATION

16 BY MR. FEW:

17 Q You were just asked about the e-mail -- well,
18 apparently, you had a relationship with Earl Simmons in
19 October and November of 2017, didn't you?

20 A We exchanged e-mails. But we've never had a close
21 relationship.

22 Q You had enough of a relationship with him to let him
23 come down to your office and go through all your financial
24 records and prepare -- or review what you had already
25 done?

1 A I didn't invite him to the office or allow him in
2 there.

3 Q Then why did he come down there?

4 A I really -- it was not on behalf of me.

5 Q Do you think your husband did?

6 A They probably talked. They were closer at the time.

7 Q But you were the one that was e-mailing back and
8 forth with him; right?

9 A He addressed an e-mail to me.

10 Q He says it's not a police issue. Would you -- do you
11 agree with that?

12 A I didn't really agree or disagree. I wasn't involved
13 in the decision to take this to the police.

14 Q So when did it become a police issue?

15 A I wasn't involved in that decision. So I can't
16 really speak to that.

17 Q Did it become a police issue after you got that
18 letter in hand from Doug Schmieding on November 14th?

19 A I didn't make the decision to go to the police. So I
20 can't really speak as to when or what became a police
21 issue.

22 MR. FEW: That's all the questions I have.

23 THE COURT: All right. Any redirect?

24 MR. KENDRICK: No, Your Honor.

25 THE COURT: All right. You may step down, ma'am.

1 THE WITNESS: Thank you.

2 MR. KENDRICK: Your Honor, we call Alex Chapman.

3 THE CLERK: Place your left hand on the Bible and
4 raise your right hand.

5 WHEREUPON,

6 MARSHALL ALEXANDER CHAPMAN,

7 after first having been duly sworn, testified as follows:

8 THE CLERK: State your name.

9 THE WITNESS: Alex Chapman.

10 THE CLERK: Thank you.

11 Please be seated.

12 DIRECT EXAMINATION

13 BY MR. KENDRICK:

14 Q Dr. Chapman, good morning.

15 A Good morning.

16 Q Obviously, you're a dentist; right?

17 A Yes, sir.

18 Q How long have you been a dentist?

19 A Since 2010.

20 Q How long have you owned Chapman Dental?

21 A 2013.

22 Q And what were you doing between 2010 and 2013?

23 A Just trying to find jobs and pay student loans down.

24 Q Okay. And what kind of jobs did you work?

25 A I worked for a few different offices. And I, also,

1 did, like, fill-in work. I went to different dental
2 offices when they needed a dentist or they just needed
3 help.

4 Q Okay. Is fill-in work something common in the dental
5 field?

6 A I think so.

7 Q Do you hire fill-in dentist?

8 A Not now, no. It's nice to have your own practice and
9 be able to --

10 Q Okay. When you started Chapman Dental in 2013, did
11 Ms. Katchick work for you right away?

12 A No.

13 Q When did she start working for you?

14 A I think right at the end of 2013 or beginning of
15 2014.

16 Q And what was her role at your office?

17 A Office manager.

18 Q And what did that entail as it related to money?

19 A So it was her job to determine how much patients
20 needed to pay, and collect that money, and make insurance
21 claims, send those to the insurance companies, collect on
22 these claims, make sure the insurance companies paid what
23 they were supposed to. If there was money left over, get
24 the patients to pay that money. And then put it all
25 together, make a deposit slip, and take the deposit to the

1 bank.

2 Q I want to talk about collections and deposits. When
3 we talk about collections, tell me the different ways your
4 office collects money.

5 A So it would be insurance payments and patient
6 payments.

7 Q When a patient made a payment, who was responsible
8 for collecting it?

9 A Samantha.

10 Q Were there other people that ever took a payment over
11 the course of -- from 2014 to 2017?

12 A Possibly. If so, it would been under the direction
13 of Samantha.

14 Q And if someone else took a payment, who was
15 responsible for making sure the payment went where it
16 belonged?

17 A Samantha.

18 Q Were you ever aware of discrepancies between your
19 accounting records at the office and your bank records?

20 A Yes.

21 Q And we saw an exhibit yesterday that's in evidence
22 where your accountant is e-mailing with you about that
23 matter. Do you remember that?

24 A Vaguely, just mostly from the trial.

25 Q Do you remember what the discrepancy involved?

1 A No.

2 Q Okay. Do you remember solving that problem?

3 A No.

4 Q Was that problem solved in March of 2017?

5 A I don't think so.

6 Q Okay. So were there discrepancies between the
7 collections and the deposits in March of 2017?

8 A Yes.

9 Q And is that, ultimately, why you terminated
10 Ms. Katchick?

11 A Yes.

12 Q Before you terminated her, were you close with
13 Ms. Katchick?

14 A Yeah, absolutely.

15 Q Did you get along with her?

16 A Yes.

17 Q Did you like Ms. Katchick?

18 A I did.

19 Q Did you want to fire her?

20 A No.

21 Q Why did you, ultimately, have to terminate
22 Ms. Katchick?

23 A Well, the office wasn't in a good state of affairs
24 financially. We had a lot of outstanding insurance claims
25 and a lot of patients that owed us money. And we were not

1 doing very well. Once we saw there was, also,
2 discrepancies with the cash getting to the bank, I had no
3 choice.

4 Q After you terminated her, who took over her role?

5 A Brooke.

6 Q And that's what she just told us. What happened when
7 she took over the role?

8 A Once Brooke took over, she started being able to make
9 everything add up and be how it was supposed to be. I
10 think once Samantha was gone and Brooke was at that
11 time -- once Samantha left -- responsible for everything
12 at the front desk, then all the numbers started adding up
13 and everything did what it was supposed to do.

14 Q Why did you reach out to the accountants we've heard
15 from in October of that year?

16 A I just really wanted answers as to why -- why there
17 were discrepancies.

18 Q And did those accountants give you these answers?

19 A No.

20 Q Did those accountants give you the existence of a
21 discrepancy?

22 A Yes.

23 Q Why did you use the accountants to determine whether
24 there was a discrepancy?

25 A Well, that's their job.

1 Q Numbers?

2 A Yeah.

3 Q Once you -- you got the discrepancies, did anyone
4 ever give you an explanation for why there were
5 discrepancies?

6 A No.

7 Q And neither of the accountants could explain to you
8 what was going on?

9 A No, sir.

10 Q And you did not know what was going on?

11 A No.

12 Q Did you suspect someone had taken money?

13 A Yes.

14 Q And why did you decide to go to the police?

15 A I really wanted answers. I figured if the
16 accountants couldn't figure out why there was a
17 discrepancy, maybe the police could look into it and
18 figure out what happened.

19 Q Do you know anybody in the police force?

20 A No.

21 Q How did you come to go to the Greenville County
22 Sheriff's Office?

23 A Well, we weren't in the city, we were in the county.
24 So I just Googled Greenville County Sheriff's Office
25 and --

1 Q And went there?

2 A -- went there, yes, sir.

3 Q Did you have a person in mind to go see there?

4 A No.

5 Q Did you walk in the front door?

6 A Yeah. I just walked up.

7 Q What did you bring with you?

8 A I just brought all the financial information that I
9 could gather.

10 Q And what did they do when you got there?

11 A They asked me, Hey, why are you here?

12 I said, I own a business and there's money missing.
13 And I just don't know what's going on.

14 Q Did you end up talking to a detective?

15 A Yes.

16 Q And who was that?

17 A Elliott Turner.

18 Q Who we heard from Monday?

19 A Yes.

20 Q What did you tell Investigator Turner about your
21 situation?

22 A Well, I just explained I think there's money missing
23 and I don't really understand what's happened. And I
24 wanted him to look at it.

25 Q And you told him that there was an employee who was

1 responsible for that money; right?

2 A Absolutely.

3 Q And is that true?

4 A Yes.

5 Q Did you tell Investigator Turner that 24 hours a day,
6 seven days a week that employee had the money with them?

7 A No.

8 Q Did you explain to him how your office worked?

9 A Yeah.

10 Q Did he ask you any questions?

11 A Not a lot. He just mostly asked me who my employees
12 were.

13 Q Did -- did you tell him who you wanted arrested?

14 A No.

15 Q Did you tell him that you wanted anyone arrested?

16 A No.

17 Q What did you think Investigator Turner would do with
18 your information?

19 A Hopefully, give me some answers and get to the bottom
20 of what was going on.

21 Q What would you have done if he had given you no
22 answer?

23 A I mean, at that point, we've tried having accountants
24 look at it, having the police look at it. I don't know if
25 there's anybody else that could figure it out.

1 Q Did he ask you for follow-up information?

2 A Yes.

3 Q Did you provide that information?

4 A Yes.

5 Q Did you reach out to him proactively and have him do
6 anything for you?

7 A No.

8 Q Did you give him information to add to his work --

9 A No.

10 Q -- if he didn't ask for it?

11 A Right.

12 Q Did you tell him that you wanted someone arrested as
13 his investigation progressed?

14 A No.

15 Q You sent an e-mail that we've seen where he told you
16 that Samantha was arrested. And you said, Thank you for
17 your hard work. Why did you send that?

18 A Just a nice response. I try to be polite and thank
19 people.

20 Q Did you trust that he had done an investigation?

21 A Yeah.

22 Q Did you believe that he had done an investigation?

23 A Absolutely.

24 Q Once Ms. Katchick was arrested, did the Prosecutor
25 contact you?

1 A I think at some point, they reached out and -- and
2 contacted me. And I think they mostly -- I think they
3 were just -- when they asked for information, we gave it
4 to them. I think there was one point toward the end when
5 they contacted me and wanted me to come down to -- I don't
6 know if it was the police station or the solicitor's
7 office.

8 Q Did they tell you at some point they were going to
9 dismiss the charges against Ms. Katchick?

10 A Yes.

11 Q Did you have any position on that?

12 A No.

13 Q Did you ask them not to do that?

14 A No.

15 Q Had you pressed them to prosecute her?

16 A No.

17 Q We've heard a lot about the term "forensic audit."
18 Do you know what that is?

19 A No.

20 Q Would you have any idea if that's what your
21 accountants did or not?

22 A No.

23 Q Okay. Do you know Dr. Nasim?

24 A Yes.

25 Q Okay. Do you remember calling Dr. Nasim to talk

1 about Ms. Katchick?

2 A I don't. If he says I called him, I'm not going to
3 argue with the guy. But I don't recall.

4 Q Do you remember during that time whether you would
5 have made a call just to have a discussion with him about
6 this situation?

7 A No.

8 Q Do you know Brian Smith?

9 A I do.

10 Q And were you friends with Brian Smith?

11 A We were.

12 Q But no longer?

13 A No.

14 Q Now, do you remember, roughly, when you met Brian
15 Smith?

16 A I think sometime in 2018.

17 Q Do you remember when he first came to your office?

18 A I don't.

19 Q Was it before or after Ms. Katchick was terminated?

20 A After.

21 Q Did he ever know Ms. Katchick through you?

22 A No.

23 Q Do you remember having a conversation with him about
24 this lawsuit?

25 A No.

1 Q Did you, generally, talk about this lawsuit openly?

2 A No.

3 Q Did you talk about this situation with Ms. Katchick
4 openly?

5 A No.

6 Q Do you remember telling him that she had stolen money
7 from you?

8 A No.

9 Q Do you remember telling him that the lawsuit was
10 pending?

11 A No.

12 Q Is that the kind of thing you would have discussed
13 with him as your friend?

14 A No.

15 Q Did you steal any money from yourself?

16 A No.

17 Q Did you manipulate any records to falsely to make it
18 look like someone else stole from you?

19 A No.

20 Q Are you upset that the charges against Ms. Katchick
21 were dismissed?

22 A No.

23 MR. KENDRICK: I beg the Court's indulgence, Your
24 Honor.

25 (Pause.)

1 BY MR. KENDRICK:

2 Q Just a couple more questions, Dr. Chapman. Did you
3 send her a text message after the charges were dismissed?

4 A I don't remember. But it looks like I, apparently,
5 did.

6 Q Do you know why you would have sent her that text
7 message we've seen in evidence?

8 A Looking at that text message, it would have just been
9 to make peace.

10 Q Just to try to get along with her?

11 A Absolutely.

12 Q Okay. Did you and your wife ever have any kind
13 of agreement to go to the police and make up a false
14 story?

15 A No.

16 Q Did you make a false story up?

17 A Not at all.

18 Q Was everything you told the police officer true?

19 A Absolutely.

20 Q Did your wife and you agree on what would be said to
21 the police officer?

22 A No.

23 MR. KENDRICK: That's all I have.

24 Thank you, Your Honor.

25 THE COURT: All right. Cross.

CROSS-EXAMINATION

BY MR. FEW:

Q So as I understand your testimony, Dr. Chapman, all the decisions about prosecuting Samantha Katchick were made by Elliott Turner?

A Or the police. I don't know all that works.

Q So was he testifying falsely yesterday when he said that you told him repeatedly that she was the only one that could have --

MR. KENDRICK: Your Honor, I'm going to object. He's mischaracterizing that --

THE COURT: Sustained.

MR. KENDRICK: -- and pitting witnesses.

THE COURT: Sustained.

MR. FEW: I'll rephrase.

BY MR. FEW:

Q He testified that --

MR. KENDRICK: Your Honor, I'm going to object. It's pitting witnesses. He's already testified.

THE COURT: Sustained.

BY MR. FEW:

Q Let's look at his police report. Before I do that, did you give him the names of any of your employees when you went down there to meet with him? It was, like, December of 2017, I believe; right?

1 A I'm sure I would have. He would have asked for that
2 information.

3 Q What names did you give him?

4 A I don't remember, but all of my employees.

5 Q You gave him the names of all of the employees. So
6 that should be reflected in his report, wouldn't you
7 think?

8 A I have no idea.

9 Q So it's your testimony before this jury that when you
10 went down there to meet with him that you didn't give any
11 indication that you thought it was Samantha Katchick that
12 was responsible for this discrepancy. And, therefore, she
13 had stolen \$3,505.19 from your petit cash account?

14 A Correct. I mean, I told him who my employees were
15 and what -- their roles.

16 Q Hadn't you previously told her that she was being
17 terminated in March of 2017 for taking money?

18 A No. I told her that there was money missing and that
19 she was responsible for it. And I just -- I couldn't have
20 that happen.

21 Q So you didn't tell Angela Hawthorne that she stole
22 money from you?

23 A I did not.

24 Q And you have no recollection of calling Jim Nasim on
25 his cell phone and telling him she had stolen money from

1 you?

2 A I don't remember a phone call. But, like I said, if
3 he says I called him -- I talk to lots of dentists.

4 Q Do you have Exhibit No. 12 up there? I think you do.

5 MR. KENDRICK: I moved them.

6 MR. FEW: Oh, you did. What did you do with them?

7 MR. KENDRICK: I put them over here.

8 BY MR. FEW:

9 Q Have you ever seen that document?

10 A No. I mean, maybe in this trial. You've put a lot
11 of stuff on the projectors. But I don't remember.

12 Q Look at the front page of that. Do you see that?

13 A Uh-huh.

14 Q I'll put it on the screen for the jury.

15 THE COURT: What exhibit number is that?

16 MR. FEW: Plaintiff's Exhibit No. 12, Your Honor.

17 BY MR. FEW:

18 Q This is a letter dated March 12th of 2018. Do you
19 see that?

20 A You're asking me?

21 Q Yeah.

22 A Yeah. It says it right at the top.

23 Q And one of the things on here -- it says there's a
24 two-page letter from Doug Schmieding, CPA. Did you ever
25 tell Elliott Turner that Doug Schmieding's letter that you

1 gave him had an attachment to it with my client's name on
2 it?

3 A No. I handed him the whole stack of everything. And
4 he opened it and looked through it himself.

5 Q This is what they call the narrative portion of the
6 report. The complainant, Alex Andrew Chapman, is a
7 dentist who owns Chapman Dental. That's true, isn't it?

8 A Uh-huh.

9 Q Chapman is reporting that from December 2013 to
10 March 28th of 2017, Samantha Katchick was employed by
11 Chapman's office. From January '14 to January of 2017,
12 Katchick was solely responsible for receiving payments, to
13 include cash from patients and making the bank deposits.
14 Is that what you told him?

15 A That's what the report says.

16 Q Well, how would he know her name if you didn't give
17 it to him?

18 A I gave him all the employees names.

19 Q Do you want to look through there and see if any of
20 the other employees names are in there as being
21 responsible for the cash missing?

22 A That's a lot of pages. I'll start looking.

23 Q Take all the time you need.

24 A I don't see any employees names at all. I'm sorry.

25 I'm looking. Do you want me to look at a specific page or

1 area? I'm not used to looking at police reports.

2 Q Have you given up or are you reconciled that no other
3 names are in there?

4 A It's a big stack. Looking through it, I don't know
5 what I'm looking at. It's pages, and pages, and pages.

6 Q Well, let's look at Page 19 of Exhibit No. 12.

7 A 19. All right.

8 Q Tell me if you recognize this letter that you wrote?

9 A Okay.

10 Q Did you write that letter?

11 A If it says "Sincerely" and my name at the bottom,
12 probably so.

13 Q Is that your signature?

14 A I can't see it.

15 Yeah, that's me.

16 Q That's you. Are there any names of any other
17 employees on this letter or just Samantha Katchick?

18 A No. I think Mr. Turner wanted me to write a letter
19 that explained everything as I discussed it with him. He
20 said, We need a letter that's just like a narrative
21 letter, or something like that. So I put that together
22 and sent it to him. That's what he wanted.

23 Q Dr. Chapman, this letter is dated November 14th of
24 2017, the same day that Doug Schmieding wrote his letter.
25 You didn't even go report to Turner until December 6th of

1 2017.

2 A I don't know. I remember that Mr. Turner wanted
3 information in, like, a narrative. So I gave him that.

4 Q You gave him this as well, didn't you?

5 A Yes. I just tried to supply the police with any
6 information that they needed to figure out what happened.

7 Q Well, this -- did you type this up?

8 A I -- I have no idea.

9 Q Somebody got it from what Earl Simmons had sent y'all
10 on November 13th, didn't they?

11 A Might have been.

12 Q Did you have any discussions with Earl Simmons about
13 Samantha Katchick being arrested?

14 A No.

15 Q Why do you think he put those statements in the
16 e-mails he sent to y'all?

17 A I think Earl put a bunch of things in e-mails that I
18 didn't follow or understand.

19 Q It's strange that he's talking about having her
20 prosecuted, which you didn't understand. But, yet, that's
21 exactly what happened, didn't it?

22 A I mean, I think, like, didn't he just testify that --
23 it's a bunch of things could happen and that's why he put
24 the information together. Sorry. I don't follow you.

25 Q Earl e-mailed and said, You can take this to the DA.

1 And then you can, also, call her employer. And both of
2 those things happened, didn't they?

3 A I don't remember if I called Jim Nasim.

4 Q Okay. We know that. You've already testified.

5 A Right.

6 Q The jury understands that. I know that. You deny it
7 and say you don't remember. Fine. But he took the stand
8 and said you did, didn't he?

9 A I don't know what another person said that I can
10 answer that.

11 Q You took Earl Simmons' work, your wife or you one
12 forwarded it to Doug Schmieding because y'all wanted him
13 to put it on his letterhead that you did on November 14th;
14 right?

15 A I don't remember.

16 Q You don't remember that?

17 A No.

18 Q You haven't been paying attention, apparently, this
19 week, have you?

20 A I've been trying. It's pretty complicated.

21 Q Really?

22 A Yes.

23 Q So your testimony is that you just took the
24 information down there and gave it to Mr. Turner. And
25 then independently, he came to the conclusion that

1 Samantha Katchick was the only person that could be
2 responsible for a discrepancy in your accounting records?

3 A I mean, that seems about right.

4 Q Do you recall e-mailing him after he told you that
5 the warrant had been issued and thanking him for all of
6 his hard work?

7 A Yes. I always say thank you to people. That's
8 polite.

9 Q You believe that Doug Schmieding should have caught
10 this discrepancy matter and fixed it, don't you?

11 A I mean, he's my accountant. And I was paying him to
12 check over things and make sure the practice was running
13 properly financially, yes.

14 Q He testified he didn't have anything to do with
15 Eaglesoft?

16 A I remember him asking for Eaglesoft reports any time
17 I sent him information for taxes and bookkeeping.

18 Q So when Elliott Turner signed the warrant, Exhibit
19 No. 2 -- I mean, did you ever see the warrant?

20 A If it's been shown in the trial, I've probably seen
21 it.

22 Q You didn't see it when it came out?

23 A No. I don't remember.

24 Q So you -- so your testimony to this jury is that
25 throughout your lifetime, you never had an opinion about

1 whether or not Sam was responsible for the discrepancy, or
2 yourself, or Angie Hawthorne, or your wife, Brooke, who
3 was down there working the front desk. That determination
4 was made by Elliott Turner all by himself?

5 A I don't know that I can say all that. That's a whole
6 lot of a long sentence. I will say I let the police do
7 their job.

8 Q A warrant is pretty important in all this, you
9 understand that; right?

10 A Okay. Sure.

11 Q The complainant, Alex Andrew Chapman, reported that
12 the Defendant, who was a previous employee that was solely
13 responsible for collecting money from patients and making
14 bank deposits from January of 2014 to February 2017 took
15 \$3,505.19 from the practice.

16 A Yeah.

17 Q Is that what you told Elliott Turner?

18 A I can't be responsible for what he writes. But I
19 answered his questions and explained anything that he
20 asked me. And he -- I didn't write that. I didn't make
21 the warrant. I'm not a police officer.

22 Q I didn't ask you if you read it. I asked you if
23 that's what you told him.

24 A I did not read him that word-for-word, no.

25 Q I didn't ask if it was word-for-word. Did you tell

1 him that Samantha Katchick -- you, obviously, gave him
2 Samantha Katchick's name?

3 A Uh-huh.

4 Q But you gave him the other employees names, too?

5 A Absolutely.

6 Q So how do you think he got to where he was going to
7 issue an arrest warrant to put this woman in jail for five
8 years?

9 A I don't know. I'm not a police officer. That's not
10 my job. I'm a dentist.

11 MR. FEW: That's all the questions I have.

12 THE COURT: All right. Any redirect?

13 MR. KENDRICK: No, Your Honor.

14 Thank you.

15 THE COURT: All right. You may step down.

16 All right. Next witness.

17 MR. KENDRICK: Your Honor, the Defendants rest at
18 this time.

19 THE COURT: All right. Any rebuttal from the
20 Plaintiff?

21 MR. FEW: No, Your Honor, not at this stage.

22 THE COURT: All right. Ladies and gentlemen, that
23 concludes the evidence in the case. And so I've got some
24 matters I've got to take up with the lawyers. And it's a
25 good time for the morning break. I'm going to excuse you

1 for your break.

2 And, again, please don't discuss the case.

3 (WHEREUPON, the jury was excused from open court at
4 approximately 10:49 a.m.)

5 THE COURT: All right. Let's take a short restroom
6 break.

7 (WHEREUPON, a break was taken.)

8 MOTIONS

9 THE COURT: All right. Let's hear any motions.

10 First of all, any from the Plaintiff?

11 MR. FEW: I don't believe so, Your Honor. I don't
12 think anything's come into evidence that changes our
13 position on our right to a directed verdict. We believe
14 there's facts in issue that need to be resolved by the
15 jury.

16 THE COURT: All right. Any motions from the
17 Defendants?

18 MR. KENDRICK: Your Honor, I would just renew my
19 arguments I made yesterday evening for the same reasons
20 with the addition of the testimony you've heard this
21 morning.

22 THE COURT: Mr. Few, let me ask you, what is the
23 evidence against Ms. Chapman? What is the evidence that
24 you have that she meets any of the elements of malicious
25 prosecution?

1 MR. FEW: Well, Your Honor, inferences can be drawn,
2 even if we didn't have these e-mails and the information
3 in the file from Elliott Turner, the communications with
4 Earl Simmons. She was the one that took the report from
5 Earl Simmons -- took out some portions of it, had her
6 husband sign the procedural part of it as if it was a CPA
7 procedural letter, but it was coming from her husband.
8 That next day, he did that. Then she flipped it to Doug
9 Schmieding. And then he gave it back to her. So she was
10 involved in the whole thing. It's kind of hard to
11 separate her out.

12 About the only thing that she didn't do, Your Honor,
13 is we don't dispute that there's no testimony that she
14 physically went down to the sheriff's office to meet with
15 Investigator Turner.

16 Your Honor, from an inferential standpoint, even if
17 all of those things weren't there, there's testimony that
18 my client had a relationship outside of a work
19 relationship with Dr. Chapman. She comes on the scene
20 after the fact. Even Turner's report says that a new
21 employee came on the scene, which, of course, was his
22 wife. And -- and they got married in September of 2016.

23 And then, you know, six months later, my client gets
24 fired and then, eventually, gets prosecuted. We just went
25 over, Your Honor, statements that are in the police file

1 about her providing information about the Burras family
2 having not made payments when we just showed that they --

3 THE COURT: Well, what is the -- I understand all of
4 that. And that may be for another issue. But tell me
5 what is the evidence that she instituted these proceedings
6 and they were at her insistence -- or her instance, as the
7 law requires. That she instituted it and it was at her
8 instance. What is the evidence?

9 Because I don't believe the e-mails going back and
10 forth with Earl Simmons or any of the others is evidence
11 that she instituted the judicial proceeding against your
12 client.

13 MR. FEW: Well, Your Honor, that -- I can answer it,
14 I think, off the elements themselves. The elements are
15 the institution or continuation of proceedings without
16 probable cause. And she testified today that she was
17 there in January and February. That's when she admits
18 being there. There's testimony she was there before that,
19 had access to Eaglesoft, had access to the records.

20 So, Your Honor, I don't have the direct evidence. I
21 mean, obviously, the direct evidence is Turner's testimony
22 that Alex Chapman is the complainant. It requires an
23 inference to get her involved. But the evidence in the
24 record is plenty to draw an inference from that that she
25 is the one that was involved. And, particularly, Your

1 Honor, even putting all that aside --

2 THE COURT: What is the inference that -- what's the
3 evidence -- any evidence that she was involved in -- other
4 than dealing with the accountants and all, what is the
5 evidence that Ms. Chapman instituted this action,
6 contacted law enforcement, was involved with them, and it
7 was at her instance? What -- what evidence do you have
8 that she is the one?

9 She's testified she didn't have any involvement,
10 didn't contact the Solicitor, didn't have anything --
11 didn't ask for it to be prosecuted, didn't do anything.

12 MR. FEW: Well, Your Honor, that evidence -- that
13 testimony is just not credible because Turner in his
14 report refers to speaking to her and getting further
15 information from her --

16 THE COURT: That goes against you. Turner says he's
17 calling her and getting information from her. That
18 doesn't go against you?

19 MR. FEW: I don't believe so, Your Honor. Because --
20 let me go back further. The testimony is that when she
21 came to work, she started looking over the reports. And
22 she identified these discrepancies, even though he had
23 already seen discrepancies in this Exhibit No. 3 e-mail
24 back and forth with Bruce Stevens at Doug Schmieding's
25 firm.

1 So within two months of Brooke Chapman being an
2 employee of the firm, she gets fired. She was in the
3 thick of the -- of the decision, even though she denies
4 it. I mean, people deny things all the time --

5 THE COURT: What's the evidence that she's the one
6 that made the decision?

7 MR. FEW: The timing.

8 THE COURT: What's the evidence of that? Isn't that
9 speculation? Timing, just because something happens --
10 what's the evidence you have that Ms. Chapman was involved
11 in the decision to prosecute Ms. Katchick?

12 MR. FEW: Everything that I've already laid out, Your
13 Honor. I understand that it's not direct evidence, but --

14 THE COURT: I don't think it's really circumstantial
15 either. I understand your argument on the timing.

16 All right. Any response, Mr. Kendrick?

17 MR. KENDRICK: Your Honor, it's the same argument
18 that I think I made yesterday as it relates just to
19 Ms. Chapman. And I do think we're in the Sunshine
20 Recycling World of providing information. And I think
21 what we have in evidence is an inquiry from an
22 investigator that has been answered by Ms. Chapman. But
23 his investigation didn't start because of her.

24 And, again, there's not been any evidence that
25 anything -- so we'll just concentrate on Ms. Chapman. The

1 information provided in that e-mail is true. In November,
2 they weren't making their pages and then they sued them
3 and got them back. That was relevant to one of the
4 prosecutors, but it doesn't necessarily have anything to
5 do with -- I don't know if it has anything to do with the
6 case or not.

7 But Ms. Chapman just didn't have anything to do with
8 instituting -- she didn't have anything to do with having
9 Katchick arrested. And she didn't have anything to do
10 with this case going on. The continuation is probably far
11 weaker than -- you know, we, obviously, disagree with the
12 institution element of malicious prosecution. But the
13 continuation doesn't seem to be there at all. Because the
14 Prosecutor -- or the sheriff's office and solicitor have
15 taken it over.

16 I don't think there's any evidence. The argument I
17 made last night I think is strengthened by the fact that,
18 of course, she denied it. But there's nothing
19 inconsistent with her denial. I don't know that the
20 firing is relevant, Your Honor. Because that happens in
21 March. And the events we're talking about occurred
22 between December and February. And the firing, no one
23 takes issue with that because there's no -- that wasn't a
24 wrongful termination.

25 So I just don't know why that would have any bearing

1 on your analysis as to whether Ms. Chapman had some part
2 to play in the false arrest or the malicious prosecution.

3 MR. FEW: Your Honor, Exhibit No. 6, the
4 November 13th e-mail from Earl Simmons starts out, Brooke,
5 here is everything. And then he goes on to discuss what
6 was, obviously, a plan that had been discussed amongst
7 these people to take it to the police related to Samantha
8 Katchick. Samantha Katchick's name is all over all of
9 these documents that he attaches to it.

10 And so this shows that she was involved in it. This
11 is direct evidence that she was involved in discussions
12 about having my client arrested.

13 THE COURT: I don't think that's -- I -- I -- I don't
14 think that's what that says, does it? I don't have it in
15 front of me.

16 MR. FEW: I'll read it.

17 THE COURT: And all I remember is reading -- or
18 looking up on the screen --

19 MR. FEW: This is the second one, Your Honor. He
20 sent her two e-mails where --

21 THE COURT: But if that was with the officer or
22 someone in law enforcement -- but this is internally
23 between the people at Chapman. But that doesn't -- that's
24 from Mr. Simmons.

25 MR. FEW: Yeah. And it's to her. And we were able

1 to get ahold of this information because they put it in an
2 e-mail. And what people put in e-mails is things that
3 they have been discussing. And so this is not the first
4 time. And on October 22nd in Exhibit No. 8, he said the
5 same thing -- actually, I take that back, Your Honor,
6 Exhibit No. 4.

7 THE COURT: The thing about that -- that letter,
8 actually, says -- that e-mail says, This is not,
9 typically, a police issue at this level.

10 MR. FEW: That's what he says, Your Honor. But
11 that's the second time that he has -- that he has -- I
12 mean, they've e-mailed back and forth talking about having
13 her -- having this person -- solely this person arrested.

14 So, I mean, other than that, I can't --

15 THE COURT: Where's the e-mail that Ms. Chapman says
16 let's arrest her?

17 MR. FEW: Well, that would be a nice piece of
18 evidence.

19 THE COURT: In fact, the evidence is that she didn't.
20 And it's uncontradicted.

21 MR. FEW: Well, Your Honor --

22 THE COURT: Where's the evidence that she said let's
23 arrest her? In fact, Mr. Simmons says this is not a
24 police action.

25 MR. FEW: Right. So Simmons says it's not a police

1 issue. But then, like, I asked her, it then became a
2 police issue once she got ahold of it and her husband --
3 they were both involved, Your Honor.

4 THE COURT: The evidence doesn't show that. That may
5 be your argument. But the evidence is just -- her
6 testimony is, I didn't talk with the Solicitor. I didn't
7 seek -- I did not reach out to the police. I had no
8 involvement in going to the police. I had no involvement
9 in connecting -- or contacting the accountants. I would
10 send the documents when requested. I had no involvement
11 going to the police. I did not reach out to the police.
12 I had no contact with the Prosecution. I did speak to the
13 victim advocate. I did not talk with the Solicitor. I
14 went to the preliminary hearing because the victim
15 advocate said that we could go. Dr. Chapman had patients,
16 she went. She had no involvement in the preliminary
17 hearing. She had no involvement.

18 MR. FEW: Your Honor, she said she did go to the
19 preliminary hearing.

20 THE COURT: That's what I'm saying. She went to the
21 preliminary hearing because the victim advocate said you
22 can go. Victims often go to preliminary hearings. And
23 Dr. Chapman was seeing patients that day.

24 MR. FEW: Well, additionally, her testimony is just
25 not credible. She told the jury that the only person she

1 ever spoke to was --

2 THE COURT: Well, at the directed verdict stage, you
3 know the Court doesn't determine credibility. It's
4 whether there's any reasonable inference. I don't
5 determine credibility.

6 MR. FEW: It's conflicting evidence, Your Honor.
7 Turner said that both of them were adamant about having
8 her arrested, that they wanted her arrested.

9 THE COURT: Actually, that's not the testimony. The
10 testimony from Mr. Turner -- Investigator Turner is that
11 the -- when he -- when you asked the question, his
12 response was they seemed eager to have it looked at.
13 There was no testimony from any of the witnesses in this
14 case, including Mr. Turner, that they told -- that any of
15 the Defendants told Investigator Turner that they wanted
16 her arrested.

17 The closest testimony that came was what I just read.
18 If you can point me -- I take pretty good notes. But if
19 you can point me to some other testimony.

20 MR. FEW: Your Honor, I mean, I don't know what other
21 evidence I could point to. I've pretty much highlighted
22 everything that's already come in. She was involved. She
23 was involved in the continuation of it. There's an easy
24 inference to be drawn that it was both of them. And I
25 know they want to say it was just one of them, but they

1 were both involved.

2 And she didn't have no involvement in contacting
3 Elliott Turner. In fact, the critical piece of the
4 equation was the November 14th letter from Doug
5 Schmieding. Because that's the same day that her husband
6 then took an e-mail that she had. So then here she is,
7 she takes Earl Simmons e-mail from the afternoon of
8 November 13th. She pulls out those procedures. Somebody
9 turns it into a letterhead letter from her husband. He
10 signs it, takes that down to the prosecutor's office.

11 So she was absolutely involved. Now, she can testify
12 I was just doing what my husband told me to do. But the
13 evidence is abundant that someone can believe differently.

14 THE COURT: I know your argument. And I appreciate
15 your argument. And I respect your argument. But I'd have
16 to disagree with you that the evidence is abundant that
17 Ms. Chapman was involved.

18 So as to Ms. Chapman, under the causes of action
19 against her, I would grant the directed verdict as to her.

20 MR. FEW: On just malicious prosecution?

21 THE COURT: And false imprisonment.

22 MR. FEW: Civil conspiracy?

23 THE COURT: She's not involved in the -- what --
24 well, let me hear from you on civil conspiracy,
25 Mr. Kendrick.

1 MR. KENDRICK: And just based on what I've seen from
2 the Plaintiff's side is the agreement was to go and tell
3 the police what they said in order to have her arrested.
4 So if she's not liable for that, then there isn't an
5 agreement between the two of them. So that would seem
6 that civil conspiracy wouldn't apply.

7 THE COURT: Let me hear from you on that, Mr. Few.

8 MR. FEW: Well, Your Honor, I mean, the argument that
9 opposing counsel is just making is based off of -- I mean,
10 we're at directed verdict at the close of both sets of
11 evidence to go up. So there's plenty of conflicting
12 evidence. The fact that his client testifies that someone
13 was not involved when clearly they were in the middle of
14 it --

15 THE COURT: What is the civil conspiracy that she
16 conspired to have her arrested? That's what the civil
17 conspiracy has got to be about.

18 Do you agree with that?

19 MR. FEW: Yeah, I do, Your Honor. She was
20 involved -- the same set of facts from the beginning. She
21 was involved with making the conclusion that Sam stole and
22 having her fired.

23 THE COURT: That is not the evidence. That is not
24 the evidence that she concluded to have her fired. That's
25 what I keep asking you. Show me the evidence.

1 MR. FEW: Well, the evidence is -- excuse me. The
2 evidence is that Chapman discovered discrepancies, per his
3 testimony, in January and February of 2017 when she was
4 working at the front desk, per her testimony, even though
5 he had identified and was discussing discrepancies almost
6 a year before with the bookkeeper. And, boom, after his
7 wife discovered the discrepancies, he had no choice but to
8 fire Sam. So that's the evidence.

9 His wife was involved in identifying discrepancies.
10 He then reached the conclusion that she stole from him.
11 He fired her for that. And then Angie Hawthorne testified
12 that he told her that he fired her for stealing.

13 THE COURT: But where is -- and Angie Hawthorne
14 didn't say a thing about Ms. Chapman. Who else said
15 something about Ms. Chapman?

16 MR. FEW: They don't have to say anything about
17 Ms. Chapman, Your Honor.

18 THE COURT: They do to prove that she was involved in
19 the civil conspiracy to have her arrested, not fired.
20 This is not a wrongful termination case. She has to --
21 there has to be evidence that Ms. Chapman was involved
22 in -- and I've already ruled on the malicious prosecution
23 and false imprisonment.

24 But where is the evidence that Ms. Chapman was
25 involved in the civil conspiracy to have her arrested?

1 That's the key. It's got to be to have her arrested, not
2 fired.

3 MR. FEW: It's all the same evidence I've already
4 argued, Your Honor. I mean, I don't have to have an
5 e-mail where they say, hey, let's go do this. I mean,
6 inferences can be drawn from the evidence that's in the
7 record. And I really don't have a different position --

8 THE COURT: What is in the record that draws an
9 inference that she wanted her arrested? Arrested, not
10 fired, arrested?

11 MR. FEW: All the e-mails back and forth with Earl
12 Simmons. And then she --

13 THE COURT: Is there an e-mail from Ms. Chapman back
14 and forth with Earl Simmons that Ms. Chapman says I want
15 her arrested?

16 MR. FEW: He says that to her.

17 THE COURT: My question is, is there any e-mail from
18 Ms. Chapman that says she wants her arrested? And the
19 e-mail from Mr. Simmons does not say that. He says it's
20 not a police issue.

21 So where is an e-mail from Ms. Chapman that she
22 wanted her arrested?

23 MR. FEW: I don't have direct evidence of that, Your
24 Honor.

25 THE COURT: There's no circumstantial evidence, just

1 no evidence that Ms. Chapman said she wanted her arrested.
2 She was dealing with the discrepancies and compiling the
3 documents and dealing with those issues. But that's not
4 what the heart of the issue is, whether it's malicious
5 prosecution or her actions as a civil conspiracy to have
6 her arrested. Again, it's not to have her fired. It's to
7 have Ms. Katchick arrested. And so that's what the
8 conspiracy has got to be about.

9 MR. FEW: Your Honor, under a standard where I have
10 to have something in writing between two conspirators that
11 they're --

12 THE COURT: Give me some other evidence other than in
13 writing.

14 MR. FEW: I've already given everything that I know
15 to give.

16 THE COURT: I understand your argument.

17 MR. FEW: From e-mails from Simmons, they're
18 discussing the plan.

19 THE COURT: That's not -- Mr. Few, I've looked at --
20 they're not discussing the plan to arrest her. They're
21 not discussing the plan to arrest her. And that's what --
22 that's the leap that's being made here is that she wants
23 to have her arrested.

24 MR. FEW: Your Honor, Exhibit No. 5, if not
25 prosecuted by the DA, they can still be taken to small

1 claims court. Now, this goes to -- he says it's going to
2 Alex. But she's the one that's facilitating these
3 things --

4 THE COURT: That's an e-mail from Earl Simmons;
5 right?

6 MR. FEW: Yes, Your Honor. This is October 31. So
7 he's already discussing it 13 days before he brings it up
8 again. And Your Honor, the thing is --

9 THE COURT: Did Ms. Chapman bring it up? Is there
10 evidence in the e-mail or in any testimony? Did
11 Mr. Simmons testify that Ms. Chapman said, let's arrest
12 her? Did Angie Hawthorne testify that Ms. Simmons -- I
13 mean, Ms. Chapman said, let's have her arrested?

14 Did anybody testify that Ms. Chapman took steps, or
15 made comments, or -- and it doesn't have to be in writing.
16 I agree with you that it doesn't have to be in writing.
17 But I haven't heard any evidence -- or didn't hear any
18 evidence that Ms. Chapman was the one that was wanting her
19 to be arrested.

20 MR. FEW: Your Honor, if the standard that we're
21 being held to is that we have to have direct evidence of
22 it, then --

23 THE COURT: No. That's not the standard. You're not
24 being held to the standard of direct evidence. You're
25 being held to the standard at the directed verdict stage

1 viewing the evidence most favorable to you that there is
2 more than one reasonable inference to be drawn from the
3 evidence. That is the standard that directed verdict
4 requires. And that is the standard that I'm using with my
5 questions here.

6 And so what I'm asking is what is the evidence that
7 gives more than one reasonable inference -- material
8 evidence that gives more than one reasonable inference
9 that Ms. Chapman was involved here?

10 MR. FEW: I don't have anything to offer that I
11 haven't already pointed out.

12 THE COURT: I understand your argument. I appreciate
13 your arguments. And I respect your arguments.

14 All right. I'm granting your motion for directed
15 verdict as to Ms. Chapman on all causes of action.

16 Any other motions?

17 MR. KENDRICK: No, Your Honor.

18 THE COURT: Other motions -- you renewed your motions
19 from the other ones. Those are denied as to the other
20 Defendants.

21 MR. KENDRICK: Your Honor, I do have another issue.

22 THE COURT: All right.

23 MR. KENDRICK: I don't know how to handle it. But I
24 believe during the trial, we have -- the Plaintiff has
25 tried to establish this \$11,000 as damages from the

1 forensic accountant. But it seems like what O'Shea
2 testified to is that that was, actually, litigation costs.
3 And I don't -- for this civil case -- and I've never been
4 in a case where you could argue to the jury for --

5 THE COURT: I was curious. He said, though -- what I
6 recall from Mr. O'Shea is he did it for a dollar --

7 MR. KENDRICK: Right.

8 THE COURT: -- as far as the criminal case. And then
9 the rest of it was for the litigation.

10 MR. KENDRICK: Right.

11 THE COURT: Did I hear that right?

12 MR. KENDRICK: Well, he said he's never really been
13 paid any money.

14 THE COURT: He hasn't been paid yet.

15 MR. FEW: You heard it right. But he misspoke is
16 what he did, Your Honor. He does this one dollar thing
17 when he gets hired just to protect privilege. Because
18 when I met with him the other day, he goes -- because I've
19 been hearing 11,000 all throughout. 4.

20 So he just misspoke. And I should have fixed it, but
21 I didn't. So on my argument, I've already reduced that
22 amount that we're claiming to one dollar.

23 THE COURT: To a dollar.

24 MR. KENDRICK: That's fair, Your Honor.

25 THE COURT: He came up with some saying. I can't

1 remember -- he had a little saying about that, or
2 something.

3 MR. FEW: He just -- he was confused, I think. So I
4 should have got him to -- but it's fine.

5 THE COURT: All right. What -- I like to get input
6 from lawyers as far as closing and if you want to have a
7 break now. And do you want to send them to lunch? And we
8 argue and close after lunch to give y'all an opportunity
9 to prepare and be ready.

10 We've got to discuss the charges anyway. We've got
11 to go through the charges. So we can't argue and close
12 right now. So my thought was sending them to an early
13 lunch. And we discuss some charges and verdict form now
14 and maybe close this afternoon. Like I said, I want to
15 get input from the lawyers on what you want to do.

16 MR. FEW: I think I'm in favor of that, Your Honor.
17 It's 11:30 already. Even if we got the charges done by --
18 we've still got to type them up and look them over. So it
19 seems like an early lunch is --

20 THE COURT: Mr. Kendrick?

21 MR. KENDRICK: That's fine with me, Your Honor.

22 And just so y'all are both aware -- and I've looked
23 at Mr. Few's proposed charges. I've sent you some charges
24 that -- I have a trial next week and that's what the
25 Defendants sent me. I made them more readable. But they

1 seem to say the same thing. We're probably all working --
2 and I looked at the -- we're all working out of the same
3 book.

4 So I don't anticipate -- there was nothing in these
5 charges that gave me heartburn. So I don't know that
6 we're going to have a long charge.

7 THE COURT: Well, if you've looked at them and you
8 don't object. Now, I'm not necessarily using
9 word-for-word those charges. I've got my own. I'll mix
10 them and mesh them together.

11 MR. KENDRICK: The way I look at these, Judge, is --
12 you know, I don't think I've ever had a judge to just take
13 mine and read them, which probably says something about my
14 work. But I think really what happens is Mr. Few and I
15 had some funny little disagreement on a definition of a
16 word or element based on opposing cases, but that isn't
17 here.

18 So I still think it's a good idea to let them go to
19 lunch. But my point is, for charges, if you wanted to use
20 his, or yours, or mine.

21 MR. FEW: Your Honor, does the Court have a printout?

22 THE COURT: Yeah. I'll tell you, Mr. Umbriano can --
23 he can go over them with y'all right now.

24 MR. KENDRICK: Okay.

25 MR. FEW: If you could give us --

1 THE COURT: Do you want to take a look at them?

2 MR. FEW: Yes.

3 THE COURT: He can do that right now. So we'll
4 bring them back in and tell them.

5 My thought is probably 11:30, maybe to bring them
6 back -- maybe 1:00 maybe. Or y'all tell me what -- again,
7 I'll work with y'all on how much time you want.

8 MR. FEW: That should be plenty of time.

9 THE COURT: I'll do it later if you want.

10 MR. FEW: We could go 1:30, I suppose. But if
11 they're back -- you've got more experience with this than
12 me, Judge.

13 THE COURT: Well, I don't know about that.

14 All right. Mr. Kendrick, any response?

15 MR. KENDRICK: I mean, 1:30 is fine with me, Judge.
16 I mean, we've gotten through this case a day faster. I
17 don't know that we need to try to hit the gas. I suspect
18 we'll have it to them this afternoon.

19 THE COURT: Yeah. We'll have it to them this
20 afternoon.

21 MR. KENDRICK: So I think 1:30 wouldn't put us behind
22 and would give us a little extra time.

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

24 (WHEREUPON, the jury came into open court at
25 approximately 11:35 a.m.)

1 THE COURT: All right. Ladies and gentlemen, let me
2 keep you in the loop and tell you what -- what we're going
3 to do. We've been able to make good time in this case.
4 We anticipated it may have been a little bit longer. And
5 the lawyers have done a great job in getting this case to
6 you. So I commend them for that. Because we expected it
7 maybe to be a little bit longer.

8 Because of their efforts, we've been able to get all
9 the evidence in to you. And then there are matters --
10 additional matters from a legal standpoint that I've got
11 to take up with them. And then we will have closing
12 arguments.

13 So what I'm going to do is I'm going to excuse you
14 for lunch. It's a little early, I know. And I'm going to
15 give you a little bit longer because we're, actually,
16 going to be working. So I'm going to excuse you until
17 1:30. And at 1:30, we will then have closing arguments
18 from the lawyers, and then my charges to you, and you will
19 get the case here to decide this afternoon.

20 So I'm going to excuse you for lunch. Be back here
21 at 1:30. And, again, please don't discuss the case. This
22 is the last -- probably the last time I'll have to tell
23 y'all not to discuss the case. Because the next time I
24 talk to you, we'll be giving you the case to discuss.

25 I hope all of you have a good lunch. And we'll see

1 you back here at a 1:30.

2 (WHEREUPON, the jury was excused from open court at
3 approximately 11:37 a.m.)

4 THE COURT: All right. We'll be in recess until
5 1:30.

6 (WHEREUPON, a lunch break was taken.)

7 THE COURT: All right. A couple of things.

8 Mr. Few, I know you wanted to charge or align for
9 some language in the Sunshine case. It started out the
10 notion that a private individual may face potential
11 liabilities and false imprisonment is recognized in South
12 Carolina.

13 And it goes on and on from there; is that correct?

14 MR. FEW: Your Honor, let me clarify. I don't
15 request it to be in that specific form. I just think that
16 the concepts that are set forth in that paragraph need to
17 be included in the charge. Because when I read the charge
18 on false imprisonment, there's a portion in there that
19 reads as if there's probable cause. And we've stipulated
20 that there's probable cause.

21 I don't want the jury to be confused that because the
22 Judge found probable cause that these private individuals
23 are off the hook when the probable cause was based on
24 knowingly false information.

25 So I don't -- I apologize if I'm indicating that I

1 wanted that quoted directly. But just some portion of
2 that quote from that case, which, of course, is the most
3 recent Supreme Court case on these issues.

4 THE COURT: Well, that -- the part of that paragraph
5 and the discussion in that paragraph that you're talking
6 about, though, is followed by the next paragraph when
7 they're talking about Wingate and that analysis. And it
8 discusses about how they are interpreting Wingate and what
9 you're talking about there. And it goes on to then read
10 and cites Wingate. And in fairness, it probably should be
11 charged with that if you want that in there.

12 But it, also, says, those who honestly seek the
13 enforcement of the law and who are supported by
14 circumstances sufficiently strong to warrant a cautious
15 man, a person in the belief that the party suspected may
16 be guilty of the offense charged should not be unduly
17 apprehensive that they will be held answerable in damages.

18 And it goes on and cites some other Wingate language
19 and following the paragraph you're talking about, where a
20 person has information or knowledge that the law has been
21 violated, he not only has a right, but, frequently, it is
22 his duty to communicate such information or facts to the
23 proper officer so as to give such officer the opportunity
24 if in his judgment it is proper to do so to take whatever
25 steps may be necessary to apprehend the offenders. It is

1 to be remembered that while individuals are to be
2 protected against rash and baseless prosecutions, the
3 public interest demands that the Courts shall not frown
4 upon honest efforts made in attempts to bring the guilty
5 to justice. And then it goes on and cites more similar
6 language.

7 So if I -- if you want me to charge some of that
8 stuff, then I think in fairness, the rest needs to be
9 charged as well out of Sunshine.

10 MR. FEW: I do think the concepts that are set forth
11 in there need to be charged, maybe not in that length of
12 discussion, but -- but we could have those things --

13 THE COURT: So what exactly do you -- what exactly is
14 the language that you want?

15 MR. FEW: Well, Your Honor, the second paragraph that
16 you're talking about kind of sets forth that objective
17 person's standard. And then -- and then the part that
18 said those who honestly seek the enforcement, then I think
19 that -- that -- that's -- honesty is good faith. But it's
20 not a subjective standard. Clearly, we know that for --

21 THE COURT: I'm still, though, trying to figure out
22 what is it that you want. I'm charging the elements of
23 false imprisonment. I talk about proximate cause in the
24 charges.

25 So what precise language are you requesting?

1 MR. FEW: This language that -- that embodies this
2 notion that -- I don't want the jury to be misled to think
3 that only law enforcement can be sued for false
4 imprisonment. Because I felt like that's the way the
5 charge could be read without this language in there.

6 THE COURT: I'll charge the jury that the Plaintiff
7 has filed a cause of action for false imprisonment against
8 the Defendants. And then I go in and describe -- I mean,
9 go in and define the elements of false imprisonment, as I
10 do with malicious prosecution.

11 MR. FEW: And, Your Honor, the -- the problem I have
12 is that -- the issue that there's to address is that the
13 charge, also, says if you find that probable cause
14 existed, then they're going to think there's no claim.
15 They could think there's no claim. Because --

16 THE COURT: Well, they've got to -- you've got to
17 prove no probable cause.

18 MR. FEW: But -- but -- I mean, I can argue it, I
19 suppose.

20 THE COURT: I think it's more an argument, isn't it?

21 MR. FEW: Well, I can argue it.

22 THE COURT: Yes, sir.

23 MR. KENDRICK: But if it makes it easier, it sounds
24 like what I understand he's asking for is the first
25 paragraph that you read would establish that a private

1 individual can be held liable for false imprisonment,
2 which is a true statement of the law.

3 THE COURT: Yeah.

4 MR. KENDRICK: And we would not object to that, as
5 long as you, also, read the language from the next
6 paragraph which explains how the law requires the jury to
7 analyze that.

8 So if there's a concern about clarity, then I always
9 would err to the side that I would rather have them know.
10 I don't have your charge in front of me. But I will agree
11 that the two paragraphs that you just read, to me, seems
12 to be the framework that this jury would need to use to
13 decide. It may be that they -- I don't know that I would
14 call them redundant to your charge. It may be
15 overlapping. But, certainly, if we wanted to craft
16 language out of that first paragraph and then make sure --
17 you know, it's just misleading without the second
18 paragraph.

19 THE COURT: Well, I think I'm going to leave it the
20 way it is and not charge either one of them. I'm going to
21 charge the elements of false imprisonment.

22 And, it's, certainly, an argument, Mr. Few, that you
23 definitely can make.

24 And I'm going to charge that the Plaintiff has filed
25 an action and asserts a cause of action against the

1 Defendants. I think that's probably pretty
2 self-explanatory. They can figure out, okay, there's a
3 lawsuit for false imprisonment, a cause of action that
4 exists that they -- could be found. And it would just
5 be -- you can argue. It doesn't have to be just law
6 enforcement. So I think I'm going to leave it the way it
7 is because I'm defining the elements of false
8 imprisonment. All right.

9 MR. FEW: Thank you, Your Honor.

10 THE COURT: Anything else on the charges before I
11 talk about the verdict form?

12 MR. KENDRICK: Your Honor, we had asked for a charge
13 on privilege. And I forgot that in opening the
14 Plaintiff -- we raised it as an affirmative defense. The
15 Plaintiff made the argument that the statements in the
16 police station that were heard by anybody in the police
17 station were defamatory.

18 But, also, I think your charge has an element of
19 defamation as an unqualified -- or I'm sorry, an
20 unprivileged statement. That's a word that doesn't have
21 any meaning to the jury most likely. Because we use
22 privilege in this context is very different. I think we
23 have to have some definition. The one we sent, arguably,
24 Your Honor, is the long one out of the charge book. So
25 I'm not telling you we necessarily need it to be longer

1 than the whole defamation charge. But we do think
2 privilege needs to be defined.

3 THE COURT: And you have asserted that as a defense;
4 correct?

5 MR. KENDRICK: Yes, sir. It's in my answer.

6 THE COURT: Any objection to that Mr. Few?

7 MR. FEW: No objection to the qualified privilege
8 charge they have proposed.

9 THE COURT: On the verdict form -- Mr. Umbriano told
10 you what I have indicated as far as the damages part of
11 it. I normally -- when I am doing a verdict form, I do
12 not break general and special damages, nor do I go further
13 as some lawyers ask me to do, go through all of those
14 general damages and all of those special damages. I don't
15 do that. I think the proper procedure -- the process is
16 the Plaintiff argues all day long on what special damages
17 are, what general damages are, that the Plaintiff is
18 entitled to those damages.

19 And so for verdict form purposes, I normally just
20 put -- have a place for this is the amount of actual
21 damages. Again, the Plaintiff is entitled to argue
22 extensively that they are entitled to both general and
23 actual damages -- I mean, general and special damages and
24 these are part of actual damages. And so that is normally
25 my process -- or my verdict form on sending damages to the

1 jury. I do not break down general, special, and then even
2 break it down further as I've been requested before.

3 But I'll hear from you.

4 MR. FEW: Thank you, Your Honor.

5 The nature of these claims the Plaintiff believes
6 requires that be done. For example, in the authorities
7 that we have cited in Snyder, I don't think there's any
8 dispute about it. If we're dealing with a per se
9 defamation, otherwise known as an actionable defamation,
10 depending upon which case you're looking at, general
11 damages are then presumed.

12 THE COURT: I charge that. I charge that.

13 MR. FEW: I understand that. But if -- if they -- so
14 then they have to award something for general damages.
15 And so that's why they may find no special damages. They
16 could find zero special damages. And they could find all
17 general damages, which are presumed.

18 So because the general damages are presumed because
19 as the authority state, those charges are the -- those
20 damages are the natural result of what happened. So the
21 claim in and of itself carries with it those general
22 damages, whereas a -- an accident case or a business -- a
23 business breach of contract case would not have that.

24 So in a standard tort case with a wreck, you're not
25 dealing with humiliation, and shame, and those types of

1 things, unless there's some other thing that came up
2 afterwards. So those are the reasons that the Plaintiff
3 believes that breaking out special and general is proper
4 for these claims.

5 THE COURT: What about that, Mr. Kendrick?

6 MR. KENDRICK: Your Honor, I feel -- I'm sort of torn
7 here. Because I like transparency and simplicity, which
8 would be the one line. And I, actually, think there's an
9 argument that would be favorable to the Plaintiff.
10 Because if there's -- you know, if there's a number for
11 both and I've got something to argue about, you know, I
12 feel like we don't get into that grandular issue. But we,
13 certainly, do if that's what we set out.

14 In other words, if you were to put the categories
15 from the statute in there and they started putting numbers
16 in, then I could make post-trial motions and appeals all
17 day long about whether evidence supported each number. I
18 guess some of me says maybe I should agree, but I think
19 it's confusing. And, generally, I don't care if confusion
20 is -- I don't want that to be part of what we're doing.

21 So my slight tipping to the position I would take is
22 your -- the one line is fine.

23 THE COURT: But it's not a strong position. I
24 understand. It can cut both ways. I understand what
25 you're talking about.

1 MR. KENDRICK: I'm trying to say you're not going to
2 see it come from me down the road.

3 MR. FEW: I've already admitted to not being the best
4 at second guessing verdict forms over the course of my
5 career. And I can tell a story about that later.

6 THE COURT: Well, I'll tell you, you would think that
7 verdict forms are the easiest thing, but believe it or not
8 believe it, y'all know, it is one of the most difficult
9 things for lawyers and judges to come up with it, except
10 in a regular negligence wreck case. Other than that --
11 but some cases I've had on the bench and as a trial
12 lawyer, I mean, it can be -- it can be -- can get very
13 complicated.

14 MR. FEW: Your Honor, I would, also, note that in one
15 of the cases -- I can't remember it right now -- the Court
16 did an additur up to \$7,500. So it's kind of an old case.
17 But in that case, it dealt with -- it addressed the issue.
18 And I can bring it to the Court's attention. I apologize
19 for not having it in my head.

20 But they address this very issue that they awarded --
21 they found for the Plaintiff on this type of claim, a
22 defamation or a false -- these types. And they'd only
23 awarded a small amount. And that small amount was,
24 basically, the special damages.

25 And so the Court said, well, it's obvious that the

1 jury did not follow my instructions to award presumed
2 damages -- presumed general damages. So you could tell
3 from the verdict form that -- that no general damages had
4 been awarded. And for that reason, there was an additur.

5 THE COURT: All right. What I'm going to do, I am --
6 I am going to switch my position. So after hearing
7 arguments, I will just leave it as it is. And the
8 proposed jury verdict form that has a special and general
9 damage -- I realize it cuts both ways and could be
10 favorable to the Defense as well.

11 Also, on the verdict form, I have deleted those other
12 defendants that were either settled or dismissed out of
13 the case. So the caption that goes back to the jury --
14 and I have, also, taken Ms. Chapman out -- is Marshall
15 Alexander Chapman, DMD, and Chapman Dental, PA, as
16 Defendants.

17 Is there any comment or response to that? Anything
18 from the Plaintiff or the Defendant?

19 MR. FEW: No, Your Honor.

20 MR. KENDRICK: I say this just because I don't know,
21 in a criminal case, if somebody got out on directed
22 verdict, we don't say anything about it. I assume in this
23 case, we don' even --

24 THE COURT: That's why I just took them off the
25 verdict form.

1 MR. KENDRICK: Yes, sir.

2 THE COURT: And leave it at that.

3 MR. KENDRICK: Thank you.

4 MR. FEW: And, Your Honor, there should be no
5 argument from either party that -- I mean, that's not
6 evidence. That's not anything for the jury to consider in
7 making their rulings on the claims.

8 THE COURT: It was not part --

9 MR. FEW: So Defendants couldn't say, well, she was
10 dismissed from the civil conspiracy. That would be an
11 improper argument.

12 THE COURT: My game plan is not to mention that at
13 all. I'm just going to give the charges. They'll have
14 the verdict form and deal with it from there.

15 MR. KENDRICK: In my closing, I don't intend to make
16 any reference to that at all.

17 THE COURT: Anything else before we bring them in?

18 MR. FEW: Nothing from the Plaintiff.

19 THE COURT: Anything from the Defendant?

20 MR. KENDRICK: No, Your Honor.

21 THE COURT: All right.

22 MR. FEW: Oh, Your Honor, I was wondering if I can
23 get this table over here so I can use this Elmo without
24 having to walk around.

25 THE COURT: Yeah. Do you want to move it over there?

1 MR FEW: I was wanting to bring it over kind of like
2 this so I could just turn the Elmo like that.

3 THE COURT: Okay. If it can move.

4 THE BAILIFF: Yeah. It can move.

5 (WHEREUPON, the jury came into open court at
6 approximately 1:55 p.m.)

7 THE COURT: All right. Ladies and gentlemen, we have
8 reached the next stage of the case here. And it will be
9 the closing arguments.

10 And with that, I recognize the Plaintiff for closing
11 argument.

12 CLOSING ARGUMENTS

13 MR. FEW: Thank you, Your Honor.

14 May it please the Court.

15 Good afternoon, ladies and gentlemen. Thank you for
16 your attentiveness throughout this trial.

17 I'm sorry I haven't been able to look at you much.
18 I've been focused up here on the witnesses and the
19 evidence.

20 Before I get into arguing some of the overall issues
21 in the case, I want to point out one thing that I'd like
22 for you to look at in the jury room. And let me just tell
23 you what it is -- well, I'll show you. Exhibit No. 7 is
24 the e-mail that was sent to Doug Schmieding on November
25 13th of 2013. If you'll notice March of 2014, there was

1 more money put in the bank than was reflected in
2 Eaglesoft.

3 THE BAILIFF: It's not on. Hang on a second.

4 That one is coming on.

5 They're coming on.

6 MR. FEW: Can y'all see that?

7 THE BAILIFF: Hang on.

8 Yes.

9 MR. FEW: Okay. So you'll see that there are,
10 actually, one, two, three, four, five, six, seven, eight,
11 nine, 10 of the approximately 38 months that my client is
12 alleged to be responsible for taking money that the
13 Eaglesoft records didn't match in the other direction.

14 So for here, March of 2014, 860 was put in the bank
15 and 787 in Eaglesoft. \$73 difference, \$30 difference
16 here, a \$240 difference in August of 2014. Then 16, then
17 \$4.97. I have no explanation for this, except to say that
18 what we've been telling you all along is these Eaglesoft
19 records are not reliable. And remember, also, that
20 these -- this was not done with end-of-day reports. Okay.
21 If they had done this on a weekly basis, then they would
22 have had good records to go back and look at, but they
23 didn't. They chose not to do that.

24 So after three years and two months, they -- they
25 took this action and had these reports prepared and -- and

1 it's just based on unreliable data that was put into
2 Eaglesoft. \$304 difference in April of 2016, \$13 the next
3 month. And then, finally, a \$100 difference. And then
4 like I showed you when Brooke Chapman was on the stand,
5 during the time period that she was there, \$200.50 and
6 \$589.35.

7 So let me explain to you something, Dr. Chapman has
8 told law enforcement that the discrepancy of \$3,505.19 was
9 because this woman took the money, every single penny of
10 it. Now, I have no idea why that discrepancy is in there.
11 No one really does without doing a tremendous amount of
12 work. Doug Schmieding said, I have no idea why this is.

13 So people make errors. There's, obviously, going to
14 be errors. Accounting records need to get reconciled all
15 the time. But, again, remember what they chose -- and I
16 was trying to make this point a minute ago. They went
17 back and took the Eaglesoft records after all these people
18 had access to them and could have gone back and made
19 changes. They didn't come in here and give us an audit
20 report, present to you that nothing was ever changed, or
21 look at a week-by-week thing.

22 And so -- and then Dr. Chapman's testimony today was
23 completely remarkable. He wants us to believe that he
24 just took this down to Elliott Turner at the Greenville
25 County Sheriff's Office. He tried to tell y'all that he

1 gave Elliott Turner every employees name. There's only
2 one employees name in that file, and it's her name.
3 They've been trying to get her.

4 And if you look at the timeline, he fired her for
5 allegedly stealing in March of 2017, told her that was the
6 reason. He told Angie Hawthorne that she stole from him.
7 And then for whatever reason, I don't know what motivated
8 them, if it was that Burras case or whatever. But
9 somebody was motivated to get Earl Simmons to come --
10 basically, all Earl Simmons did, as near as I can tell, is
11 review the work that they gave him and put it in some type
12 of report form. And do you remember what he said? A
13 signature is not going to make a difference. Well,
14 translation on that is, I'm not going to sign it is what
15 he's saying. I'm not putting my CPA name on it.

16 And what did they do, they took -- Chapman Dental
17 took his report 49 minutes later, sent it to Doug
18 Schmieding to get Doug Schmieding to sign a letter and
19 send it back to them. And they take that letter down to
20 Elliott Turner on December 6th, 2017, and they say, This
21 is a forensic audit.

22 Okay. What did Doug Schmieding say? That ain't no
23 audit. That's what he told Alexa Kluska when she called
24 him -- when he called her after the e-mail on June 27th of
25 2018. He said he called her up and he said, That's not an

1 audit. And I'm not their expert. I've never been hired
2 as an expert to do a forensic accounting of what their
3 discrepancies are.

4 What else did he say? He said, My staff, Ruth
5 Stevens, does their bookkeeping for them. We don't even
6 look at Eaglesoft. So there's probably more in evidence
7 than we needed or would normally be thought of.

8 Let me talk to you about two other things. And that
9 is the existence of these two different types of damages.
10 Okay. So it's taken me a long time, 25 years almost to
11 understand this myself. But the Judge is going to charge
12 you about special damages.

13 Okay. And it is right -- it is recoverable for the
14 attorneys that she hired to get those charges dismissed.
15 She can't recover my fees in this case. But she can
16 recover the fees that those criminal defense attorneys
17 that she paid them and that she endured 293 days not
18 knowing if she was going to go to jail. 293 days not
19 knowing if she was going to have to pay a forensic
20 accountant more.

21 And, by the way, my friend, Mike O'Shea, I think he
22 made a mistake on his testimony. But we're only going to
23 be asking for one dollar for what Mike has done for her,
24 which is a tremendous amount of work.

25 But those special damages -- remember the

1 hypothetical I gave you in the opening statement? If
2 someone went and had someone arrested and the next day,
3 they were like, oh, I made a mistake. And then they go
4 tell the Prosecutor. And the Prosecutor goes, oh, yeah,
5 well, we'll withdraw the warrant. We'll going to do all
6 that stuff. That person may not have had to hire an
7 attorney. So they wouldn't have special damages in the
8 form of hiring an attorney to get out of the mess that the
9 Defendants put them in.

10 Okay. General damages are things that -- they're --
11 it's the humiliation, it's the shame. Those are the
12 things that anybody who's falsely arrested experiences,
13 unless they just don't have -- they're kind of inhuman.
14 Okay. But if -- if anyone is falsely arrested and they're
15 mug shot is put out in the public and their employer finds
16 out that they were arrested and then there's a call made
17 to say she stole from you, the false arrest in and of
18 itself gives rise to these general damages. Okay. And
19 that's the humiliation.

20 You heard my client testify that February 8th, 2018
21 was the worst day of her live. No criminal record. This
22 is unbelievable, truly unbelievable that this has happened
23 to a loyal employee with a great employment record. And
24 she's got a great employment record at her new job.

25 And guess what? Some of that information is still

1 out there, I hate to tell you. Because there are services
2 that pull that information from public records. Even
3 though it's been expunged, it still comes up sometimes.
4 She could go look for another job if she wanted to do
5 that. But she's been in fear -- she's still in fear that
6 she's going to go look for another job and someone is
7 going to pull this up and find out she's been stealing and
8 she has no chance.

9 So those are the two type of damages, special
10 damages -- and I've got a chart that I'm going to go over
11 to summarize the special damages figures that was
12 presented from that witness stand, okay, from her mouth
13 and from Sarah and -- which is, also, in some of my
14 exhibits and in my chart. I'll go over the exhibits for
15 what that is.

16 But then you can award her the damages for the
17 humiliation that she suffered for those 293 days. You can
18 award her on the false imprisonment charge.

19 False imprisonment has to do with your liberty. That
20 means that someone went and took your physical body, your
21 person, and restrained it. Okay. And that's what
22 happened to her. And I would say that given that she was
23 told she was going to be arrested on the 7th, she had to
24 leave work, go take care of her family, make arrangements
25 for her kids and then spent, I think she testified eight

1 hours -- eight hours on the worst day of her life with
2 real criminals that are throwing feces, scared to death.
3 I can't even imagine what that was like. On her false
4 imprisonment claim, as part of her general damages for
5 that, you can compensate her for all the emotional trauma
6 that she suffered that particular day.

7 On her malicious prosecution claim -- because, see,
8 that continues. That's the difference. The Judge is
9 going to charge you that the elements of the malicious
10 prosecution are that either you instituted the
11 proceedings, which is going down and complain to the
12 sheriff's office, or you continued the proceedings. Well,
13 they did both.

14 Okay. They -- Dr. Chapman went and met with Turner.
15 And he gave him -- and you saw me pull the exhibits out.
16 He tried to tell us that he just turned this over and was
17 like, can you explain this discrepancy to me? But
18 littered throughout Exhibit No. 12 are references to my
19 client. And, again, what he has said -- what he has sworn
20 out is that she's responsible for every single penny
21 that's taken. Okay.

22 Maybe she made a mistake in entering in Eaglesoft.
23 Obviously, somebody made a mistake. I don't know. Nobody
24 knows. The way you keep up with those things is you do an
25 end-of-day report and then you know there's a discrepancy

1 that day. He chose not to do that.

2 And on that note, remember Exhibit No. 3? I'm just
3 going to refer to it. That's the e-mail with Ruth Stevens
4 where he's talking about discrepancies in the bookkeeping
5 all the way back in March of 2016. He did nothing about
6 it. He did nothing to start doing end-of-day reports. So
7 he knew that there was an issue. He chose to do nothing
8 about it and -- and that is -- that is part of the problem
9 is that he did not require these end-of-day reports.

10 So what does the Plaintiff have to prove? We have
11 four causes of action, malicious prosecution is the
12 institution or continuation of proceedings by the
13 Defendant, Dr. Chapman. He was the complainant on Exhibit
14 No. 2, which is the warrant. He's the person that went
15 down to the Greenville County Sheriff's Office with the
16 binder that included all that information that's in
17 Exhibit No. 12, which is the 25 pages. He's the one that
18 met with Elliott Turner and convinced him that Doug
19 Schmieding's letter was not a one-page letter, but a
20 two-page letter.

21 And what's on the second page of that letter? And I
22 would encourage the jury to do what I asked Dr. Chapman to
23 do, which is to -- I'm sorry -- do what I asked
24 Dr. Chapman to do, go through that report, go through
25 Exhibit No. 12, and see if you see the names of anybody

1 else. There's no names of anybody else. It's only
2 Samantha Katchick. There's Doug Schmieding's letter. You
3 can see the solicitor's office file numbers on it. And
4 then the second page note client records and bank deposits
5 were maintained solely by Samantha Katchick. He never
6 thought that this was some discrepancy that needed to be
7 figured it.

8 Where else are you going to see that same language?
9 Let's go back to Exhibit No. 7. Exhibit No. 7 is an
10 e-mail with, basically, four spreadsheets. We presented
11 it to you in printed format. At the top of each one, note
12 client records and bank deposits were maintained solely by
13 Samantha Katchick. This was about Samantha Katchick all
14 along.

15 Institution or continuation. Continuation. Mike
16 O'Shea testified that he comes along and because of his
17 experience and -- he decided that he would help Samantha
18 out. He prepared a report and gives his critique of the
19 first -- of the indictment, basically, the warrant,
20 whichever we want to call it.

21 What did the Chapmans do? Did they back down at that
22 point in time? No, no, no. They went and got a bunch of
23 documents and took them down to the solicitor's office and
24 said, Give that guy this and see what he can do with it.
25 He prepares another report, even more critical of it.

1 Remember what he said in that report? That the checks and
2 the credit card payments were off by, like, a total of
3 \$55,000. Eaglesoft didn't do it accurate for those things
4 either.

5 Malice in instituting the proceedings. Well,
6 termination in the Plaintiff's favor is the third element
7 that we have to prove for malicious prosecution. Well, it
8 was terminated in her favor. The solicitor's office
9 dismissed the charges. And you heard testimony that she
10 got her record expunged at no charge. So that's what they
11 do when the charges are improper. You don't have to pay
12 for it.

13 Malice in instituting the proceedings. I'm going to
14 read to you what the courts say that malice is. And the
15 Judge will charge you something either identical to this
16 or very similar. Malice is defined as the deliberate
17 intentional doing of an act without just cause or excuse.
18 If you find that Dr. Chapman did not have just cause or
19 excuse to go down to that sheriff's office and say that
20 this woman was solely responsible for \$3,505.19, then
21 that's malice.

22 He doesn't even say that he did that. That's a fact
23 that's in dispute. Elliott Turner says that he told him
24 that she was solely responsible. February 7th --
25 December 6th, they go down there, I believe, January,

1 February. Two months later, after working on the case,
2 Elliott Turner types up what's in that warrant. What does
3 he say? See, when Turner signed this warrant -- I'm not a
4 criminal attorney like my colleague, Mr. Kendrick -- most
5 of the time, I'm not.

6 He says that she was solely responsible. And it's
7 her name. It's not Angie Hawthorne's name or anybody
8 else's name. But on this, if you look down here, Hudson,
9 a Judge had to sign off on this. Okay. So he has to make
10 this constitute probable cause. And it did constitute
11 probable cause sufficient for the Judge to sign off on it.
12 Because it was based on false information provided by Alex
13 Chapman. That false information to begin with being that
14 she was solely responsible for all of these things.

15 The testimony has shown that she was gone on
16 Wednesdays. The testimony is undisputed that the cash was
17 in an unlocked drawer on all occasions. People -- other
18 employees were in there. Dr. Chapman was in there. His
19 wife, Brooke Chapman, was in there. Customers that were
20 coming in on Saturdays were in there. She didn't work on
21 Saturdays.

22 So what does that mean? On Saturdays, someone pays
23 in cash, she's not putting the record in Eaglesoft. She's
24 not entering the data for the payment. She's not taking
25 the cash and putting it in an envelope. Somebody else did

1 that. When someone else does that, you're not solely
2 responsible for that. But somehow or another, he
3 manipulated Elliott Turner to believe that. And look at
4 all the things he did to manipulate. Uncle Earl, CPA,
5 Doug Schmieding, CPA. Take this information. I've got
6 documented evidence.

7 Malice does not necessarily mean that the Defendant
8 acted out of spite, revenge, or with a malignant
9 disposition, although such an attitude may indicate
10 malice. Malice is a confusing term. Okay. It doesn't
11 have to be revengeful. That's what the law is saying.
12 In -- listen to this, this is most important. In an
13 action for malicious prosecution, malice may be inferred
14 from the lack of probable cause to institute the
15 prosecution.

16 So what is probable cause? Because my opposing
17 counsel told you in opening statements that as long as
18 Alex Chapman believed it, then that's probable cause.
19 Well, that ain't right. Okay. There's no way that's
20 right.

21 Probable cause is an objective standard, always has
22 been, always will be, praise the Lord for that. Because
23 if it was subjective, then any time someone believed
24 something had happened, if they were a law enforcement
25 officer, they could go sign a warrant and you would get

1 arrested. So that's the test that has to happen. And he
2 worked it past to get the warrant signed by all these
3 things that he did in addition to just taking it down
4 there and saying there's a discrepancy.

5 Probable cause is defined as a good faith belief that
6 a person is guilty of a crime when this belief rests on
7 such grounds as would induce an ordinarily prudent and
8 cautious man under the circumstances to believe likewise.

9 His testimony didn't even match up with what his
10 attorney argued in his opening statement. He said he
11 didn't believe she did it. He said he took the file down
12 there and Elliott Turner made the determination. I mean,
13 the only way I can think of the reason he said that is
14 because he doesn't have any other explanation. It looks
15 to me like he was just thinking on the fly. And that's
16 what he thought was the best thing he could say to try to
17 convince you that he hasn't done anything with malicious
18 intent.

19 Probable cause. And to be clear, private individuals
20 can be held liable for malicious prosecution if they give
21 false information to law enforcement, which is what the
22 Plaintiff alleges has occurred here and what the evidence
23 shows has occurred here. And then damages, of course, is
24 an element in that. And I've already talked to you about
25 her special damages and her general damages.

1 False imprisonment. Three elements. And the charge
2 probably will have some language in there. As I said
3 earlier, false imprisonment has to do with physical
4 liberty. So that's what we're going to ask you an award
5 of damages for is that time period in which she was
6 falsely imprisoned.

7 If you find that that was from 11:00 on the 8th until
8 7:00 when she got out, then that's fine. If you
9 include -- that's up to you. You get to decide what --
10 how to put a value on the humiliation and the shame that
11 she felt, and the shock and the horror of having to be in
12 jail as she testified to.

13 So element one, that the Defendant restrained the
14 Plaintiff. Okay. If the Defendant causes or instigates
15 or procures the arrest, then that satisfies the restraint
16 element. The restraint was intentional. Well, I went to
17 all this trouble to get all these records. They already
18 said that she stole in March of 2017, told her that, told
19 Angie Hawthorne that. He denies that he told Angie
20 Hawthorne, but she testified that he did. She testified
21 that she wanted to make him say it to her face. Can you
22 imagine that if you were working with somebody?

23 It was intentional. He went down there. The dental
24 practice followed up. Chapman followed up. The restraint
25 was unlawful. That's the other element. So, really, the

1 probable cause -- the lack of probable cause is the basis
2 of the malicious prosecution and false imprisonment claim,
3 but, yet, they're two separate claims. And you can award
4 damages for each one.

5 Defamation. Fortunately for Samantha, this wasn't --
6 we don't have any evidence that this was put on Facebook.
7 But it was -- her mugshot was out there. And, you know,
8 these publications, they pick these things up. In fact,
9 the mugshot that we have in evidence is from
10 carolinaarrests.org. So other similar organizations such
11 as this could have put that out there as well.

12 And so to prove defamation, we have to prove to you
13 that a false and defamatory statement was made. The
14 statements were made to Jim Nasim. We had that fellow
15 come in here and testify.

16 Let me tell you, it is very unusual for anybody to be
17 willing to get involved in a defamation case when it's by
18 slander. It's just hard. People don't want to do it. He
19 didn't want me to send him a subpoena. He didn't want to
20 have to come down here, but he did. He came down here and
21 he told you what he was told. That Dr. Chapman went out
22 of his way to call him the same day that she was arrested
23 and tell him that she stole from him.

24 Okay. And guess what? That's exactly what they're
25 talking about doing in these e-mails on October 22nd and

1 November -- and October 31st and November 13th, the
2 e-mails from Earl Simmons. They should be four, five, and
3 six, I believe, in the exhibits. We've already gone
4 through those. I won't go back through those.

5 An unprivileged publication. When you say something
6 to a third person, it's not subject to a privilege. The
7 Judge is going to give you a charge on what's called a
8 qualified privilege. Because we allege that she was
9 defamed by taking the false information to Elliott Turner.
10 But the law says that people have a right to report
11 something to law enforcement.

12 But you're, also, going to hear in that qualified
13 privilege charge, you have to do it in good faith. You
14 have to be acting in good faith. And remember what
15 Dr. Chapman has said is not that this money is missing and
16 this is the person that might be responsible for some of
17 it. Okay. Because he's saying she's responsible for
18 every single penny. And that's why she was charged with
19 breach of trust over \$2,000, which carries five years.

20 The publisher was at fault, which means that it was a
21 false statement and that they did it. And then this is
22 where it gets a little -- there's a different wording when
23 you talk about defamation. But they say that either
24 actionability of the statement irrespective of special
25 harm or special harm caused by the publication.

1 All right. This is going to get into that general
2 damages thing again. Because there's several types of
3 defamation that when those defamations occur, the law
4 requires that the general damages are presumed. And
5 here's what they are. Commission of a crime of moral
6 turpitude. I'm pretty sure I told you that in my opening
7 statement. A crime of moral turpitude is theft. She was
8 accused of theft. She meets that element.

9 Number two, a loathsome disease. We don't have that.
10 Three, adultery. We don't have that. Unchastity, don't
11 have that. Number five, unfitness in one's business or
12 profession. She went to school to get a degree to work in
13 healthcare administration. And Dr. Chapman called her new
14 employer to say this person stole from me. She might
15 steal from you. And what did he do -- what did they do in
16 an abundance of caution? They made her go to Spartanburg
17 and work and cut her hours.

18 So I'm going to walk you through a summary of the
19 special damages that I've prepared. February the 7th, she
20 testified that she had to go home and take care of her
21 kids and make arrangements to be arrested the next day.
22 We're claiming four hours at \$14.50, \$58.

23 The next day, she missed a whole day of work. She
24 said she worked 35 hours a week. That's seven hours at
25 14.50, 101.50. The next day, the 9th, she said she was so

1 distraught she couldn't go to work. That's another
2 101.50.

3 All right. At the call center, this number here, 15,
4 she testified that she normally worked 35 hours. But then
5 her hours got cut back to 20. But she still had the same
6 rate of pay. So that is a difference of 15 hours. She
7 said it was for six months, which is 26 weeks at 14.50.
8 That's \$5,655. Total wages lost \$5,916.

9 Travel to Spartanburg. Now, think about this, every
10 day she got in that car and had to drive to Spartanburg,
11 somewhere different, a longer drive going down I-85. I'm
12 glad I don't have to do that every day. What's probably
13 on her mind, particularly during -- this is during the
14 time period the charges are still pending. She can't get
15 it off her mind. She never should have had to experience
16 that.

17 And you -- you can reward her for all that emotional
18 distress that she felt during that 293-day time period,
19 including when she's driving over to Spartanburg. It was
20 an extra 15 miles a day. We calculated it. I think Sam
21 said 30. It was four days a week and at \$55, that's
22 \$1,740.

23 February 7th, she didn't work at the steakhouse,
24 Kanpai. She missed out on 55 hours worth of tips. That's
25 what she said was the average amount. And then she, also,

1 missed out on -- these are the tips -- I'm sorry. I'm
2 confusing. That's the tips from February 7th. And the
3 Kanpai hourly down here. She missed out on six hours at
4 \$8 an hour, \$48.

5 Then she testified that she couldn't work at Kanpai
6 because of the emotional distress because she was
7 overwhelmed in dealing with all these issues for a year.
8 She missed out on 52 weeks. She didn't work on
9 Wednesdays. And she said she worked every other weekend,
10 which is 26 weekends out of that year, \$55 in tips. Her
11 tips are \$2,860. The tips that she lost on the weekends
12 were \$1,430. And a similar calculations on the wages
13 here. All of the Kanpai adds up to \$8,449. \$26, she had
14 to buy a background check.

15 Exhibit No. 28, I'm going to go through it here.
16 Samantha and I have gone through it and marked out the
17 Clonazepam, the Viibryd, the Wellbutrin and the Prozac,
18 the four things that she took. And that totals \$1,049.39.

19 She testified about her excess medical visits,
20 including the time that she didn't have -- she didn't have
21 healthcare. So those other years, she's getting a lower
22 copay because she's, also, paying for her own insurance.
23 So if she wasn't paying for her own insurance, this number
24 would be bigger.

25 She paid David Seay \$4,000. Mike O'Shea, I've

1 already talked about that, one dollar. Ryan Beasley.
2 They can say what they want about Ryan Beasley. She hired
3 him while the charges were still pending and the charges
4 got dismissed. And her testimony is that she owes that
5 money. And criminal defense attorneys, once they take a
6 case, they can't just decide they don't want to be on it
7 anymore. So they get paid the amount -- they set a fee
8 that they're going to have to take a case to trial.
9 Fortunately for Sam, the case was dismissed not long after
10 that.

11 Treatment that she's received from Sarah McGuire,
12 that's on Exhibit No. 26, \$2,550. Sarah McGuire said that
13 she thinks Sam will need eight more sessions. The Judge
14 is going to charge you that future damages are
15 recoverable. That's \$960. Continued prescriptions, it's
16 estimated at a thousand. It's been a thousand so far.
17 Total future damages, \$1,960. Her total special damages
18 that have been presented -- you can award this much in
19 special damages, \$46,108.79. That's the special damages.
20 That's not the general damages.

21 Finally, civil conspiracy. Civil conspiracy is the
22 combination of two or more people to do a criminal or
23 unlawful act or a lawful act by criminal or unlawful
24 means. My head starts spinning every time I read that.
25 If you find that Dr. Chapman committed an unlawful act --

1 and the Judge is going to charge you -- but let me finish
2 the rest of those elements.

3 A combination of two or more people to do a criminal
4 act, three -- by one or more of the co-conspirators,
5 that's all that -- have to do the act in furtherance of
6 the scheme or the object. Well, we know what the scheme
7 or the object was. It's in the e-mails. It's in the
8 e-mails from Earl Simmons in October and November of 2017.
9 Call her employer. Tell him she stole. Okay. Guess
10 what, most people don't know this, which results in
11 damage.

12 The Judge is going to charge you on the three
13 statutes that I read out. Conspiring, a combination of
14 two or more persons for the purpose of accomplishing a
15 criminal or unlawful act. It's a crime. You can be
16 charged for it. That's in the statute, 16-17-410. The
17 conduct here was unlawful. Whether or not the prosecutor
18 chooses to do anything with it doesn't mean it's not
19 unlawful.

20 False statement to law enforcement. That's really
21 what we're dealing with here, false statement to law
22 enforcement. It is unlawful for a person to knowingly
23 make a false complaint to a law enforcement officer
24 concerning the alleged commission of a crime by another.

25 So when you get to analyzing that unlawful element

1 when you're evaluating the claims that are going to be on
2 the verdict form, remember these three statutes, civil
3 conspiracy is unlawful, making a false statement to law
4 enforcement is unlawful.

5 It's, also, unlawful to slander somebody. I
6 mentioned this in the opening statement. Any person who
7 shall with malicious intent originate, author, circulate
8 or publish a false statement or matter concerning the
9 effect of which shall tend to injure such person in their
10 character or reputation shall be guilty of a misdemeanor.
11 Those things are unlawful acts.

12 The evidence -- I've already gone through what's in
13 doctor -- what's in the police report. I've already
14 pointed out to you that Dr. Chapman has no explanation for
15 why everything points at Samantha Katchick. And he's told
16 everybody in this courtroom that -- that he just went down
17 and handed the file over.

18 We have e-mails setting forth this scheme with Earl
19 Simmons. That's Exhibit Nos. 4, 5, and 6. We have
20 e-mails. And what does Chapman Dental do? Because it's
21 Chapman Dental's e-mail. Chapman Dental takes what they
22 got from the one CPA and they flip it over to the other
23 CPA. They manipulate it. And they take the procedures
24 from the first CPA and Dr. Chapman signs it. All that's
25 in the criminal file. It's got my client's name all over

1 it.

2 Who can forget the text message? After someone has
3 done this and put her through an extremely difficult
4 situation, a living hell, quite frankly. And the day that
5 the charges get dismissed, Yo, Sam, let's grab a beer or
6 two. I'll buy. And what does she say about that? It's
7 the cause for another panic attack.

8 Ladies and gentlemen, I'll show you, when you
9 deliberate --

10 Is it okay for me to show them this?

11 THE COURT: Yes.

12 MR. FEW: You're going to have this verdict form.
13 Once you reach your verdict after you've followed all the
14 Judge's instructions, which I know you will, you're going
15 to mark these boxes. And depending on how you fill this
16 form out -- it's self-explanatory. At least, we hope it
17 is. The Court and the lawyers worked on it. And then you
18 get to decide who is liable. I'm sorry. Brooke Chapman
19 has been dismissed. So she's not on there. You can award
20 special damages and general damages on each one of these
21 claims.

22 It's been a privilege for me to represent this young
23 lady. When someone is treated like this, it just doesn't
24 sit right. And so we're extremely proud of what we've
25 done. I feel like we've presented about the best case we

1 can. And I think we've given you an abundance of evidence
2 from which you can find for her on all the claims. I ask
3 that you do that and that you use your power to send a
4 message that this kind of conduct is not acceptable in the
5 State of South Carolina.

6 Thank you.

7 THE COURT: Mr. Kendrick.

8 MR. KENDRICK: Thank you, Judge.

9 There are a series of questions that arise in the
10 course of this trial that you need to resolve to reach a
11 verdict. The answers to those questions require you to
12 find for the Defendant.

13 Because the premise of the Plaintiff's case is that
14 someone who thinks money is missing from their business
15 has no choices. Because if they don't know and they go to
16 the police and the police can't later prove that case,
17 then the idea here -- the thing that has happened in this
18 courtroom, the thing the Plaintiff is asking you to do is
19 that person then becomes liable for every failure in the
20 system. And that's the last thing you heard, to send a
21 message.

22 But what message would you send? We will talk about
23 the failures in the system in this case and who caused
24 those. But the message you send by awarding -- and the
25 word that the Plaintiff used was somewhat telling, by

1 awarding this Plaintiff for bringing this case is that a
2 business owner better not go to the police unless they are
3 sure about what they're bringing to the police.

4 And that causes a problem, and here's why. It leaves
5 no role for the police to play. It leaves no reason for
6 an investigation to be conducted. It leaves no room for
7 that citizen to make a mistake. And that's what's
8 happened here.

9 When Dr. Chapman went to Investigator Turner -- there
10 are two pieces of information that you have heard about
11 during this trial repeatedly. The \$3,500 was missing,
12 based on a discrepancy in the records. That is true. It
13 is not even in dispute. The accountants agreed. The
14 Plaintiff's expert agreed.

15 And all the exhibits you will see show that that
16 money wasn't where it was supposed to be. Whether that's
17 on paper, whether it was, actually, taken, it is perfectly
18 reasonable for the person missing that money who cannot
19 get an answer from the accountant to go to the police, who
20 he trusted to figure it out.

21 Even the Plaintiff's expert, Mr. O'Shea, a man with
22 decades of experience and -- in those decades, the
23 Plaintiff's lawyer knows him and vouches for him. They've
24 worked together plenty of times. Even he didn't say,
25 well, that wasn't true. He said there's a discrepancy in

1 the records. And there is no way to tell if the money was
2 missing, if the money was stolen, or if the records have a
3 problem.

4 The second thing that Dr. Chapman said was that
5 Samantha Katchick -- and I will use these words because we
6 have talked about them a lot -- was solely responsible for
7 the collection of payments and the making of deposits.
8 What has happened during the course of this case is we
9 have twisted those things in a way to support what the
10 Plaintiff wants to happen.

11 So we have turned that wording into the idea that
12 what was being conveyed to Investigator Turner was that --
13 I think the phrasing was 24 hours a day, seven days a
14 week, even going to the bathroom, the money was under the
15 control of Ms. Katchick. That's not what anyone has said.
16 That's not what anyone believed. And that isn't,
17 actually, true. The word "responsible." It was her
18 responsibility to collect the money, enter it into the
19 records, and put it in the bank. Did other people take
20 part in that? Absolutely.

21 So if the words had been she was the only one who
22 ever did it, that would be false. But that isn't what was
23 said. What was said is she was responsible, and she was.
24 There is no evidence in front of you that Dr. Chapman told
25 the police something that wasn't true. There isn't any

1 evidence that he mislead Investigator Turner. There isn't
2 any evidence that he convinced Investigator Turner that as
3 a commissioned law enforcement officer in the State of
4 South Carolina he could disregard his responsibility to
5 investigate a potential crime and just move forward.

6 We know that didn't happen because there's a time
7 period between the initial complaint when Dr. Chapman
8 talks to him and when the arrest warrant gets issued. And
9 Investigator Turner documents what happens. He's looking
10 for information. Dr. Chapman gives him that information.

11 But he's, also, talking to the Thirteenth Circuit
12 Solicitor's Office in this building, the person we elect
13 to prosecute crimes, who hires other lawyers to prosecute
14 crimes. And he is telling these people what he has. And
15 they're like, yeah, okay, probable cause, issue a warrant.
16 Where is his role? Where is his responsibility? What
17 part does he play in this system?

18 It probably is telling that the person the Plaintiff
19 seeks to take responsibility in this action is the doctor,
20 as opposed to the police officer or the police department.
21 Some of that is rooted in the biases that we expect people
22 to have and maybe a lack of trust for the people that come
23 in here and don't have those biases.

24 At the end of the day, when you go to the police and
25 you report facts to them, they investigate. And if they

1 get it wrong, there are ways that they're held
2 accountable. And in this case, the white collar crimes --
3 the economic crimes investigator does not do the things
4 that, actually, aren't as complicated as they're made out
5 to be, but Mr. O'Shea tells you they should have been.

6 At one point, Mr. O'Shea even said -- and he probably
7 believed that she took the money. He told us stories
8 about dental practices where they thought a few grand was
9 missing and it was half a million. I assume he would,
10 also, tell you there were times that he thought money was
11 missing and none was.

12 How would you find that out, Mr. O'Shea, in your 30
13 years of experience in federal government forensic
14 investigations all over the world? I would move into the
15 office and go through every single thing until I got to
16 the bottom of it.

17 So in this case, the Plaintiff has told you what the
18 responsibility of the investigation was and that it wasn't
19 done. And that isn't Dr. Chapman's fault. Because he
20 didn't do anything to make that investigation go in any
21 particular direction.

22 I understand that it is likely that we will never
23 know if that money was taken. I believe and concede to
24 you for purposes of today that maybe it wasn't ever taken.
25 That doesn't matter. Because we are not here to prove

1 whether or not Ms. Katchick took that money. That was the
2 job, first, of Investigator Turner, second, of the
3 solicitor's office. Even the Solicitor when confronted
4 with all this stuff and all these expert reports from
5 Mr. O'Shea says, well, I don't really know what I should
6 do. I don't know if I can take it to trial or not.

7 There was no action on behalf of the Chapmans.
8 There's no evidence in this case the Chapmans did anything
9 when that occurred. She sent them more records. So
10 either she asked the Chapmans for the records or she asked
11 Turner for the records. And they were produced to
12 Mr. O'Shea, who, again, was unable to look at those
13 records and reach any conclusion. But to find Dr. Chapman
14 responsible, then you have to hold him to a higher
15 standard than you would hold Investigator Turner or you
16 would hold Mr. O'Shea.

17 And part of what you heard a minute ago was a
18 detailed explanation of damages. And I don't disagree
19 that some of those things occurred. And I might if I was
20 arguing the other side of this case be inclined to do it
21 that way, to concentrate on the harm that was caused to
22 convince you that someone has to pay.

23 Because one of the things that exists within all of
24 us and is perfectly true in human beings, we don't want to
25 hurt our fellow humans. We don't want to hurt them

1 any more than we have to. And if they are hurt, we want to
2 fix them. I think if you watch the news, if you listen to
3 people talk about today's world, you might not believe
4 that, but I do. I believe people are inherently good.

5 And in this case, if we can set out to you how
6 horrible what happened to Ms. Katchick was, then your
7 natural inclination as human beings is to want to fix
8 that. But the problem is that the evidence in this case
9 does not point to Dr. Chapman as the responsible person
10 for that pain.

11 In March of 2016, there are e-mails back and forth
12 between an accounting office and Dr. Chapman about
13 discrepancies in the records. It is telling that
14 Dr. Chapman says, I trust her, but the math has to add up.
15 And he several times mentions, you know, even if I was
16 being embezzled from, I would have to figure this out.

17 And Ms. Stevens writes, I'm not trying to imply
18 anything odd is going on. Even she recognizes that the
19 discrepancy needs to be fixed. And she sets out a plan
20 for how it can be fixed. Because if it is fixed, then
21 there's no further problem. A year goes by and the
22 discrepancy doesn't resolve.

23 Then in March of 2017, because the records aren't
24 adding up -- but keep in mind, too, the Plaintiff has told
25 you that Ms. Katchick was fired because she was taking

1 money. And that isn't what the testimony reflects, and
2 that's not what the evidence shows. There were amounts of
3 claims that were not being processed on time. There were
4 issues with payment plans being made that didn't make any
5 sense. There were financial problems that were on the
6 horizon. And she was let go.

7 As months go by and Dr. Chapman's wife starts to
8 handle these reports, the discrepancies resolve. And he
9 becomes suspicious about why they existed and now they
10 don't. So like any reasonable business owner, he goes to
11 an accountant. The first accountant he goes to is Uncle
12 Earl to say, Do my numbers make sense? They do.

13 Well, the Plaintiff would have you believe that this
14 is the beginning of the scheme, that there's this
15 conspiracy arising before our eyes. But what's, actually,
16 happening during those e-mails is that Earl says, Well,
17 you could go and do this. You know, there's a lot of talk
18 about how these e-mails were key towards arresting
19 someone. And they say exactly the opposite.

20 Earl is very clear to Dr. Chapman who, also, has no
21 experience with the legal system. The police aren't going
22 to look at this. It's not enough. They don't care. You
23 just need to take it to them so they can take a pass.
24 Then you'll be okay, do whatever you want. And he does
25 say, you can call her new employer and tell them. But

1 there's no response from Dr. Chapman where he says, yeah,
2 let's do it. There's no response from anybody that says
3 that.

4 The information is then taken down to Investigator
5 Turner. And this is where we end up diverging from why
6 this case must fail and why the system is the problem.
7 Because Investigator Turner didn't do the things that
8 expert O'Shea told you would be required.

9 And the first thing was to go and interview them, to
10 ask a few questions. If it is so critically important
11 that other people could have taken a payment, then that
12 information was available for Investigator Turner. In
13 fact, it is not at all clear from the evidence in this
14 case that he didn't have that information. I do not know
15 why he elected to arrest Samantha Katchick. But it is
16 completely utterly bizarre to argue that Dr. Chapman's
17 statements to him were so powerfully convincing that he
18 could just go ahead, which he, actually, didn't.

19 It took months for him to issue a warrant. He
20 consulted with Sylvia Harrison, head of the white collar
21 crime unit, who said, you know -- and there's this idea
22 that they're talking about something else. But, I mean,
23 he's got one incident report. He's talking about one
24 report that was made. She was like, you know, if there
25 was a problem with the payment plan from the family

1 member, then I'd probably give it to you due to probable
2 cause. And why is that? Because she has a suspicion of
3 dishonesty. Is she wrong? I don't know. But it's all
4 about suspicion in this case.

5 And I will apologize if I said something incorrect in
6 my opening argument or if I didn't give you a complete
7 thought. We don't spend a lot of time arguing the law in
8 the opening. If Dr. Chapman had a good faith belief that
9 she had taken money from him and it was based on objective
10 evidence that an ordinary person would, also, have that
11 same feeling, then probable cause existed in this case.

12 And the two pieces of evidence that he had were that
13 the money that was being collected in his office was not
14 being deposited at the bank and that there was a person
15 responsible for that. And he has told you during the
16 course of this trial that the other piece of it was that
17 that stopped.

18 So why is it unreasonable for him to think that
19 someone has taken money from him? And why is it
20 unreasonable for him to take that information to the
21 sheriff's department and ask them to investigate it, but
22 it's perfectly reasonable for the investigator to do no
23 more investigation and be off the hook.

24 Because when I look in the corner, I see myself, and
25 my law partner, and my client. I don't see the sheriff's

1 department. I don't see the solicitor's office. But I
2 hear you being invited to send a message. What message do
3 you send when you take their failings, you take their
4 irresponsibilities and you assign them to Dr. Chapman and
5 you reward the Plaintiff for what the Prosecutor and
6 police did not do?

7 And that's the heart of all these cases any time we
8 hear about malicious prosecution. Is the person who made
9 the report so misleading, so convincing, so -- so
10 powerfully convincing that the police are overcome by
11 their sensibilities and they just do what they were told?
12 But there's not even any evidence here that anyone told
13 them to do something.

14 Turner testified that they wanted this to be looked
15 at. They wanted an answer. And that's okay. That's
16 reasonable. That is, in fact, an investigation. If you
17 have a problem with the way law enforcement works,
18 sometimes it is -- you know, we merge investigation and
19 prosecution and we let people off the hook. And we say,
20 you don't even need to go ask a question. You don't need
21 to go look. You don't need to go ask. You don't need to
22 even think.

23 But, interestingly, even Expert O'Shea says that the
24 problem is that all the evidence that's here and even if
25 we had Eaglesoft and they had put all the Eaglesoft

1 evidence in, it really would not have answered where the
2 money went.

3 So we're back to the beginning of the question, which
4 is that a business owner under the Plaintiff's theory and
5 in response to the message you've been invited to send is
6 that they have to eat that loss because they are not
7 allowed to ask the police to investigate. I, certainly,
8 don't want the business owners to start investigating. We
9 don't live in a world of vigilantism. We live in a world
10 where people report things to the police and the police do
11 their job.

12 There hasn't been a witness in this case that has
13 disputed those two main pieces of evidence or the fact
14 that they're true. Every time you hear words about solely
15 responsible, sole control, sole access, something has been
16 added to the words that you see in front of you on the
17 papers in evidence in this case. Something has been
18 changed. Something has been put in there that isn't
19 there. And that isn't how we reach decisions under our
20 system of law.

21 We look at the evidence. We see what is there. We
22 make a decision. The second we fill in a hole, the second
23 we add something that doesn't exist, you have now engaged
24 in something that you promised you wouldn't do at the
25 beginning of this trial. You are making a decision based

1 on sympathy, or prejudice, or emotion, and not on facts.

2 I try not to do what I call nitpicking arguments
3 where I go through everything you've already heard from
4 the Plaintiff's lawyer and dispute it. We live in a
5 system of adversary justice, where for you to make a
6 decision, the Plaintiff comes in and presents their case,
7 I come in and present mine, put evidence in front of you,
8 and you decide. I don't begrudge them the ability to
9 present their case. I never would. It is as American as
10 anything we see.

11 But the damages that they have alleged in many ways
12 cut against the very argument they're making. Because if
13 Dr. Chapman has just created this -- this case, he is
14 so -- so much of a mastermind that he's able to fool an
15 investigator. He's able to fool the head of the white
16 collar crime unit and later able to fool the assistant
17 solicitor. We know that isn't what happened. Because,
18 quite simply, he was working off of a system that confused
19 him. And that's what Mike O'Shea says.

20 So it is, certainly, reasonable that a lawyer was
21 hired for a normal fee and defended the case. But then a
22 month before the case is dismissed, another lawyer comes
23 in with a fee of five times that to get the case
24 dismissed. And it still doesn't get dismissed.

25 It still takes months for a \$20,000 well-connected

1 lawyer to make this case go away. This case that is so
2 lacking in probable cause that you're being asked to award
3 damages against the dentist who gave the information. The
4 case is so weak -- the case is -- and probable cause is --
5 you know, you've been given the definition. It -- it
6 doesn't mean someone's guilty. I said that to you in the
7 beginning and no one has disputed that. The Judge will
8 tell you that.

9 You can be innocent of a crime and probable cause can
10 exist. It is why we have a system in place to protect
11 people from that. It is why we have investigators to vet
12 information. It's why we have prosecutors to put
13 information together. And if the people in this case that
14 were to be held accountable were here, then you may hear
15 something different. But they're not here, only
16 Dr. Chapman is here.

17 So we have this \$20,000 lawyer that doesn't sound
18 like it was -- there's the wording we use sometimes about
19 an obligation or payments. And, listen, people get
20 confused. This all happened years and years ago.

21 But we even heard Mr. O'Shea say, I haven't been paid
22 a penny on this. And that wasn't what we heard from the
23 Plaintiff, who told you, oh, yeah, I'm making payments.
24 I've paid X amount of dollars. That wasn't the case. She
25 misremembered that. Because he said, I didn't get any

1 money. Yeah, maybe if there's a civil case. This is not
2 a contest or a lottery ticket. This is not a way for
3 these people that have said, oh, yeah, maybe if there's a
4 civil case, we can all make some money. That isn't how
5 this works.

6 And I will thank the Plaintiff for bringing up the
7 idea -- Plaintiff's counsel that there is a message to be
8 sent here. And the message is simple. You're allowed to
9 provide information. In fact, there is probably an
10 argument that you're required to present information to
11 the police when you think a crime has been committed.

12 No one has been charged with making a false
13 statement. No one has been charged with laundering money.
14 The first time it was brought up was here. It's a way to
15 make you think maybe somebody else did something.

16 At the end of the day, I leave room in my mind for
17 the fact that Dr. Chapman was wrong. If I had come in
18 here convinced that he was right, Mike O'Shea might have
19 convinced me -- or would have convinced me that he could
20 have been wrong. Because I asked him, Where's the money?

21 I don't know.

22 What would I have to give you for you to tell me
23 where the money was?

24 I'd have to move into that office, spend a bunch of
25 time there going through every single transaction and an

1 audit trail.

2 I still did not get a clear picture as to whether or
3 not he said that would give him the answer.

4 So this case should not satisfy us. The verdict for
5 the Defendant when it comes to malicious prosecution,
6 false imprisonment, and group that in with the civil
7 conspiracy, it won't be satisfying. It won't satisfy me.
8 It won't satisfy Dr. Chapman. A verdict for the Plaintiff
9 is not going to satisfy anybody. People who are
10 responsible for failing to do their jobs are not here and
11 are not being held responsible and never will be.

12 The last thing I'm going to talk about is defamation.
13 And just because I've gone on longer than I wanted to, I
14 will ask you to listen to the Judge's definition of
15 defamation and listen to the times that those are claimed.

16 So someone -- Dr. Chapman has to publish the
17 information. So the mug shot, he can't be held
18 responsible for that. The person who published that
19 picture, also, is not here.

20 The comment he made to Jim Nasim was that someone was
21 arrested for stealing from him. And that was true. But
22 it didn't cause any damage. And it's funny how I -- you
23 know, I worry when nobody has a clear memory of what was
24 said, especially in a case where the exact words matter so
25 much. But Nasim doesn't remember. Chapman doesn't

1 remember. Nobody remembers exactly what was said.

2 But what Nasim did say is we knew about this. We
3 knew about the arrest. It was not the dentist calling me
4 to tell me that gave me pause. It was the Greenville
5 County Sheriff's Office, again, the white color crime
6 investigator that gave me the pause. That was what caused
7 the move.

8 I don't really know why Brian Smith came in here. We
9 didn't get into the friendship and the failure of that
10 friendship. But he didn't go to that practice until
11 Samantha had left. He didn't know Samantha. He doesn't
12 know her now, other than sitting here. And there's no way
13 on earth that a comment to him about a pending lawsuit, if
14 it even happened, could have made any difference.

15 Keep in mind, too, we have this entire timeline of
16 events we're talking about. And we just have this kind of
17 random out here two years later, maybe at the pool, maybe
18 in April, maybe in March, not really sure, maybe something
19 about a lawsuit was said.

20 I don't know why Mr. Smith was here. Because this is
21 a courtroom where serious things happen. If he wants to
22 come in and manipulate it, then there's the message you
23 can send. We don't reward that behavior.

24 The message that you send in this case if it is a
25 verdict for the Plaintiff against Dr. Chapman is that no

1 law enforcement investigator and no state prosecutor needs
2 to worry about doing their job or failing to do it.
3 Because they have no role to play in this case, no reason
4 for them to do work or investigate, and you give no room
5 for them to make a mistake or any other business owner.
6 Fortunately, that's the only answer you can get to.

7 I feel for Ms. Katchick's damages. I do think that a
8 portion of them are real. But you don't award on damages.
9 The Judge will tell you that the law says injury is not
10 what creates liability. You have to find Dr. Chapman
11 responsible for those injuries. And if he's not, then it
12 is none of our place to decide how they will ever be
13 resolved or recovered. You just can't hold the wrong
14 person responsible. That is what you're being asked to
15 do.

16 So avoiding that requires for you to find in favor of
17 the Defendants on all these causes of action.

18 Thank you.

19 MR. FEW: Thank you, Your Honor.

20 Ladies and gentlemen, that was a lot to take in. I
21 heard a bunch of different things. And, frankly, I'm more
22 confused about what their defense is now than I was when
23 this trial started.

24 The premise of a false premise is that you get led
25 down a rabbit trail. So all these questions about Mike

1 O'Shea and there's discrepancies in the records. That's
2 all it is. Nobody has proven that anybody stole anything.
3 There's just discrepancies in the records. And the
4 Eaglesoft records could have been manipulated by the
5 Defendants at any point in time up until the time that
6 they printed those reports in April of 2017, in August of
7 2017. That's attached to, I believe, Exhibit No. 7 that
8 went to Doug Schmieding -- no, that's attached to -- Mike
9 O'Shea's report didn't go into evidence. I'm sorry about
10 that.

11 I heard Defense Counsel talk about what Plaintiff
12 wants. The Plaintiff doesn't want to be here. The
13 Plaintiff never wanted to be here. She got fired. She
14 was fine with that. She went on with her life. The
15 Plaintiff did not want to be arrested based on false
16 information.

17 They don't even know what their story is.
18 Dr. Chapman testified that he did not say Sam did this.
19 The file says otherwise. Elliott Turner's testimony says
20 otherwise. I want somebody on the jury to read the
21 preliminary hearing transcript. It's Exhibit No. 13, I
22 believe. Go through there.

23 You'll see what Elliott Turner says. That's where
24 he's under oath in a courtroom trying to establish
25 probable cause. And he says, Dr. Chapman told me,

1 Dr. Chapman told me, Dr. Chapman told me, Dr. Chapman told
2 me. That's all he says. Everything I got, I got from
3 Dr. Chapman and Chapman Dental. What they're saying is
4 that Elliott Turner should have figured out that
5 Dr. Chapman was lying to him. Didn't Dr. Chapman know
6 that already?

7 Dr. Chapman is not being held to any higher standard
8 than anybody else. The Judge is going to charge you on
9 the standard. The standard for probable cause has been
10 the same for a long, long time. What would an ordinarily
11 prudent and cautious person have done under the
12 circumstances.

13 And his particular circumstance is he knew more about
14 what was going on in that practice than pretty much
15 anybody. He had all this information that Elliott Turner
16 wasn't going to have. And, yet, he went down there and
17 absolutely manipulated law enforcement using two different
18 CPAs.

19 The Eaglesoft data -- the whole question that money
20 is missing and that somebody took money is just a false
21 premise. Okay. There's just discrepancy in the records.
22 And Chapman Dental and Dr. Chapman chose to put it on
23 here. And there's no evidence to support it.

24 He knew that other people had access to the records.
25 Think of the testimony that you've heard. We brought

1 current employees in here. Do you think Angie Hawthorne
2 wanted to come in here and have to testify against her
3 employer and tell the truth and say that I made him tell
4 me that she stole it, and that I entered payments in
5 Eaglesoft, and all kinds of people have access to that
6 envelope.

7 See, Chapman knew all that. But he went to work to
8 have her arrested because that's what he wanted. The
9 evidence is abundant to show it. You even have it in
10 e-mails. You even have people e-mailing people about
11 having her arrested and calling her current employer. I
12 made a lot of notes when my opposing counsel, a friend of
13 mine, was up here talking.

14 Jim Nasim and Dr. Chapman, according to their
15 testimony, they barely know each other. Dr. Chapman says
16 he didn't hardly remember him. So why did he call him?
17 Why did he call him? Because he wants to hurt this
18 person. You can draw your own conclusions about that.
19 People that don't know each other all that well don't go
20 calling somebody to give a warning about somebody that's
21 going to steal from them.

22 Mr. Kendrick is talking about something that's not
23 going to satisfy -- he's telling you what's going to
24 satisfy my client. He doesn't know what's going to
25 satisfy my client. My client did not want to be here.

1 Ladies and gentlemen, thank you again for your time.
2 I thank you for your conscientious deliberations that
3 you're getting ready to endeavor into.

4 As the Judge has told you and is going to charge you
5 shortly, it is the critical function to the United States
6 system of justice. Without you, we -- people that have
7 been wronged like this young lady and have had to come
8 into court and get on that witness stand and tell you
9 about the worst day of her life and tell you about how she
10 had to tell her children that she didn't -- I mean, that's
11 the epitome of humiliation.

12 When it's so humiliating that you don't want to tell
13 somebody that you've been accused of doing it. That's why
14 the law says when it's an allegation that you are a
15 morally corrupt person that you steal from people, that
16 you are unfit to do your job, the damages are presumed
17 because it's so humiliating. If you tell somebody about
18 it, they might think you did it. Okay. She had no
19 control over the people that heard that because of the
20 actions of the Defendants.

21 Ladies and gentlemen, thank you again.

22 And I look forward to hearing your verdict.

23 Thank you for your service.

24 THE COURT: All right. Ladies and gentlemen, before
25 I instruct you on the law, I'm going to give you five

1 minutes to use the restroom and stretch your legs. So I'm
2 going to excuse you. So when y'all are ready, let the
3 bailiff know and I'll bring you in. I'm going to rely on
4 y'all to let me know when y'all are ready to come back in.

5 (WHEREUPON, the jury was excused from open court at
6 approximately 3:13 p.m.)

7 THE COURT: We'll be in recess for a restroom break.

8 (WHEREUPON, a break was taken.)

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

10 (WHEREUPON, the jury came into open court at
11 approximately 3:27 p.m.)

12 CHARGE ON THE LAW

13 THE COURT: All right. Ladies and gentlemen, we are
14 at the stage of my instructions of the law to you. I
15 appreciate y'all paying attention during this whole trial.
16 And I just ask you for a little while longer to give me
17 your full attention on the law.

18 It's my duty as the Judge to instruct you on the law.
19 And as jurors in this case, it is your duty to accept it
20 and apply the law as I now state it to you.

21 It is your exclusive duty to decide all the issues of
22 fact in this case and to determine the effect, value, and
23 weight of all the evidence. All parties have the right to
24 expect that you will carefully consider and evaluate the
25 evidence and apply the law of the case to that evidence so

1 that in the end all parties will receive a fair and
2 impartial trial.

3 Now, you and I have had separate duties during this
4 trial. As the trial judge, it's been my responsibility to
5 preside over this trial and to rule upon the admissibility
6 of the evidence that's been put forth in this case. And
7 in that regard, you are to consider only the evidence
8 before you. And that includes witnesses on the witness
9 stand and any exhibits that may have been admitted.

10 I have the additional duty to charge you on the law
11 which is applicable here. And it's your duty, as I've
12 said earlier, to accept it and apply it as I give it to
13 you. If you have any preconceived ideas as to what the
14 law is or what the law should be and it does not agree
15 with what I tell you it is, then you are obligated under
16 your oath to abandon any preconceptions you have. Because
17 you are sworn to accept the law as I give it to you.

18 You are the sole and exclusive judges of the facts in
19 this case. Do not infer about anything I may have said or
20 done in this case to give you the thought that I have any
21 opinion. Because as I told you when we started the trial,
22 I do not have any opinion on the facts of the case. And
23 the law doesn't allow me to have any opinions. I am
24 dealing solely with the legal issues in the case. And you
25 are the sole judges of the facts in this case.

1 As part of that, it is your obligation to determine
2 the credibility or believability of the witnesses in the
3 case. Now, credibility, again, just really means
4 believability.

5 And in determining the believability of the
6 witness -- witnesses, you may believe one witness over
7 many, or many witnesses over one. You may believe a part
8 of the testimony of a witness and reject the remaining
9 part. You may believe the testimony of a witness in its
10 entirety or you may reject it in its entirety. You may
11 consider whether the witness has an interest in the result
12 of the trial, whether the witness is prejudiced towards
13 either party, the opportunity for the witness to have seen
14 the matters and things about which that witness may have
15 testified, and the way the witness acted on the stand.

16 Now, there are two types of evidence, direct and
17 circumstantial evidence. Direct evidence directly proves
18 the existence of a fact. And it does not require any
19 deduction.

20 Circumstantial evidence is proof of a chain of facts
21 and circumstances to prove a fact. Liability may be
22 proven by circumstantial evidence. The law makes no
23 distinction between the weight or the value to be given to
24 either direct or circumstantial evidence. However, to the
25 extent the parties rely on circumstantial evidence, all of

1 the circumstances must be consistent with each other. And
2 it is based on inferences and not personal observation.

3 Your determination in this case can be based on
4 direct evidence, it can be based on circumstantial
5 evidence, or it can be based on a combination of the two.

6 Now, things that are not in evidence are the
7 statements and the arguments of the lawyers and any
8 questions that they may have asked. The only evidence
9 that you are to consider is, again, what came from the
10 witnesses on this witness stand and what may be in those
11 exhibits that have been admitted into evidence.

12 Now, we have had a couple of expert witnesses. And I
13 gave you a little instruction before they testified in the
14 trial. As I told you, witnesses ordinarily are not
15 allowed to testify about any opinions or conclusions. But
16 an exception to that rule exists for any witnesses that we
17 call expert witnesses. And that's a witness who by
18 education, or experience, or training has become an expert
19 in some field. And that particular expert witness can
20 give an opinion in that field.

21 Now, you should consider any expert opinion given by
22 a witness just like any other evidence from other
23 witnesses or any other evidence in the record. You give
24 it the weight you think it deserves. If you decide that
25 an expert witness' opinion is not based on sufficient

1 education and experience, or if you decide that the
2 reasons given in support of the opinion are not sound, or
3 that the opinion is outweighed by the evidence, you may
4 disregard the opinion in its entirety.

5 An expert witnesses testimony is to be given no
6 greater weight than any of the other witnesses simply
7 because that witness is an expert. And you do not have to
8 accept an expert's opinion, even though it is
9 uncontradicted.

10 Now, the Plaintiff as I told you earlier before we
11 started -- or at the beginning of this trial, the
12 Plaintiff has brought this suit against the Defendants. And
13 because of that, the Plaintiff bears the burden of proof.
14 And that proof is a preponderance or greater weight of the
15 evidence.

16 And I gave you the example when we started that when
17 this case started that the scales -- the lady of justice
18 who holds the scales, they're even when this case started.
19 Now that the evidence is in, you will weigh that evidence.
20 And you will weigh that evidence as you determine or make
21 your decision in this case. And if the scales are still
22 even when you've weighed the evidence or if it even tilts
23 ever so slightly for the Defendant, then the Plaintiff has
24 not met the burden of proof. However, if the scales tilt
25 slightly in favor of the Plaintiff, then the Plaintiff has

1 met the burden of proof.

2 So that's what we call the preponderance of the
3 evidence. And the preponderance of the evidence, the
4 greater weight of the evidence is not determined by the
5 number of witnesses. Instead, it is determined by the
6 greater weight of all of the evidence.

7 Now, one of the causes of action that the Plaintiff
8 has brought against the Defendants in this case is what we
9 call malicious prosecution. The Plaintiff claims that the
10 Defendants are guilty of malicious prosecution. An action
11 for malicious prosecution protects an individual's
12 interest in being free from unjustified litigation and the
13 resulting injury to reputation, financial expense, and
14 interference with property.

15 In order to recover in an action for malicious
16 prosecution, the Plaintiff must prove by a preponderance
17 of the evidence or greater weight of the evidence the
18 following elements. First, they must prove -- or she must
19 prove that civil or criminal judicial proceedings against
20 the Plaintiff were begun or continued.

21 Secondly, the Plaintiff must, also, prove that the
22 proceedings were begun or continued by the Defendants or
23 at the Defendants request.

24 Next, the Plaintiff must prove that the Prosecution
25 has ended in the Plaintiff's favor and cannot be

1 reinstated or further maintained without beginning a new
2 proceeding.

3 The Plaintiff must further prove that the Defendant
4 acted with malice in instituting or continuing the
5 proceedings. Malice may either be expressed or implied.
6 And malice in a case of this kind is a deliberate purpose
7 to injure another without any just cause or excuse.
8 However, malice does not require that the act be motivated
9 by personal ill will. Malice is a willful intention to
10 wrong another unjustly. It may be inferred from the
11 circumstances of the case or it may be inferred from a
12 prosecution that is commenced without probable cause.

13 With that is the next element. The Plaintiff must
14 prove that the Defendants lacked probable cause in
15 instituting or continuing the action. And in determining
16 whether the probable cause existed, you should focus on
17 whether the Defendants had reasonable cause to believe
18 that the Plaintiff committed the act about which the
19 complaint was made, and not whether the Plaintiff was,
20 actually, guilty or innocent.

21 Probable cause is determined by the facts and
22 circumstances present in the mind of the Defendants at the
23 time of the institution or continuation of the
24 proceedings, not by any later events. If the facts and
25 circumstances would lead a person of ordinary

1 intelligence, caution, and prudence acting
2 conscientiously, fairly, and without prejudice to believe
3 that the Plaintiff was guilty, that would be probable
4 cause. Probable cause is something more than suspicion.

5 The Plaintiff must, also, prove that injury or damage
6 resulted from the proceedings.

7 Now, in a malicious prosecution case, the Plaintiff
8 may recover damages if she has met the burden of proof in
9 the case. Plaintiff may recover actual damages for all
10 injuries which are naturally the proximate result of the
11 alleged wrongful conduct of the Defendants. They include,
12 if it is established by the preponderance of the evidence,
13 loss of time, deprivation of liberty, bodily pain, injury
14 to fame and reputation, injury to health, general
15 impairment of social standing, losses to business as the
16 direct and natural result of the proceedings.

17 Special damages may, also, be awarded to the
18 Plaintiff in a malicious prosecution case if the damages
19 are supported by specific pleading and proof. These
20 include damages for any discomfort or injury to the
21 Plaintiff's health, loss of time, depravation of the
22 society of family, reasonable attorney fees, including
23 fees for the prior criminal action, specific financial
24 loss, as in present or prospective employment, of course,
25 limited by the doctrine of proximate cause.

1 If you reach the issue of damages, you are not
2 governed by the amount of damages that may have been
3 suggested. But you are to be governed exclusively by the
4 evidence that has been presented in this case and the law
5 that I give you in this case.

6 Now, the Plaintiff has, also, filed a cause -- or
7 asserted a cause of action for what we call false
8 imprisonment. The Plaintiff claims that the Defendants
9 falsely imprisoned her. False imprisonment is the
10 deprivation of a person's liberty without lawful
11 justification.

12 In order to recover for false imprisonment, the
13 Plaintiff must prove by a preponderance of the evidence or
14 greater weight of the evidence that the Defendant
15 restrained the Plaintiff, that the restraint was
16 intentional, and that the restraint was unlawful.

17 False imprisonment may be committed by words and/or
18 acts which the Plaintiff was afraid to disregard. It is
19 not necessary that the Plaintiff be confined within a
20 prison or within walls or that she be assaulted or even
21 touched. Nor is it necessary that force be used, nor that
22 any injury be done to the Plaintiff's body, character, or
23 reputation, nor that the wrongful act be committed with
24 malice or ill will or even with the slightest wrongful
25 intention.

1 False imprisonment may result from a false arrest or
2 from a lawful arrest in which there was a detention or a
3 delay beyond a reasonable time in which to make an
4 investigation. The fundamental issue in determining the
5 lawfulness of an arrest is whether there was probable
6 cause to make the arrest.

7 A false arrest is an arrest made without probable
8 cause. For example, if probable cause existed to believe
9 that a theft had occurred, then it could not be a false
10 arrest.

11 As I discussed a little bit with you in defining
12 probable cause, it's a good faith belief that the
13 Plaintiff is guilty of a crime where the belief rests on
14 grounds that would make an ordinarily prudent and cautious
15 person under the circumstances believe that a crime had
16 been committed. Probable cause is something more than
17 mere suspicion of guilt of the Plaintiff.

18 Therefore, an arrest made on a hunch or mere belief
19 or guess unsupported by facts, circumstances, or credible
20 information pointing to the guilt of the Plaintiff cannot
21 be justified as having been made on probable cause. It
22 may be found somewhere between suspicion and sufficient
23 evidence to convict.

24 In determining whether or not there was probable
25 cause for an arrest, the probability cannot be technical.

1 But it must be based upon factual and practical
2 considerations of everyday life on which reasonable,
3 prudent, and cautious people act. Probable cause may
4 exist even though there may be some room for doubt.

5 In addition, the fact that the Plaintiff may have
6 been found not guilty of the crime for which the arrest
7 was made does not mean that there was no probable cause
8 for the arrest. If the Defendant was legally justified in
9 restraining the Plaintiff or if the Plaintiff consented to
10 the restraint, there is no false imprisonment.

11 If you find that the Plaintiff is entitled to a
12 verdict on false arrest by a preponderance of the
13 evidence, then you must determine the damages which would
14 have been suffered by the Plaintiff as a natural and
15 proximate result of false imprisonment.

16 Actual damages are sometimes called compensatory
17 damages, meaning to compensate the Plaintiff for an injury
18 and to put the Plaintiff in the same position she was
19 prior to the injury, insofar as monetary compensation can
20 do that.

21 Now, the Plaintiff has, also, sued for a cause of
22 action of what we call defamation. In order for the
23 Plaintiff to prevail on that cause of action, the
24 Plaintiff -- there are four elements the Plaintiff must
25 prove. One, a false and defamatory statement was made.

1 Two, the unprivileged publication was made to a third
2 party. Three, the publisher of that was at fault. And
3 four, either actionability of the statement irrespective
4 of special harm or the existence of special harm caused by
5 the publication.

6 Now, the defamatory meaning of a message or a
7 statement may be obvious on the face of the statement, in
8 which case, the statement is defamatory per se. An
9 example of a defamation per se is, she or he is a thief.
10 If the defamatory meaning is not clear unless the hearer
11 of that statement knows facts or circumstances not
12 contained in the statement itself, then the statement is
13 defamatory per quod.

14 In cases involving that kind of defamation,
15 defamation per quod, the Plaintiff must introduce facts
16 extrinsic to the statement itself in order to prove a
17 defamatory meaning.

18 Now, this is a defamation cause of action. There's
19 libel and there's slander. In contrast to libel, which is
20 written defamation, slander is actionable per se only if
21 it charges the Plaintiff with one of five types of acts or
22 characteristics. One, commission of a crime of moral
23 turpitude. Two, a contraction of a loathsome disease.
24 Three, adultery. Four, unchastity. Or, five, unfitness
25 in one's business or profession.

1 If you find that the statement or statements is
2 actionable per se, then the Defendants are presumed to
3 have acted with common law malice and the Plaintiff is
4 presumed to have suffered general damages.

5 Now, the Defendant has interposed the defense of a
6 qualified privilege. In a defamation action, the
7 Defendants may assert the defense of conditional or
8 qualified privilege. In this case, the Defendants claim
9 that defense. And, as I said, the burden is on the
10 Plaintiff to prove her case and is on the Defendant to
11 establish this defense by the preponderance of the
12 evidence.

13 A communication made in good faith on any subject
14 matter in which that person communicating has an interest
15 or duty is qualifiedly privileged if made to a person with
16 a corresponding interest or duty, even though it contains
17 matter which, without this privilege, would be actionable.
18 And although this duty is not a legal one, but only a
19 moral or social duty of imperfect obligation.

20 Where the defamation is made in good faith and with
21 proper motives, a Defendant may claim a qualified or
22 conditional privilege. The privilege exists if the
23 Defendant correctly or reasonably believes that some
24 important interest of his own or a third party is
25 threatened. However, the qualified privilege exists only

1 when the publication has occurred in a proper manner and
2 to proper parties only.

3 The Plaintiff has, also, alleged a cause of action
4 for civil conspiracy. The elements of a civil conspiracy
5 are, one, a combination between two or more persons to do
6 a criminal or an unlawful act, or a lawful act by criminal
7 or unlawful means. An act done by one or more of the
8 conspirators pursuant to the scheme and in furtherance of
9 the object, which results in damage to the Plaintiff.

10 A crime of conspiracy is a statutory offense. It's a
11 combination, as I've said, between two or more persons for
12 the purpose of accomplishing a criminal or unlawful act or
13 an object neither criminal nor unlawful by criminal or
14 unlawful means. And that is Section 16-17-410.

15 Under Section 16-7-150, any person who shall with
16 malicious intent originate, utter, circulate, or publish
17 any false statement or matter concerning the effect of
18 which shall tend to injure such person in his character or
19 her character or reputation shall be guilty of a
20 misdemeanor. And upon conviction, therefore, be subject
21 to punishment by a fine not to exceed \$5,000, or by
22 imprisonment for a term not exceeding one year, or by both
23 fine and imprisonment in the discretion of the Court
24 provided that nothing herein shall be construed to abridge
25 any right any person may have by way of an action for

1 damages, or liable, or slander under the existing law.

2 Under another statute 16-17-725, it is unlawful for a
3 person to knowingly make a false complaint to a law
4 enforcement officer concerning the alleged commission of a
5 crime by another, or for a person to knowingly give false
6 information to any kind of rescue squad or fire department
7 concerning the alleged occurrence of a health emergency or
8 fire. That's just the reading of the statute.

9 Now, general damages -- you've heard me talk about
10 damages. There are classifications of damages. General
11 damages are inferred by the law itself. They are the
12 immediate, direct, and proximate result of the act
13 complained of. General damages are those which arise by
14 inference of law and need not be proved by evidence, while
15 special damages must always be pleaded and proven.

16 Special damages are not implied by law because they
17 are the natural, but not the necessary or usual
18 consequence of the Defendants conduct.

19 Now, a Plaintiff is never entitled to speculative or
20 conjectural damages. Actual damages need not be proven to
21 a mathematical certainty or be based on evidence of the
22 precise amount of damages that the Plaintiff has suffered.
23 But the evidence must allow you to determine what amount
24 of damages is fair, just, and reasonable.

25 In our courts, there's no distinction made between

1 companies and individuals. A company or corporation is a
2 person in the eyes of the law. And that company or
3 corporation is entitled to the same fair and impartial
4 consideration to justice by the same legal standards as an
5 individual.

6 Now, a verdict in this case, ladies and gentlemen,
7 cannot be based upon sympathy, passion, prejudice, or
8 emotion, or some other consideration not found in the
9 evidence. I charge you that, as jurors, you must decide
10 the issues involved in this case based solely on the
11 evidence which you have heard during the course of this
12 case.

13 Your verdict must be without bias and without
14 prejudice to any party. You can't allow yourselves to be
15 governed by sympathy, by prejudice, by passion, by public
16 opinion, or by some other consideration not found in the
17 evidence.

18 Now, in closing, let me talk to you about your
19 deliberations. You're getting ready to go into
20 deliberations. The word deliberation has often been
21 defined as careful consideration, weighing up with a view
22 to a decision.

23 The great thing about our jury system is it allows 12
24 good men and women from different backgrounds, different
25 life experiences, different ages and perspectives to

1 consider the evidence, talk about the evidence, and,
2 ultimately, if you can, reach a verdict.

3 We call them deliberations for a reason. You are to
4 consider the evidence in this case carefully and
5 deliberately and discuss it in a calm, thorough, and
6 courteous manner.

7 Remember, you are not partisans or advocates for
8 either party in this case, favoring one side over the
9 other. You are judges, the judges of the facts in this
10 case.

11 And as you recall, I gave you the example of the lady
12 of justice. She has the scales, but she's, also, got the
13 blindfold on. And all she is concerned about is weighing
14 the evidence. And that is what your responsibility is in
15 this case.

16 Listen to views of your fellow jurors. Consider
17 other people's points and points of view, talk through it
18 and discuss the evidence. And, remember, if you're doing
19 something deliberately, you're not in a big hurry. And
20 you should not be in a hurry here. This case is important
21 to all the parties in the trial. And this is their only
22 day in court.

23 When you retire to the jury room, again, discuss it
24 with your fellow jurors and try to reach an agreement, if
25 you can do so. And your verdict, if you're able to reach

1 an agreement, must be unanimous, all 12 of you. Each of
2 you must decide this case for yourself. But, again, only
3 after you have impartially considered all of the evidence,
4 discussed it fully with your fellow jurors, and listened
5 to the views of your fellow jurors.

6 Do not be afraid to change your opinion if the
7 discussion and the deliberation persuades you that you
8 should. But do not come to a decision simply to come to a
9 decision. It is important that you attempt to reach a
10 unanimous verdict, but only if each of you can do so after
11 having made your own decision. Do not change an honest
12 belief about the weight and effect of the evidence simply
13 to reach a verdict. In other words, don't change your
14 opinion just to reach a unanimous verdict.

15 Now, Madam Forelady, and all members of the jury --

16 Mr. Smith, can you hand that to her?

17 All right. This is the verdict form and you will
18 have this back in the jury room. It should be
19 self-explanatory. But I do want to, at least, go over it
20 with you.

21 You will see it's divided into questions. And it
22 may -- when I go through this, it may sound a little
23 confusing. But I assure you, once you get back there and
24 all of you can look at it, it will make sense.

25 But the first question as to the Plaintiff's claim

1 for malicious prosecution against the Defendants, Marshall
2 Alexander Chapman and Chapman Dental, we, the jury,
3 unanimously find -- and it says check A or B and complete.
4 So you'll see A, the first thing is a verdict for the
5 Plaintiff. And then you'll see B down there would be a
6 verdict for the Defendants.

7 Now, the order of this does not mean anything. I
8 have to pick one or the other, whether it's a verdict for
9 the Plaintiff or a verdict for the Defendant. And it's
10 eeny, meeny, miny, moe. Do not read into the order of the
11 verdict.

12 So the first option is for the Plaintiff. If you
13 find that the Plaintiff has met her burden, then you would
14 place a check. If you find the Defendant, Marshall Alex
15 Chapman, DMD, or the Defendant, Chapman Dental, or both --
16 it gives you those options. If you do find one or both
17 are liable, then it has a place for the amount of the
18 award, and special damages, and the amount of award in
19 general damages.

20 Then, again, B, if you find for the Defendants in
21 this case, then you would check B. And if you answer
22 that, then you go to question two.

23 Question two is the false imprisonment cause of
24 action. Again, it goes through the same thing. The first
25 thing is for the Plaintiff against -- and it has places

1 for the Defendants to check and the amount of damages.

2 And then B, if you find for the Defendants.

3 Number three, that goes to the defamation. It is the
4 same thing for the defamation. And number four, civil
5 conspiracy. Again, the same questions for those -- or for
6 that paragraph as well.

7 If you are able to reach a unanimous verdict on these
8 causes of action, you would then sign it, date it, and let
9 the bailiffs know that you have reached a verdict.

10 If you have any questions, there will be a piece of
11 paper and pencil or pen. And if you have any questions
12 you need to ask, write it down on a piece of paper, knock
13 on the door, and let the bailiffs know. They'll get it to
14 me. I'll take a look at it. And then I'll let the
15 lawyers know that there is a question. I'll tell them
16 about the question.

17 And I'll make a decision on what I need to do. And
18 that could be a couple of things. It could be that I'll
19 bring you in here and answer your question in person. Or
20 if it's a question -- I may can just answer and write you
21 the answer. I may just write it on the paper and send it
22 back in there to you.

23 If you to want hear any testimony replayed, let the
24 bailiffs know. Write it down and let the bailiffs know.
25 And we can bring you in here to listen to replay of any

1 testimony. So, again, if you've got any questions, just
2 write it down on a piece of paper and let the bailiffs
3 know.

4 Now, I'm going to excuse you right now, but just for
5 a minute. I've got to inquire of the lawyers if I gave
6 you the right law. And they'll tell me otherwise if I
7 hadn't, and then I may have to bring you back in. If not,
8 then I will have the bailiffs gather up the exhibits for
9 you and bring them in to you and tell you that you may
10 start your deliberations.

11 So with that, I will excuse you.

12 (WHEREUPON, the jury was excused from open court at
13 approximately 4:01 p.m.)

14 THE COURT: All right. Any exception from the
15 Plaintiff?

16 MR. FEW: Your Honor, the -- I still kind of have the
17 same concern that we went over earlier on the false
18 imprisonment part where you got to the probable cause.
19 There was a portion where you said if a theft occurred,
20 then -- it still seemed to me that it was misleading
21 that -- that if the arrest was deemed proper, which it was
22 in this case, that probable cause existed. And that's
23 number one. That's just a renewal, I guess, of what I had
24 said earlier.

25 And then on the qualified privilege, we would

1 respectfully request that the jury be reminded that
2 that -- it's only alleged to apply with respect to
3 statements made to law enforcement. That's the way I
4 understood it.

5 And then unrelated to the charges, as I look at that
6 stack of exhibits there, I was wondering if the jury is
7 going to get that list that you've been making, Hollie?

8 Will they have a list of what the exhibits are?

9 THE COURT: No. They don't get a list. They get the
10 exhibits.

11 MR. FEW: Okay.

12 THE COURT: Any response from the Defendants on
13 Plaintiff's exceptions?

14 MR. KENDRICK: Your Honor, I mean, I, also, listened
15 to the false imprisonment charge and didn't love it, which
16 means it's probably not prejudicial to the Plaintiff. It
17 made it clear. And I don't see any issue with it.

18 I think the other issues, your charge on defamation
19 says an unprivileged statement. So that isn't limited to
20 any particular statement, the definition of privilege
21 shouldn't be listed. So just, generally, I think those
22 are clear statements of the law and should be left alone.

23 THE COURT: All right. I note your exceptions. I
24 think the charges -- charges sets forth the law. But your
25 exceptions are noted.

1 What was the other thing, Mr. Few?

2 MR. FEW: The other thing was the qualified immunity,
3 as I understood it, was only alleged to apply to the
4 statements made to law enforcement. So that's what my
5 request was. That was my second request. And then I just
6 have the two things as far as the charge.

7 THE COURT: All right. So what's your position on
8 that as far as that only applies to law enforcement -- the
9 statements to law enforcement?

10 MR. FEW: That was my understanding of the way it was
11 presented to be offered, that the Defendants were only
12 claiming that the qualified immunity applied -- I mean,
13 the qualified privilege -- I'm sorry -- to the statements
14 to law enforcement. That there -- I don't know that it's
15 a matter of law that there's any basis for holding that
16 the statements to Brian Smith or Jim Nasim could fall
17 within the parameters of qualified privilege because
18 they're third parties. They don't have an interest in the
19 outcome. They just don't meet the test. But a statement
20 to Angie Hawthorne, it could fall in there as well, I
21 suppose.

22 THE COURT: Yeah. I think to her, it could fall in
23 there.

24 MR. FEW: Yeah. I agree with that.

25 THE COURT: All right. So what is your --

1 MR. KENDRICK: Well, I think any defamatory. It was
2 raised in the answer that we were asserting that defense.
3 I think any statement could, potentially, be subject to
4 privilege. And, Your Honor, the charge on defamation, one
5 of the elements is an unprivileged statement. So, first
6 of all, you have to define privilege, which I think is all
7 you did.

8 I worry about coming back and charging them that
9 privilege applies to this statement or that. I mean, I
10 don't know how you're going to charge defamation because
11 you're going to have to change that charge, too. I did
12 argue it that way -- I didn't argue it that way. I
13 e-mailed you that I was reminded, but there was nothing
14 more appropriate for a privilege argument than a statement
15 to law enforcement. But any defamatory statement could be
16 considered privilege and you correctly laid out the law of
17 privilege.

18 So if the jury -- I mean, we always assume that they
19 listen and follow your instruction. So if they evaluate
20 each statement that has been argued to them -- and one of
21 the things they have to find is privilege or not. They
22 have to know what privilege means. So I don't think that
23 anything you said is prejudicial.

24 THE COURT: Yeah. I think the charge as given is the
25 proper charge on the law. And I think privilege could be

1 to law enforcement, privilege could be to Angie Hawthorne
2 as a person working there in the office.

3 So I think qualified privilege applies. And I think
4 the charge as given encompasses that. But I note your
5 exception and you're protected on the record.

6 MR. FEW: Thank you, Your Honor.

7 THE COURT: All right. Anything else? Any other
8 exceptions from the Plaintiff or Defendant?

9 MR. FEW: Nothing from the Plaintiff.

10 MR. KENDRICK: No, Your Honor.

11 THE COURT: All right. Before I get y'all to take a
12 look at -- and I thought all of you did an outstanding
13 job. Your clients can be satisfied with the job and the
14 lawyers that they had representing them in this case. And
15 I commend you on all of your jobs.

16 Now, if you would take a look at those exhibits, make
17 sure they're all there. And if they are, we'll give them
18 to the bailiffs, and give them to the jury.

19 (Pause.)

20 THE COURT: All right. If you would bring out the
21 two alternates. Tell them they can deliberate and bring
22 out the alternates.

23 THE BAILIFF: Okay.

24 (WHEREUPON, the alternate jurors entered the
25 courtroom.)

1 THE COURT: All right. Ms. Jackson and Mr. Hardwick,
2 I want to thank you for your service.

3 Unfortunately -- or, fortunately, whichever way you
4 look at it, because everybody stayed on the jury -- a lot
5 of times, we need alternates. It just happens a lot with
6 alternates. But in this case, all 12 -- a lot of times
7 somebody may get sick or something happens and we need to
8 replace a juror. So this one, we didn't.

9 So that means that y'all's service is concluded for
10 the week and for the next three years. So if you get a
11 summons to come to circuit court again for jury duty, we'd
12 love to have you again. I hope you'd come back, but you
13 don't have to.

14 But thank you for your service and you're excused.

15 JUROR #84, MARK HARDWICK: Thank you.

16 JUROR #98, CAROLYN JACKSON: Thank you.

17 (WHEREUPON, the alternate jurors exited the
18 courtroom.)

19 THE COURT: All right. We'll be in recess.

20 (WHEREUPON, the proceedings were recessed at
21 approximately 4:15 p.m.)

22 QUESTIONS FROM THE JURY

23 THE COURT: All right. The question is, General
24 damages sheet, breakdown of lawyer costs, lost wages, et
25 cetera.

1 THE BAILIFF: They want the sheet, Wes, that you used
2 for closing. They're asking about where you had the
3 various descriptions, the various --

4 MR. LEONARD: They want his damages sheet?

5 THE BAILIFF: Yeah, that damages sheet.

6 THE COURT: Was that in evidence?

7 MR. FEW: I didn't put it in evidence.

8 THE COURT: That was just demonstrative, wasn't it?

9 MR. FEW: Yes, Your Honor.

10 THE COURT: All right. Any response? I know what
11 I'm going to do. But any response?

12 MR. FEW: Well, Plaintiff would love to have it in.

13 THE COURT: It's not going back to them.

14 MR. KENDRICK: We would have objected if he had tried
15 to put it in any time during the trial. It's not anything
16 he did wrong.

17 THE COURT: I'm going to write -- I'm not going to
18 bring them in for this, unless either one of y'all think I
19 need to bring them in. But my inclination is just to
20 write on here, You are only to consider the evidence
21 admitted in the case that you have with you.

22 MR. KENDRICK: I agree.

23 THE COURT: Anything, Mr. Few?

24 MR. FEW: No, Your Honor.

25 What was the question, Your Honor?

1 THE COURT: It's not really a question. It just
2 says, General damages sheet, breakdown of lawyer costs,
3 lost wages, et cetera.

4 MR. FEW: Okay.

5 THE COURT: All right. I've written, The only
6 evidence to consider in your deliberations is the evidence
7 which was admitted and provided to you in the jury room.

8 Does that work?

9 Anything from the Plaintiff?

10 MR. FEW: I don't want them to think that it's only
11 the documents that they can look at, so maybe say
12 including, you know, the testimony. Because we -- they
13 have exhibits. I probably went through it too fast.

14 THE COURT: The evidence to consider in your
15 deliberations is the evidence which was admitted and
16 provided to you in the jury room, including testimony from
17 the witness stand.

18 MR. FEW: Perfect.

19 THE COURT: All right. We'll be in recess.

20 (WHEREUPON, Court's Exhibit No. 1 was marked for
21 identification and admitted into evidence.)

22 (WHEREUPON, the proceedings were recessed at
23 approximately 4:31 p.m.)

24 THE COURT: All right. The question is, Can you
25 clarify the difference between special damages and general

1 damages?

2 This is the reason -- I put in one line for this very
3 reason. That's why I like one line on damages.

4 All right. Let me hear from the parties on what you
5 propose.

6 MR. FEW: Well, Your Honor, I had a little bit of
7 concern that I didn't mention when the last question was
8 about general damages, which is my chart of special
9 damages. So they seem to have been confused at that point
10 in time. But it seems to me that a recharge -- you know,
11 a rereading of the charge on these two things ought to be
12 the best thing to do. No need to reinvent the wheel.

13 Because the jury seems to be confused with -- and I
14 think we have something in the charge that talks about how
15 the special damages you can calculate. That's the way I
16 have argued it.

17 THE COURT: Well, the charges are this, general
18 damages are inferred by the law itself as they are the
19 immediate direct and proximate result of the act
20 complained of. General damages are those which arise by
21 inference of law and need not be proven by evidence while
22 special damages must always be pleaded and proven.
23 Special damages are not implied by law because they are
24 the natural, but not necessary or usual consequence of the
25 Defendant's conduct.

1 So anything, Mr. Kendrick?

2 My inclination was to recharge them general damages
3 and special damages.

4 MR. KENDRICK: I don't have a position, Your Honor.
5 Whatever the law says and whatever you think makes the
6 most sense.

7 THE COURT: Mr. Few, is that what I'm hearing you
8 say? We just recharge them?

9 MR. FEW: I believe so, Your Honor. I believe so.

10 THE COURT: Will you mark this, please?

11 (WHEREUPON, Court's Exhibit No. 2 was marked for
12 identification and admitted into evidence.)

13 (WHEREUPON, the jury came into open court at
14 approximately 4:57 p.m.)

15 THE BAILIFF: He would like to be able to stand.

16 THE COURT: Absolutely, yes, sir. You may stand. As
17 I told the bailiffs early on, whether you want to stand or
18 sit down or whatever. I wanted to make sure you were
19 comfortable.

20 UNIDENTIFIED JUROR: Thank you.

21 THE COURT: Madam Forelady, the question is, Can you
22 clarify the difference between special damages and general
23 damages? Is that the question?

24 JUROR #141, REBECCA NIX: (There was no verbal
25 response.)

1 THE COURT: All right. Here is what I'm going to do,
2 is just reread what the law defines as general damages and
3 what it defines as special damages.

4 All right. General damages are inferred by the law
5 itself as they are the immediate, direct, and proximate
6 result of the act complained of. General damages are
7 those which arise by inference of law and need not be
8 proved by evidence, while special damages must always be
9 pleaded and proven. Special damages are not implied by
10 law because they are the natural, but not the necessary or
11 usual consequences of the Defendant's conduct.

12 So those were the damages as I've defined them,
13 general damages and special damages. So I hope that
14 clarifies it some. If it doesn't, again, just keep
15 writing the questions. And I will discuss it with the
16 lawyers and bring you back out if I need to, or write you
17 the answer.

18 So you may be excused to go back.

19 (WHEREUPON, the jury was excused from open court at
20 approximately 4:59 p.m.)

21 THE COURT: All right. We'll be in recess.

22 MR. FEW: Your Honor, if they were to remain confused
23 on that, would you get to the point where you could just
24 give them the written charge to take back there on those
25 two things?

1 THE COURT: The law is that if you want -- one, I
2 don't give charges. The case law out there is the Supreme
3 Court frowns on us doing that. And they said if you do
4 for some reason feel that you need to do that, you have to
5 give them the entire charge. It doesn't -- it says in
6 there, specifically, you can't just give them a portion.

7 So they'd have the whole thing. And that would --
8 I've got notes and stuff all over my charges.

9 MR. FEW: Right.

10 THE COURT: And arrows and crosses and cross-outs.

11 MR. FEW: I forgot to ask, but I probably should have
12 asked if the jury could have had a note pad during the
13 closing argument maybe, but, oh, well, live and learn.

14 THE COURT: All right. We're in recess.

15 (WHEREUPON, the proceedings were recessed at
16 approximately 5:01 p.m.)

17 THE COURT: All right. I understand we have a
18 verdict.

19 Bring them on in.

20 (WHEREUPON, the jury came into open court at
21 approximately 6:04 p.m.)

22 THE COURT: All right. Madam Forelady, I understand
23 you have reached a verdict; is that correct?

24 JUROR #141, REBECCA NIX: Yes.

25 THE COURT: If you would, hand it to Mr. Smith there.

1 All right. Madam Clerk, if you would publish the
2 verdict.

3 VERDICT

4 THE CLERK: Your Honor, this is case number
5 2019-CP-23-1522, Samantha Katchick vs. Marshall Alexander
6 Chapman, DMD, and Chapman Dental, PA.

7 Number one, as to Plaintiff's claim for malicious
8 prosecution against Defendants Marshall Alexander Chapman,
9 DMD, and Chapman Dental, PA, we, the jury, unanimously
10 find for the Plaintiff against Defendant Marshall
11 Alexander Chapman, DMD, and Chapman Dental, PA, in the
12 amount of \$25,000 in special damages and in the amount of
13 \$24,001 in general damages.

14 Number two, as to Plaintiff's claim for false
15 imprisonment against Defendants Marshall Alexander
16 Chapman, DMD, and Chapman Dental, PA, we, the jury,
17 unanimously find for the Plaintiff against Defendant
18 Marshall Alexander Chapman, DMD, and Defendant Chapman
19 Dental, PA, in the amount of three -- \$30,590 in special
20 damages and in the amount of \$26 in general damages.

21 Number three, as to Plaintiff's claim for defamation
22 per se by slander against Defendant Marshall Alexander
23 Chapman, we, the jury, unanimously find for the Plaintiff
24 in the amount of \$15,000 in special damages and in the
25 amount of \$7,800 in general damages.

1 Number four, as to Plaintiff's claim for civil
2 conspiracy against Defendants Marshall Alexander Chapman,
3 DMD, and Chapman Dental, PA, we, the jury, unanimously
4 find for the Defendants, Marshall Alexander Chapman, DMD,
5 and Chapman Dental, PA, signed Rebecca Nix, Foreperson,
6 April 24, 2024.

7 If this is your verdict, so say you all, please,
8 signify by raising your right hand.

9 (WHEREUPON, all of the jurors raised their right
10 hand.)

11 THE CLERK: Thank you.

12 THE COURT: All right. Ladies and gentlemen, I'm
13 going to inform you here that as a result of your verdict
14 finding that the Defendants are liable for the actual
15 damages, there is one more phase.

16 The Plaintiff is, also, seeking punitive damages.
17 And the case has been bifurcated to have the first phase
18 just to determine whether or not the Defendants were
19 liable and if they are entitled to actual damages, which
20 y'all have found.

21 As a result of that, because there has been a finding
22 against the Defendants for actual damages, then there is a
23 second phase which is not like the first phase. It is a
24 phase solely on whether or not the Plaintiff is entitled
25 to punitive damages.

1 And so what that will entail is the Plaintiff is
2 entitled to put up some evidence in support of that. And
3 it would be a very -- it's a very narrow issue. It's not
4 like this -- the whole trial that we've had here. It's
5 solely on whether or not the Plaintiff is entitled the
6 punitive damages.

7 So because of that, what we've got to do is have that
8 decided by you as well. And so what I was planning to do
9 is just have you come back in the morning to do that. The
10 other option would be to stay here tonight. But I think
11 the best thing to do is excuse you for the day and just
12 come back in the morning and -- and have that phase.

13 Again, it's not like a -- a full blown trial like
14 we've had with the witnesses. It would just be a narrow
15 issue of whether or not the Plaintiff is entitled to
16 punitive damages against the Defendants.

17 So I'm going to excuse you for just a minute and
18 discuss it with the lawyers. And then I'll kind of either
19 bring you back out or just have the bailiffs instruct you
20 on what to do. So I'm going to excuse you just for a
21 little bit.

22 (WHEREUPON, the jury was excused from open court at
23 approximately 6:11 p.m.)

24 THE COURT: Okay. As to the second phase here, I
25 think any post-trial motions are until after we're done.

1 And my proposal is not to keep going tonight. I
2 suggest that we go -- start in the morning and -- and
3 proceed from there.

4 So I'm just -- I'm okay with just telling Mr. Preston
5 and Mr. Smith to tell them they are fine to leave now and
6 come back in the morning, instead of bringing them back in
7 here. Because I'm sure they're a little surprised from
8 the expressions on their faces.

9 MR. KENDRICK: We tricked them.

10 THE COURT: It was me, too.

11 MR. FEW: I want to let them know that's per the
12 Defendants motion, not the Plaintiff.

13 THE COURT: So is there any -- any objection from
14 either Plaintiff or Defendants to have the bailiffs
15 instruct them to just report back here at 9:30?

16 MR. FEW: No objection from Plaintiff.

17 MR. KENDRICK: No, Your Honor. I think that makes
18 sense.

19 THE COURT: All right. Mr. Smith, and, Mr. Preston,
20 if you would tell them my instructions still stand to be
21 here at 9:30.

22 THE BAILIFF: 9:30?

23 THE COURT: 9:30 in the morning. And we'll see them
24 then.

25 THE BAILIFF: Okay.

1 THE COURT: All right. Any matters we need to take
2 up before we adjourn for the day?

3 Anything from the Plaintiff?

4 MR. FEW: Nothing from the Plaintiff, Your Honor.

5 THE COURT: Anything from the Defendants?

6 MR. KENDRICK: Nothing. No, Your Honor.

7 THE COURT: We're adjourned until tomorrow morning at
8 9:30.

9 (WHEREUPON, the proceedings were concluded at
10 approximately 6:13 p.m., to be reconvened on
11 Thursday, April 25, 2024.)
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1 THURSDAY, APRIL 25, 2024

2 THE COURT: All right. Are you ready?

3 MR. FEW: The Plaintiff is ready, Your Honor.

4 THE COURT: All right. A couple of things. First of
5 all, y'all have reviewed the proposed jury charge and the
6 verdict form; is that correct?

7 MR. FEW: Yes, sir.

8 MR. KENDRICK: Yes.

9 THE COURT: Any exceptions or objections to either
10 one of them?

11 MR. FEW: Nothing from the Plaintiff.

12 MR. KENDRICK: No, Your Honor.

13 THE COURT: All right. Here's the process of what
14 we're going to do is -- obviously, this is kind of a rare
15 procedural part of the trial. It's not used very much.
16 And so as the bifurcated -- as this is a bifurcated trial,
17 liability and actual damages has been determined. And so
18 we go to the punitive damages phase of the case.

19 And so that entitles the Plaintiff to put up any
20 evidence, any testimony, exhibits, or whatever evidence
21 the Plaintiff intends to put up. The Defense, of course,
22 has the opportunity to cross-examine the -- any witnesses
23 that may be put up and object to any evidence.

24 Once the evidence is put up, then any motions that
25 want to be -- or need to be made by any of the parties can

1 be made at that time. And then depending on what the
2 ruling is on those motions, the case either goes to the
3 jury or does not go to the jury. Then I will instruct
4 them just on punitive damages and have them retire to
5 decide.

6 So is there any question from either one of you as to
7 our procedure?

8 Anything from the Plaintiff?

9 MR. FEW: Your Honor, I'm assuming that -- the way
10 I've read the statute, this is like a second trial. So we
11 would have the opportunity to make a brief opening
12 statement, call witnesses, closing argument, that kind of
13 thing.

14 THE COURT: Yeah. I left out the opening statement
15 and closing argument part of it. Yeah, each one of you
16 get an opportunity to give a brief opening statement. The
17 Plaintiff puts up any witnesses. The Defense can put up
18 any witnesses and cross-examination to both of you.

19 And then any motions that -- the option for any
20 motions to be made. And depending on what happens with
21 those motions, then the case -- I'll give the
22 instruction -- if it goes to the jury, I give the
23 instruction and they deliberate.

24 All right. Mr. Kendrick.

25 MR. KENDRICK: Your Honor, just for the record, I'll

1 start with what I think is the more complicated issue and
2 work my way down to the simple ones. But I am concerned
3 that the Plaintiff's plan this morning is to call relevant
4 witnesses that are not related to the punitive factors.
5 It is not my understanding that this phase of the trial is
6 to see how bad we can make Dr. Chapman look, but rather to
7 present evidence relative to whatever you want to call
8 them, Gamble factors or the Fortis case brings up sort of
9 what those are.

10 So there's some limitations on what they can bring in
11 as evidence. And Mr. Few was kind enough to give me, at
12 least, a hint as to who he was going to call. So, at
13 least, two of those witnesses are Ms. Holland and
14 Mr. Smith, who have already testified. The only thing
15 they could add would be things that are irrelevant.

16 There are pending lawsuits involving both of them
17 that do not have any relationship to this case. So I feel
18 like we're back to what my original problem was. This is
19 irrelevant evidence. But if it comes in, then I have to
20 thoroughly delve into everything that's going on. And
21 we'll be here all day trying two separate cases that have
22 nothing to do --

23 THE COURT: Mr. Few, let me -- what's the relevance
24 of Mr. Smith?

25 MR. FEW: Your Honor, Smith has knowledge of his

1 ability to pay, the way he's handled cash.

2 THE COURT: His ability to pay?

3 MR. FEW: They were close friends.

4 THE COURT: What -- I want to hear what the
5 testimony -- because here's my problem, as I understand
6 it, Mr. Smith has put some things out on social media
7 which subject him to liability -- potentially liability
8 what I'm hearing for his own statements. And so if
9 Mr. Smith is going to testify about this lawsuit, then
10 we're getting into the issues with Mr. Smith. And if he
11 has made disparaging comments on social media about him
12 and he's subject to a lawsuit, we're getting into trying
13 Mr. Smith's conduct.

14 MR. FEW: Your Honor, I -- just like before, I don't
15 have any intention of bringing up the lawsuit. But he
16 knows of Chapman's ability to pay. He knows of the way
17 Chapman has handled money.

18 He, also, has testimony relevant to the way his
19 account was handled, which, basically, he was given free
20 services, free services, free services. And then when he
21 didn't -- when he left the practice or whatever, then all
22 the sudden, they went and took everything they had not
23 collected as a copay. I mean, he's going to have to
24 testify, I can't remember exactly what. And then they
25 said, okay, you owe us all this money.

1 THE COURT: But that's not relevant to the issues in
2 this case. The issues in this case are whether or not
3 Ms. Katchick embezzled money. And if it was a situation
4 where the Defendants had brought an action or taken some
5 kind of action alleging Mr. Smith had taken money or
6 embezzled money, then I think that's a different issue.

7 But putting Mr. Smith up to testify about how they
8 handled his dental account, what is the relevance as to
9 the conduct relating to the embezzlement in this case?

10 MR. FEW: It goes toward -- again, toward the
11 Defendant's degree of culpability, Your Honor --

12 THE COURT: Culpability towards embezzlement and
13 having someone arrested. So what's the relevance there?

14 MR. FEW: It's going to be supported by the testimony
15 of Althea Holland as well, who's going to say that the
16 bookkeeping in the practice was handled very sloppily.
17 There were many times where she was handed cash. People
18 would come in, he would get cash from them. He would slip
19 her some money. It goes to the cash issue, which is what
20 this case is all about.

21 And then his testimony is going to corroborate what
22 she has to say about the way these patient accounts were
23 handled, the way money was -- just the way --

24 THE COURT: Mr. Smith worked at the dental office?

25 MR. FEW: No, Your Honor. He was friends with him

1 since 2014 or '15, pretty close friends. He came to the
2 dental office. He knew what was going on at the dental
3 office. I'm not exactly sure -- Josh asked him yesterday
4 that he didn't become a patient until 2018. So that seems
5 to be accurate, which was after my client was fired,
6 but --

7 THE COURT: And how -- really, I mean, I'm not
8 hearing some relevance. But how is that relevant if he
9 didn't even become a patient until 2018?

10 MR. FEW: Well, because it shows the way that the
11 practice continued to handle the money. That they
12 continued to do it the same way that Althea Holland is
13 going to testify about it. And so the jury is going to
14 see, well, there's no wonder they had discrepancies in
15 their accounting records. Because some people were paying
16 cash and he was paying them.

17 And Althea Holland is going to testify about the way
18 she was paid. She doesn't really quite know how it was
19 calculated, but she got paid. She didn't think it was
20 done the way it should have been done. And, you know,
21 that's just the way the practice was run. And all of that
22 goes to he knew that's the way the practice was run.

23 And I will admit, Your Honor, that Smith's testimony
24 regarding his account is after the fact. But it shows
25 that they continued to run the practice the same way that

1 they --

2 THE COURT: Mr. Smith was not an employee, though, of
3 the dental practice, was he?

4 MR. FEW: He was not, Your Honor. But he was -- I
5 have a printout of my Exhibit No. 38. I hadn't sent it to
6 the Court yet. Dr. Chapman through Chapman Dental has
7 been a plaintiff in Greenville County 21 times. He's not
8 unfamiliar with the judicial process.

9 THE COURT: Most of those were probably collection
10 matters; correct?

11 MR. FEW: A lot of them are.

12 THE COURT: I handle about 40 orders a day as chief
13 administrative judge on collection matters. And that's
14 about 200 a week, and close to a thousand a month of local
15 collection matters that I've got to deal with. So that's
16 nothing really unusual.

17 You're not going to try to get into that, are you?

18 MR. FEW: Well, I think the jury is entitled to know
19 that he knows how to be a plaintiff when he wants to be a
20 plaintiff.

21 THE COURT: You're going to argue -- you're going to
22 put into evidence that he brings lawsuits --

23 MR. FEW: I'm just going to ask him if Chapman Dental
24 has filed lawsuits before.

25 THE COURT: We've got to really get to the -- as I

1 said early on, the way I handle the case, we've got to
2 keep it between the ditches. And you're, certainly,
3 entitled to bring in evidence regarding the conduct that
4 was involved in the issues in this case. But I think
5 we're getting far afield of those issues. And that's what
6 I'd like to hear from you.

7 MR. FEW: I will concede that Brian Smith's testimony
8 would probably fall under 404(b) as pattern. Because he
9 didn't come there until afterwards. However, he was a
10 friend. I'll just let the Court rule so I can have it
11 preserved. However the Court rules on this, I've reserve
12 the right to call him as a rebuttal witness after
13 Dr. Chapman --

14 THE COURT: Yeah. And I'll -- that's why I wanted to
15 give you the opportunity to tell me what Mr. Smith is
16 going to testify to ahead of time before he gets up there
17 and they have to object. If there's relevant evidence,
18 I'm going to allow him to testify. But what I've heard so
19 far, I don't think is relevant on the issue of punitive
20 damages. I'll, certainly, allow you to --

21 MR. FEW: Your Honor, one more point I want to make.

22 THE COURT: Yes, sir.

23 MR. FEW: The duration of the conduct, the
24 Defendant's awareness -- or concealment, I think it's
25 related to that. The way the practice was -- continued to

1 be handled, that's the way that I think his testimony is
2 relevant to this because it is pattern evidence. But
3 it -- it goes to the duration of the way the practice was
4 run, which was -- goes to his knowledge, which is part of
5 our case.

6 THE COURT: Mr. Kendrick.

7 MR. KENDRICK: Your Honor, I'll say this at the
8 start, I think that this trial -- and I'm not committing
9 my client to any position. But we have done this trial as
10 smoothly as one would go. There are no weird rulings or
11 things that call any results into question.

12 And now, we are going to throw that in the trash.
13 And the reason we're doing that is because -- so, first of
14 all, we have admitted throughout the trial that the
15 accounting was not particularly well handled. And the
16 jury, clearly, took that into account. Because that was
17 the heart of the case; right?

18 So, I mean, there's no -- we're just trying to retry
19 the case now. And I think what we have here -- so I'm
20 going to say this. First of all, I object to all of this.
21 The jury was asked to send a message. The jury was given
22 an argument on --

23 THE COURT: I heard that yesterday in the closing.

24 MR. KENDRICK: And that is punitive, Your Honor. So
25 they have assessed punitive damages. And to now have a

1 second phase to additional punitive damages would be
2 contrary to statute, contrary to law, contrary to the
3 Constitutional right to due process. So I want to state,
4 for the record, that we object to any further proceedings.
5 They have done what they needed to do.

6 Secondarily, this is about very specific points. So
7 we are getting ready to just open the floodgates to say
8 Dr. Chapman must be a jerk and you need to put a big
9 verdict on his head, which the South Carolina Supreme
10 Court will not entertain for even a minute.

11 That isn't what punitive damages are about. We don't
12 punish people arbitrarily. That's, in fact, the heart of
13 the argument over punitives. I'm often on the other side
14 of the punitives argument. And the reason you assess
15 punitive damages is because what happened here has, for
16 example, the opportunity to be repeated. It was -- you
17 know, it went on and on and on. And all that evidence is
18 in.

19 So now Brian Smith doesn't know anything about
20 Dr. Chapman's ability to pay because they're no longer
21 friends. And he has repeatedly slandered Dr. Chapman,
22 which we will hear all about. This will be his deposition
23 today.

24 So I don't think that's, number one, relevant. But
25 if I'm stuck, I have to do what I have to do on cross.

1 And we have to show why Brian Smith is here and why he's
2 been here all week. He's mad.

3 It's the same thing with Ms. Holland. What they're
4 trying to get in is that Ms. Holland has this lawsuit
5 against Dr. Chapman for similar things. Because if all
6 they're saying is he handed her cash, why on earth didn't
7 she say that on the stand earlier this week when we were
8 arguing about how the cash has been handled?

9 From the opening argument to the closing argument,
10 every witness, every argument has related to how the cash
11 in this office was related. If she got up there under
12 oath and didn't say anything about it, she's getting ready
13 to come up here and commit perjury. And I can't imagine
14 why that would make sense for us to muddy this trial up at
15 the very end.

16 I think they can put up evidence that meets what the
17 Supreme Court says you can do in Mitchell vs. Fortis,
18 which are, essentially, the Gamble factors, which I saw in
19 your charge. And there's a few more in there only
20 because, I think, you've broken out some of the factors
21 into the --

22 THE COURT: And that's -- those are right out of the
23 statute.

24 MR. KENDRICK: Absolutely.

25 THE COURT: Those would be things out of the statute.

1 MR. KENDRICK: But the Supreme Court has said this is
2 how we do that. What they haven't said is once you get a
3 verdict, let's see if we can sling mud at the Defendant
4 until you can get a bigger verdict. It doesn't make
5 sense. It's irrelevant. And the relevancy rules don't
6 leave at the punitive stage.

7 So both of these witnesses I thought were going to
8 testify to something else, which would be irrelevant. But
9 what they're claiming to be testifying to now is even more
10 irrelevant. And there's not going to be a rebuttal
11 witness. I'm not calling Dr. Chapman. Rebuttal would be
12 my role. If I don't put up a case and then he does, and
13 then I want to call rebuttal, I guess. But I don't intend
14 to do any of that.

15 I think we need to look at the facts that are in
16 evidence. If they have additional facts that go directly
17 to these, then fine. But how cash was handled at various
18 times that don't have any link to this case, that's not
19 relevant, honestly.

20 Because what they're saying is not that he -- I think
21 Your Honor is right, if they had people to come in and
22 say, yeah, he accused me of this and he took me down to
23 the police station and got me arrested, that's punitive.
24 That's proper evidence. But to say he wasn't handling his
25 books correctly, that doesn't relate to any of the

1 factors. We lost the case because of that.

2 If I had an accountant come in and say the books were
3 perfect, that the cash was gone and somebody took it, we
4 wouldn't be here. I mean, the heart of the case -- the
5 liability phase was that. We don't retry it and add new
6 facts. It doesn't make sense.

7 So I think all of this evidence would be improper.
8 And I think at this stage neither Mr. Smith nor
9 Ms. Holland can testify. And I'm, also, greatly concerned
10 that if he wants to call Dr. Chapman that he, also, has to
11 stay between the proverbial ditches we're talking about.

12 THE COURT: Well, as far as Mr. Smith, I don't hear
13 any evidence that he has any relevance whatsoever on any
14 of these issues. The only issue as to the wealth with
15 punitive damages goes back to State Farm vs. Campbell in
16 the United States Supreme Court that is followed here in
17 Mitchell and is the net worth.

18 Any other evidence of wealth is -- is not relevant.
19 Our courts have -- have followed State Farm vs. Campbell.
20 And, specifically, I believe Justice Toal is the one that
21 authored that opinion. I may be wrong. Branham, I think,
22 is another one where the issue as to punitive damages for
23 the wealth of the defendant is net worth. And so
24 Mr. Smith doesn't add anything to that as well, nor does
25 he add anything as far as the bookkeeping.

1 So on --

2 And, Mr. Few, I'll give you an opportunity. Is there
3 anything else Mr. Smith may add? And tell me what
4 Ms. Holland is going to add, other than bookkeeping issues
5 at the firm. Because I don't believe that is relevant.
6 But you can persuade me or convince me otherwise, if
7 you've got some other evidence that Ms. Holland can add to
8 this matter.

9 MR. FEW: Your Honor, speaking of Branham vs. Ford --

10 THE COURT: Branham, yeah.

11 MR. FEW: -- I think in that case, there is some -- a
12 provision whereby they were able -- now, we're not suing
13 Ford Motor Company here. So that's different. But they
14 were able to go into issues on net worth like salary
15 compensation, and things of that nature. So I understood
16 that to be --

17 THE COURT: Branham?

18 MR. FEW: Somebody argued to me the other day that
19 that's the way it was. It was -- so you could get beyond
20 the net worth. But I'm fine with that. But I want to say
21 a few things to address that.

22 The Defendants have exercised their statutory right
23 to bifurcate this trial. The statute would then require
24 me not to discuss punitive damages and not to put evidence
25 up about punitive damages. So they're trying to use the

1 statute as a sword to handcuff me and say that we can't do
2 this stuff. And then when we come in here after we've
3 prevailed on the primary claims, claims that involve
4 malicious and intentional conduct, they want to say that
5 we can't put anything else in. And they're just doing
6 their job. But I just want to make that clear, for the
7 record, that the statute is not intended to be that way.

8 I plan on handling these witnesses the same way we
9 handled them when they were on the stand on the case in
10 chief or the first case, whatever we're going to call
11 that, and not get into things. The fact that the jury
12 might think somebody is a jerk, that's up to them to draw
13 a conclusion. But I'm not bringing them in here to do
14 what they think I'm going to do. They have very relevant
15 evidence.

16 We've already gone over Mr. Smith. Your Honor,
17 Althea Holland worked there. She saw the way the money
18 was handled day in and day out. She has all kinds of
19 things that she is going to be testifying to.

20 THE COURT: That's what I want to hear.

21 MR. FEW: Okay.

22 THE COURT: As far as handling the money, I'm not
23 going to allow that. That's just not relevant to the
24 issues of punitive damages. If Ms. Holland had been
25 accused of taking some money or accused of doing something

1 that had some relevance to the issues in this case, then
2 that would be a different story.

3 MR. FEW: Well, Your Honor, I want to -- sorry.

4 THE COURT: That's all right. Take your time.

5 Let me address this while you're getting your piece
6 of paper. As far as being handcuffed, when you have a
7 bifurcation, it does not handcuff you if -- or it doesn't
8 handcuff you by preventing you to bring in evidence.
9 Because you are absolutely entitled to bring in relevant
10 evidence. And that's the key. You can bring in all the
11 relevant evidence you want to. And you're not handcuffed
12 at all.

13 You can -- you are, certainly, entitled to bring in
14 evidence. But it still has to be relevant under the rules
15 of evidence on the issue of punitive damages. And so I do
16 take exception with the fact that you're handcuffed
17 because you're not. You're entitled to bring anything
18 relevant to the case. And the bookkeeping procedures are
19 just not relevant to the issues in this case.

20 Those -- that was brought up a fair amount in your --
21 your examinations and cross-examinations with the
22 witnesses in the first phase of the case. Those issues
23 were brought up. And I think that was a big issue that
24 you made with the jury in your closing argument, and you
25 prevailed.

1 But that doesn't go to the issue of punitive damages.
2 It's got to be the conduct that -- in your closing, you
3 did say you added some punitive damages language in your
4 closing to ask the jury to deter this kind of conduct.
5 And that's really a punitive damages argument.

6 So what's Ms. Holland going to say?

7 MR. FEW: Your Honor, she worked there. She saw what
8 went on every day. She has testimony that goes towards
9 the Defendant's degree of culpability. She has testimony
10 that goes toward the extent to which the Plaintiff's own
11 conduct contributed to this, which is none. She has
12 testimony about the duration because she continued to work
13 there. I don't need to get into her --

14 THE COURT: Duration of the -- it would be the
15 duration of accusing people of stealing money. It's not
16 the duration of your bad bookkeeping?

17 MR. FEW: No, Your Honor. I don't think -- that's
18 too narrow of a framing of what the case is about. The
19 case is about the warrant. The warrant is about the way
20 cash was handled at the business. Cash was handled at the
21 business the same way that checks and other credit items
22 were handled through electronic transactions. That's what
23 the case is about.

24 The cash was handled on Eaglesoft the same as those
25 other things. They all used Eaglesoft. She has direct

1 knowledge about all of these things, about the way it was
2 handled. And she has testimony that she can give that I
3 did not elicit the other day. Because I was keeping
4 things between the ditches and just to get her up, and get
5 her down, and get what was relevant to the primary case.
6 But she now has testimony about these things.

7 THE COURT: And what are these things? That's what I
8 want to hear.

9 MR. FEW: Your Honor, I mean, I'm having to tell them
10 what it's going to be.

11 THE COURT: I mean, I'm not -- what I'm hearing so
12 far, I'm not going to allow you to put it in. So you
13 probably need to proffer as you're doing now. And if you
14 tell me some stuff or give me some potential evidence that
15 it's going to be, you may persuade me.

16 But I really need to hear some evidence that focuses
17 in on the conduct that relates to the issue, which is
18 embezzlement, having her arrested and put in jail, and
19 defaming her. And if there is evidence of that, I will,
20 certainly, consider that.

21 MR. FEW: Your Honor, again, I think the case is
22 about more than just a single arrest. The arrest
23 involved, like I said a minute ago, assistance. But let
24 me go through the issues.

25 She's going to testify about the way the finances

1 were handled and everything was sloppy. Your Honor has
2 indicated you're not impressed with that evidence. She's
3 been a dental hygienist for 20 years. She has testimony
4 about -- lay witness testimony based on where she works
5 now, where she worked before, the same as Angie Hawthorne
6 did that she was shocked that the end-of-day statements
7 weren't used. She has testimony that Brooke Chapman
8 wanted Sam out. She has testimony she's already given
9 that he said, I'll tell you what to say, which is,
10 basically, perjury.

11 She has testimony that they didn't send statements to
12 customers on a monthly basis. So if someone had a
13 balance, they wouldn't send it out and tell them you owe
14 this money. And then later on, they would send them a
15 statement and be, like, okay, you owe this money. And
16 that goes to the way the accounts were handled.

17 Dr. Chapman would tell people, you're cool. I'll
18 just take your insurance. Don't worry about the copay.
19 And then when they left the practice, he'd go back and add
20 up the copays and send them a bill. All of those things
21 go to the reliability of the Eaglesoft records that he
22 knew about.

23 She has testimony, Your Honor, like I said, that they
24 would see a patient, the patient would pay in cash. She
25 was supposed to be compensated not on an hourly basis, but

1 she was compensated -- and I think this is somewhat
2 unusual in the dental hygiene business because they work
3 part-time.

4 They're compensated, like, on the number of patients
5 that they see. And so she has testimony about that, about
6 some patients would come in and they would pay in cash.
7 And he would go to her and say, oh, they paid in cash and
8 he would give her -- so that's the handling of the cash
9 when my client was working there.

10 THE COURT: So issues about handling the cash would
11 be sort of taken out of the drawer or given -- taken from
12 patients?

13 MR. FEW: Right, Your Honor.

14 So that particular patient may have had no record put
15 in Eaglesoft, per Dr. Chapman's instructions. I don't
16 know. But it goes to show that there were people -- not
17 everybody went through the Eaglesoft system. This was
18 not, you know, a line where everybody went through the
19 metal detector and got their chip. Some people were
20 handled very differently.

21 She has testimony about him bartering services with a
22 cook at a restaurant, and others. She has testimony about
23 him handing her cash. I've already mentioned the sloppy
24 bookkeeping. She has testimony -- she knows about other
25 people that had the same thing happen to them that --

1 THE COURT: How does she know that?

2 MR. FEW: Because she knew people that --

3 THE COURT: I know. But how does she know that? Did
4 they tell her that?

5 MR. FEW: She knows it -- well, she would know it
6 that way. But she would, also, know it from working at
7 the practice.

8 THE COURT: But how would she know that, other than
9 somebody telling her that?

10 MR. FEW: Well, it could be subject to a hearsay
11 exception. But she did work there. So she had knowledge
12 of -- and the Defendant Chapman Dental is a party. So she
13 knows certain things that are not hearsay because they're
14 a part of the business practice.

15 THE COURT: That would be -- it wouldn't be hearsay
16 if it was stated from the Defendants themselves. But any
17 statements from anybody else would not be admissible.

18 MR. FEW: She has statements -- that's pretty -- hold
19 on. She has statements, too, that -- that he told her
20 that she should not be friends with Sam anymore and told
21 Angie the same thing.

22 So that goes toward -- goes toward the --

23 THE COURT: All right. What about --

24 Mr. Kendrick, what about that last thing? What about
25 the statements that Dr. Chapman -- it was testified to

1 about telling her what to say? What about the -- I think
2 those could be relevant.

3 Now, what about the limited part of the testimony
4 that dealt with the way that people had access?
5 Everything wasn't always put in the Eaglesoft system.
6 And, therefore, is that relevant, at least, to that there
7 could have been other ways that the money could have gone
8 and, therefore, Dr. Chapman didn't have to -- didn't need
9 to proceed the way he did? Would that be relevant?

10 MR. KENDRICK: I mean, that's my rejected defense,
11 Your Honor. I think we have raised that issue, that the
12 Eaglesoft records, there were discrepancies in them. And
13 I'll start by saying, my worry is, Your Honor, if this
14 case mistries today, it mistries. We don't restart
15 punitives is my position, based on how this is done. So
16 the same jury has to consider both.

17 So I'm very worried that -- I mean, that list of
18 stuff, there is almost nothing in there that is relevant
19 to the factors for punitive damages. And I think that
20 that is the problem here.

21 I think we are getting ready to call a witness who
22 has animosity towards Dr. Chapman. And we have gotten a
23 list of all the things that that animosity involves. We
24 need to keep in mind the only thing that I said should
25 stay out based on the bifurcation was the Defendant's net

1 worth statement, which I offered to stipulate to.

2 Now, I feel like that offer to stipulate was done in
3 the interest of efficiency and the fact that, I think, we
4 have worked together to reach a fair result. That is now
5 leaving, which I don't think I have to stipulate to
6 anything anymore.

7 So my worry is we are creating this nuclear blowup at
8 the end of the trial, but not based on me trying to keep
9 out relevant punitive evidence. I spent all night reading
10 punitive cases. I know this evidence. But none of these
11 things have anything to do -- I mean, Ms. Katchick doesn't
12 even have standing to assert that the dentist wasn't
13 running his practice well.

14 I mean, bartering for services, paying someone in
15 cash, those are things that don't involve her at all. She
16 had a problem with the fact that Dr. Chapman took
17 information to the police, which she has asserted was
18 false or misleading. The jury has agreed with that.

19 But now what we're getting into is the way the
20 business was run. We're talking about she was part of the
21 practice, so she heard what they said. I mean, I don't
22 have to make the leap, hearsay.

23 So I looked at Mitchell vs. Fortis. So if we forget
24 about ratio and compare it -- and we talked about kind of
25 the first set of factors, you know, physical harm,

1 indifference, reckless disregard, financial vulnerability,
2 heated actions or isolated event, malice, trickery,
3 deceit, but that relates to the cause of action that the
4 Plaintiff elected to bring.

5 So the false imprisonment, and the malicious
6 prosecution, and defamation, if we could show that that
7 was a common way that he handled issues, went down to the
8 police station and had people arrested, then I think that
9 would be a problem, you know. If I was -- if I could ever
10 get punitives against a government agency, I would
11 definitely say, well, look at all these other times you
12 did this. If I found a private entity that did it, I
13 would, also, do that.

14 But I have not heard -- and so it's clear, I don't
15 think this is unfair, I was going to ask that we proffer
16 her. I'm going to hear the testimony in 10 minutes. I'm
17 not getting some advantage by him telling me what she's
18 going to say.

19 I really don't want to mistry this case on a Thursday
20 afternoon, Your Honor. But we've -- sloppy financial
21 records, that evidence has come out. It has been fully
22 vetted, including with an expert. And it doesn't have
23 anything to do with the punishment. It has to do with the
24 defense I asserted.

25 Brooke wanting Sam out is irrelevant because Brooke

1 was taken out of this case on directed verdict. I mean,
2 if she wants to get up there and say Dr. Chapman told her
3 that he would tell her what to say, yeah, she, actually,
4 already testified to that, Judge. So I -- and I don't --
5 I don't foreclose Mr. Few from making appropriate
6 arguments about relevant evidence that's already come in.
7 This isn't a restart. I mean, if he wants to raise things
8 relevant to the factors that came up during trial, he's
9 allowed.

10 I think the way to avoid all this -- and I looked at
11 the -- I think the Styles case that was unpublished. It's
12 kind of the most recent malicious prosecution, false
13 imprisonment. And Judge Sprouse had them -- the network
14 came in and they both gave closings, and the jury gave
15 their award. And that's a fair way to do it unless there
16 were things -- I mean, if there was anything relevant,
17 Judge, I might make my arguments and sit done.

18 But we're talking about bartering for services. I
19 mean, that's not illegal. That's not harmful. I mean,
20 patients paying in cash. We admit all day long that that
21 happened. And if it didn't go into Eaglesoft, you know, I
22 don't know. I mean, that --

23 THE COURT: As I've said, the conduct that he
24 already -- in a claim for punitive damages, whether it's
25 one trial or a bifurcated trial, it can be -- the

1 evidence, if used for the initial liability, can, also, be
2 used for punitive damages.

3 Mr. Few, you've got evidence in there that you can
4 make the argument that conduct that's already been
5 testified to is arguable for punitive damages.

6 But if you look at -- you know, if you look at
7 Gamble, the consideration -- and it's similar to what we
8 have in 15-32-520, I believe is what it is. So Gamble
9 looked at the Defendant's degree of culpability and the
10 duration of the conduct. It's the conduct in the case,
11 the conduct. The duration of the Defendant's conduct in
12 having people arrested and defaming them, the duration of
13 that conduct. The Defendant's awareness or concealment.
14 The existence of similar past conduct. And the key word
15 there is "similar." The existence of similar past
16 conduct.

17 The next factor is the likelihood the award will
18 deter the Defendant or others from like conduct. The key
19 word being "like conduct." Whether the award is
20 reasonably related to the harm likely to result from such
21 conduct. The Defendant's ability to pay and any other
22 factors being proper.

23 So if you look at Gamble, it is really specific and
24 really deals with the conduct. So any testimony about how
25 the books were handled or whether you bartered with the

1 barber down the road for services doesn't have any
2 relation to the conduct, similar past conduct.

3 So we're doing similar past conduct would be evidence
4 that Dr. Chapman and the dental practice did the things
5 that he is accused of in this trial, not sloppy
6 bookkeeping, not bartering with the barber down the road.
7 I don't think that you can really argue to the jury let's
8 get the bookkeeping straight here at Chapman Dental
9 practice. And let's make sure that we're not bartering
10 with the barber down the road to get some dental work for
11 a good haircut. And let's deter the citizens of
12 Greenville County for that conduct.

13 The argument would be let's -- because of the
14 evidence that you have heard here of other instances where
15 this occurred to other people and the conduct of Chapman
16 Dental practice and Dr. Chapman having -- accusing people
17 of stealing money that detours that -- not detours --
18 deters that conduct.

19 And so I think that's the evidence that's relevant
20 here. And if there is element -- evidence that's relevant
21 on those issues as set forth in Gamble and as set forth in
22 15-32-520, then I think we've got a different matter. But
23 the issues with the proffer that I'm hearing from you just
24 is not -- I don't think is relevant to the issues in the
25 case.

1 Is there anything else?

2 And I've looked at the -- I had Mr. Umbriano bring my
3 folder in. The issue of punitive damages on the ability
4 to pay is the wealth -- I mean, is the net worth of the
5 Defendant --

6 MR. FEW: Your Honor --

7 THE COURT: -- for the record.

8 All right. Yes, sir.

9 MR. FEW: Your Honor, so I want to respond to the
10 most recent ground. And then I would propose that if the
11 Court's not inclined to let Althea Holland testify in
12 front of the jury, then I would want to proffer her.

13 THE COURT: I'll allow you to do that.

14 MR. FEW: So, Your Honor, again, I understand what
15 Your Honor is saying. We're not intending, really, to get
16 anything -- I understand where you're going with the
17 similar conduct.

18 However, the number one factor is the Defendant's
19 degree of culpability. And -- and the thing that the jury
20 has found him to have done is to have given false
21 information to the law enforcement. So anything that
22 bears on his knowledge of how false that information was,
23 or how absurdly ridiculous it was, or how absurdly
24 reckless it was is relevant. And she, certainly, has
25 testimony to that effect, based on her knowledge of

1 Eaglesoft and then these specific experiences.

2 And, Your Honor, I've got three other exhibits. I've
3 submitted these. You can see, this is my client the day
4 that she had eye surgery. And you're a long way away, but
5 I don't think anybody forgets it when they see somebody
6 whose eye looks like that. She's going to testify that
7 that day she wasn't supposed to get in front of a computer
8 screen. She went in and she worked in the back. And
9 Brooke Chapman worked up front.

10 So those are examples of when everybody knew that
11 Brooke Chapman was solely responsible for taking payments
12 that day. Because Sam was not only not there, but she was
13 working in the back. She was -- questions came up about
14 this. And I believe they denied knowledge of it.

15 Your Honor, here's a Facebook post about this
16 automotive group that is getting together and having a
17 social event where they're fixing cars and so forth at
18 Chapman Dental in 2015. This goes to show that all these
19 other people would have had access, coming in and out of
20 the business --

21 THE COURT: Doesn't that go to the liability? How
22 does that go to punitive damages? How does it go to any
23 of the Gamble factors?

24 MR. FEW: It goes to the word solely, to him going to
25 Elliott Turner and saying she was solely responsible.

1 That is the false statement. That is the essence of our
2 case.

3 THE COURT: That's your liability case. That's the
4 liability part of it. And how is that relevant on the
5 issue of punitive damages?

6 MR. FEW: The degree of culpability, Your Honor.
7 It's one more example that shows that he knew that Sam was
8 not solely responsible. That's what all of these things
9 are. Everything we're intending to put up goes towards
10 Dr. Chapman's knowledge and the depth of his knowledge.
11 And that's what the first factor is. It is the degree of
12 culpability.

13 I didn't have to address the degree of culpability in
14 the case in chief, although I'm sure I did my best to do
15 so. But now is my opportunity to do that. So we're
16 entitled to put up further evidence that shows what he
17 knew.

18 If this was a case against Ford Motor Company and we
19 were dealing with some of their engineers or something
20 like that, we would be entitled to put up more evidence,
21 additional evidence at the punitive stage. Or if the case
22 were not bifurcated, we would have been required to put
23 that evidence up before.

24 THE COURT: If it related to -- that -- the issues
25 of -- of people having access to the drawer, and access to

1 Eaglesoft, and people dealing in cash and all, those are
2 relevant issues to the liability part of the case. And
3 you brought those out. I mean, those issues are out.

4 But the -- again, it's got to be related to the
5 conduct. The purpose of punitive damages, as you know, is
6 to deter this conduct. We're not here to deter the
7 Greenville County -- the citizens and residents of
8 Greenville County, we're not here to deter them from doing
9 better bookkeeping or not -- you know, they're being
10 sloppy or having a car show over there and shows that
11 people had access. I just don't think those are relevant
12 to the issues of punitive damages.

13 But I'll allow you to proffer any testimony that you
14 want to get in. And I'll allow -- as I told you, some of
15 the issues that I will allow. But anything that's not
16 relevant to the factors in Gamble and under 15-32-520,
17 I'll let you proffer. So if you want to bring --

18 MR. FEW: Yes, Your Honor. Althea Holland.

19 THE COURT: Ms. Holland, you are still under oath
20 from yesterday, or the day before, whenever you testified.

21 THE WITNESS: Okay.

22 DIRECT EXAMINATION

23 BY MR. FEW:

24 Q Good morning, Ms. Holland.

25 How are you this morning?

1 A Good morning.

2 Q So -- just so you know, there's no jury in here right
3 now. We're getting your testimony down, for the record,
4 so the Judge can make some rulings on it. You still
5 testify truthfully the same way you did yesterday.

6 MR. KENDRICK: Your Honor, before we start, would
7 it -- I don't want to object since we're in a proffer.
8 Can I reserve any objections until she's done so -- that
9 way, he can just go through it and we can get it on the
10 record.

11 THE COURT: I'll allow that.

12 MR. KENDRICK: But hearsay or improper stuff, I don't
13 want to keep -- I don't think it will, but I want to make
14 sure I'm not waiving an objection.

15 THE COURT: All right.

16 BY MR. FEW:

17 Q So, Ms. Holland, to refresh your memory and those in
18 the courtroom, I believe you started working at Chapman
19 Dental in 2014; is that right?

20 A Probably. Like I said, I should have looked up the
21 date, but I didn't. I know it's been six and a half,
22 seven years.

23 Q The time that you worked there was, certainly, more
24 than a year that Sam was there?

25 A Oh, yeah.

1 Q Okay. And what were your impressions of the way the
2 finances were handled, specifically, with respect to the
3 use of Eaglesoft?

4 A Well, I've worked in a number of offices over the
5 years. And I would see, like, the offices that I worked
6 in send out statements per Eaglesoft, like, monthly
7 statements. And I never -- I never saw that done at our
8 office. And I know I asked Samantha a couple of times and
9 even Angie Hawthorne why don't we send out statements, you
10 know.

11 As far as putting things into Eaglesoft, I would put,
12 you know -- if whatever I did on a patient, like, if it
13 was a cleaning, exam, X-rays, I would put that in. I
14 would just register that in. And sometimes, that -- that
15 charge would get deleted, like, it would be zeroed out,
16 like, maybe the patient didn't -- like, maybe Dr. Chapman
17 had a deal going with that patient that he -- that
18 he didn't make that patient pay.

19 Q So who would zero it out?

20 A He would.

21 Q And how do you know that that was done?

22 A Because he would come to me sometimes and I would
23 say, What's going on or -- and he would just say, Don't
24 worry about it. It's somebody that he's taking care of.

25 Q And that was somebody that you understood him to have

1 a cash arrangement with?

2 A Well, he had cash arrangements. But he, also,
3 like -- like, there was -- there was someone that owned a
4 restaurant that -- and then, sometimes, people that would
5 come in and do things for him personally, like -- that
6 didn't -- that didn't pay that he would just zero it out
7 or, sometimes, somebody would come in -- this one guy from
8 that particular restaurant that was a cook. He would come
9 in and just pay him cash.

10 Q And do you have any knowledge about whether or not
11 the cash payments that that person was making were entered
12 into Eaglesoft?

13 A I don't think it was. Because, sometimes, he would
14 come to me and give me what he thought he owed me for the
15 patient for what I did for the cleaning. He would
16 sometimes come and give me money for whatever I did.

17 Q Explain the way that you were supposed to be
18 compensated when you worked at Chapman Dental. Was it
19 hourly or was it by the patient?

20 A It was on a commission basis. I got paid for a
21 percentage of the cleaning and the X-rays.

22 Q So do you have any knowledge of anybody that you
23 provided services for which you would have been owed a
24 commission that paid in cash?

25 A Oh, yeah.

1 Q And -- and do you -- do you know how that got
2 recorded into Eaglesoft?

3 A I have no earthly idea.

4 Q But you know that some people got [sic] paid in cash?

5 A Or some people paid in cash.

6 Q And as I understand it, Dr. Chapman would receive
7 that cash. And instead of paying you by way of a paycheck
8 or something, he would come and give you cash; is that
9 right?

10 A Yes, at times. It wasn't all the time, but it was
11 times.

12 Q About how often did that happen?

13 A Maybe 10, 12 times.

14 Q And how much money would it have been that he was
15 giving you?

16 A It might be, like, \$40 here, \$40 there. I think one
17 time I did some deep cleanings on a patient and there was
18 a little bit more money that -- that came my way because
19 that's more of an expensive cleaning.

20 Q So normal procedure, once you did perform the hygiene
21 services, you would -- I keep hearing terms about a
22 walk-out. But you would put that into Eaglesoft right
23 then; right?

24 A Yes. It would be walked out, yes.

25 Q So when you did the cleaning or the X-rays, that was

1 a charge -- that was a service that was provided. And
2 were you -- but then -- who then put the amount that was
3 charged into Eaglesoft after you logged the cleaning and
4 the X-ray in Eaglesoft?

5 A Well, it -- like, when you log it in that you've
6 walked something out -- let's say just, for instance,
7 something was a hundred dollars, it would go in and it
8 would say a hundred dollars. But you have to manually go
9 in and change that if -- if you're going to zero something
10 out or change the charge, you have to manually go in there
11 and do that.

12 Q So let me see if I understand this. You would do a
13 cleaning. You entered everything into Eaglesoft, I'm
14 assuming?

15 A Yes. I would walk it out.

16 Q And just by virtue of you walking it out, Eaglesoft
17 already had -- if the cleaning was a hundred dollars,
18 Eaglesoft had the charge of a hundred dollars in there
19 already?

20 A It was already pre-programmed.

21 Q Actually, entered by you?

22 A Uh-huh.

23 Q And then the same thing for an X-ray?

24 A Uh-huh.

25 Q So did you watch all the patients pay or did you just

1 usually walk it out?

2 A I just walked it out and dismissed my patient up
3 front.

4 Q But you have specific knowledge that during the time
5 Samantha Katchick was working there -- she left in March
6 of 2017 -- that Dr. Chapman would zero out the charges
7 that were put into the system with the monetary amount on
8 them by you?

9 A He would have had access to do that, yes.

10 Q You said he told you that he did zero amount if they
11 paid in cash?

12 A I would -- I would look in there and I would see it
13 zeroed out. It would be changed, zeroed out. Because,
14 like I say, I got paid by commission. And so I would
15 think, well, am I getting -- am I getting credit for this?
16 But I would see it zeroed out. He would hand me money.

17 So I realized, okay, this is how I got paid. I got
18 paid in cash. I didn't get paid -- it didn't go in as
19 part of my commission.

20 Q Were there any records in the office that would have
21 been used to calculate what commission you would have been
22 owed other than Eaglesoft?

23 A I wouldn't think so. I don't know that there was any
24 other program on that.

25 Q So the reason he gave you the cash is because when he

1 zeroed it out, you wouldn't have been getting a commission
2 through the normal channel of receiving a paycheck?

3 A Right.

4 Q You saw Brooke Chapman and Sam interact. And I
5 believe you said that you detected that Brooke had an
6 opinion about whether or not Sam ought to stay around or
7 not. Do you recall that?

8 A Right. Yes.

9 Q And what -- what was your understanding of it?

10 A My -- my opinion was I don't think she wanted her
11 there.

12 Q Brooke didn't want Sam there?

13 A Yes.

14 Q And Brooke was an employee of Chapman Dental?

15 A Yes.

16 Q When -- at what point in time?

17 THE COURT: Mr. Few, what was that? That was her
18 opinion? If you would --

19 MR. FEW: She said it was her opinion, yes.

20 BY MR. FEW:

21 Q But that was your -- did you hear her say anything
22 about that? Let's do this. What things did you see with
23 your eyes or hear with your ears that led you to the
24 opinion that Brooke Chapman didn't want Sam around?

25 A Well, I don't think that he knew that I knew this,

1 but Sam had told me before that there had been a
2 relationship with him. So I -- once she came, it was
3 pretty evident that the two were not going to mix.

4 Q And Brooke was, actually, put to work at the front
5 desk with Sam?

6 A Uh-huh.

7 Q Do you remember for how long that was?

8 A I don't remember. It was -- it was -- it was from
9 the time she came until Sam left.

10 Q And Brooke would come into the office and help out
11 sometimes even before she became an employee, wouldn't
12 she?

13 A Yes.

14 Q Okay. So -- so the belief that you hold that Brooke
15 didn't want Sam around is based on, like, how -- how long
16 did you observe things to come to that conclusion?

17 A A number of months.

18 Q Did you ever see Brooke do anything or say anything
19 that -- that is related to your belief that she didn't
20 want Sam around?

21 A No.

22 Q You -- you've already talked about not giving
23 statements to customers. You're familiar with some
24 patients of the practice that got into payment disputes
25 with the practice; right?

1 A Yes.

2 Q And I think you told me there was one, Chad and Sarah
3 Morris?

4 A Yes.

5 Q How do you know about their situation?

6 A Well, they live in my neighborhood. They are friends
7 with -- they had been friends with my deceased husband and
8 I. And, I mean, when I first found out about the problem,
9 it was at the office. And then, you know, she talked to
10 me later at our pool -- our community pool. And she was
11 very upset about how that transpired. And I think they
12 were sent to collections.

13 Q And tell us -- do you know how long they had been
14 patients of the practice?

15 A Actually, before I got there.

16 Q So did you provide services to them?

17 A Uh-huh.

18 Q And what is your understanding based on your working
19 there or what you've heard from her about how the -- what
20 the dispute involved? Did it not involve, like, taking
21 the insurance, but not requiring the copay, or something
22 like that?

23 A It was something about billing the insurance, I
24 think, on her children. I think her children had -- had
25 insurance through their father. Sarah was remarried. So

1 I think it was -- I think it was insurance through their
2 dad. I think it was, like, military insurance, or
3 something.

4 Q So was it a situation where they all of a sudden got
5 a payment -- a bill saying you owe a good bit of money
6 that they weren't expecting?

7 A Yes.

8 Q And did that happen more than once while you were
9 working there?

10 A Yes.

11 Q And would it normally be -- what were the
12 circumstances leading to it? Do you know?

13 A I don't really know. Because I didn't have privy to
14 the accounts. It just -- it wasn't my job. But it was
15 always, you know--

16 Q Let me --

17 A -- there was always some sort of differentiation
18 going on.

19 Q If you entered in -- I'm going to do a hypothetical.
20 Let's say a patient gets a cleaning and they get an X-ray.
21 And we're going to pretend each of those you would enter
22 into the system; right?

23 A Yes.

24 Q With every patient you treated?

25 A Uh-huh.

1 Q And let's say each charge is a hundred dollars. So
2 that patient goes up to the front desk and they owe \$200;
3 right?

4 A Uh-huh.

5 Q And then there would be -- if they have insurance,
6 the practice would say, we'll just bill your insurance and
7 don't worry about the copay. Is that what you understood
8 was happening?

9 A We'll bill your insurance.

10 Q And don't worry about the copay?

11 A I -- I -- I hardly ever saw, you know, like, money
12 change. It was just, we'll bill your insurance and then,
13 you know, settle up.

14 Q And the insurance might not pay all of it?

15 A Right.

16 Q But Eaglesoft would still show?

17 A That there would be some sort of balance on it.

18 Q So if insurance paid \$150, then there's still a \$50
19 balance?

20 A Uh-huh. Sometimes things -- I would understand
21 sometimes things like that would just get written off, or
22 sometimes things would -- you know, some people paid and
23 some people didn't.

24 Q And those balances would accumulate and then when
25 somebody would leave the practice or get into a dispute

1 with Dr. Chapman, then he would send them a bill for the
2 full amount, wouldn't he?

3 A Yes.

4 Q And you have specific --

5 A I never could keep up with it. Like I say, I was the
6 hygienist. And it was just, like, something going on all
7 the time. It was like a -- like a -- turmoil all the
8 time.

9 Q But the situation that we just went through where the
10 patients would get into a payment dispute because of --
11 your understanding is that happened more than once?

12 A Uh-huh.

13 Q Fairly regularly?

14 A Probably, yeah. Yes, there were other people that
15 were involved.

16 Q And so you were only doing the hygiene portion? The
17 normal patient coming in every four -- six months, that's
18 the part you handled; right?

19 A Uh-huh.

20 Q But there's a whole other part of the business where
21 there's crowns and that kind of thing being given, and
22 that was more Angie Hawthorne?

23 A Uh-huh.

24 Q And then would she -- when someone got a crown, who
25 would enter that into Eaglesoft?

1 A It would have been the doctor's side.

2 Q So it would happen when they were in the treatment
3 room --

4 A Yes.

5 Q -- once it's done, it gets entered?

6 So Sam was not entering the amounts. She was just
7 dealing with the amounts when the patients came out to the
8 front desk?

9 A To my understanding, yes.

10 Q So how did that compare -- how did the way that these
11 payments were handled compare to other practices that
12 you've been involved in?

13 A Apples and oranges.

14 Q And, certainly, Dr. Chapman knew that he was zeroing
15 out some of these patients?

16 A Of course, he did.

17 Q And he knew that he was taking cash from some of
18 these people, zeroing it out and paying you cash, instead
19 of paying you through the normal channel?

20 A Yes. He -- yeah.

21 Q Because you didn't -- was there any other information
22 management system at the practice, other than Eaglesoft,
23 that would have had any information in it related to the
24 services that you had provided that would have formed the
25 basis of you getting paid your commission?

1 A Not to my knowledge.

2 MR. FEW: Your Honor, that's all the questions I have
3 for this witness on proffer.

4 THE COURT: Cross-examination.

5 MR. KENDRICK: Your Honor, I'm tempted. I think I
6 could do a very flashy cross-examination to take us to
7 lunch, and it would be fun. But I have not heard a single
8 line of relevant testimony from this witness.

9 For the punitive stages, 100 percent --

10 THE COURT: Hold on.

11 You may step down.

12 You're not going to cross her?

13 MR. KENDRICK: If you're going to rule against me, I
14 might. But, Judge, nothing she said is relevant.

15 THE COURT: I'm not going to -- it's your opportunity
16 to cross, if you want to.

17 MR. FEW: Your Honor, could I get one more question
18 in?

19 THE COURT: I'll allow you.

20 BY MR. FEW:

21 Q I meant to show you this -- this would be -- I'll
22 just hand it to you. This is Plaintiff's Exhibit No. 35
23 for identification purposes.

24 Do you remember when Sam had eye surgery?

25 A Yes.

1 Q And is that a time period when you were working
2 there?

3 A Yes.

4 Q Do you remember if she was able to work the front
5 desk when she had that eye surgery?

6 A Forgive me. I'm just -- I just kind of remember she
7 was like -- I mean, she looked kind of like she had been
8 beaten up. And I think several patients said stuff to
9 her, like, what are you doing working here? Shouldn't you
10 be off?

11 Q But that's, also, an example of when she had eye
12 surgery, she was, also, out of the office; right?

13 A Yes. She had gone out of the office -- I mean, she
14 was having this done and then she would come back in.

15 Q And who was working the front desk when she was out?

16 A Either -- I don't know if Brooke was there yet. I
17 can't remember that. But it would either have been
18 Dr. Chapman or Angie.

19 Q Do you remember that Sam was told that she couldn't
20 work on a computer screen because of that eye surgery?

21 A I don't recall that.

22 Q And then there were times -- are you aware of times
23 when, like, Dr. Chapman's car friend or friends would come
24 down to the office and people would have access in and out
25 of the office?

1 A Yes.

2 Q They would be using the bathroom, and things of that
3 nature?

4 A Uh-huh.

5 Q And they would have had access to the cash drawer?

6 A I mean, I guess anybody would have access to it if,
7 you know -- I know sometimes -- well, one time in
8 particular when -- not this eclipse, but the last eclipse
9 that we had a cookout in the parking lot. And the doors
10 were open, you know. People could go in and out and go to
11 the bathroom.

12 Q How many people were there?

13 A I would say less than 15.

14 Q Was somebody at the front? Was the practice in
15 operation at that time, meaning, like, someone was working
16 the front desk, or was that on a weekend?

17 A It was during the week. And I think we kind of
18 closed, so to speak, to, you know, watch the eclipse, kind
19 of have an eclipse party. But some of the food was inside
20 in the kitchen. So there was some going in and out.

21 Q Do you recall -- was Sam there?

22 A No. She wouldn't have been there then. I think she
23 would have left by then.

24 Q At the eclipse party?

25 A Yeah.

1 Q Do you remember what year that was?

2 A I don't remember when the eclipse was, like, 2017. I
3 don't know.

4 MR. FEW: That's all the questions I have.

5 MR. KENDRICK: If I've got to do it, Judge, I'll do
6 it.

7 CROSS-EXAMINATION

8 BY MR. KENDRICK:

9 Q Do you know Google?

10 A What?

11 Q Do you know Google?

12 A Yes.

13 Q Solar Eclipse of August 21st, 2017. That's on my
14 phone screen when I Googled the last solar eclipse. Do
15 you think that sounds right?

16 A Uh-huh.

17 Q And Ms. Katchick left the practice in March of 2017?

18 A Yes. I just said I didn't know whether she was -- I
19 don't think she was there.

20 Q Now, you know she wasn't there; right?

21 A Right.

22 Q And then how long have you been in the dental
23 industry?

24 A 43 years.

25 Q Where did you start working as a dental employee?

1 A Tennessee.

2 Q What practice?

3 A Lloyd Price.

4 Q How long were you at Lloyd Price?

5 A Probably four or five years.

6 Q Okay. Did you have an ownership interest in that
7 place?

8 A No.

9 Q Okay. Did you run it?

10 A No.

11 Q Okay. You were an employee?

12 A Yes.

13 Q Okay. What was your involvement with the collections
14 process at Lloyd Price?

15 A I had no -- that was back in the day where everything
16 was on an old ledger. So I didn't have any -- I mean, his
17 wife worked at the front desk.

18 Q Okay.

19 A I'm not...

20 Q So I'm not going to be burdensome about it. If I
21 were to walk through everywhere you've worked for the last
22 43 years, would one of those practices -- or any of those
23 practices be one that you had an ownership interest in?

24 A No. I mean, I was an independent contractor in one
25 office. I don't think that counts as ownership.

1 Q It does not.

2 I mean, you worked there; right?

3 A Yes.

4 Q So -- and I'm not trying to be coy with you. But I
5 want it said from you, did you own a part of the practice?

6 A No, I did not.

7 Q Did you have anything to do with the collections
8 process?

9 A No.

10 Q Have you ever been qualified as an expert on dental
11 practices or collection practices in any court of law?

12 A No.

13 Q I'm not being a jerk. You can't offer your opinion
14 unless that would be the case. So I'm just making sure we
15 establish that.

16 A Well, I think a person that has been in the dental
17 field for 40 some years usually gets an idea of how things
18 work and what's proper and what's not.

19 Q Okay. So -- so your testimony today is that you
20 didn't agree with the way Dr. Chapman handled the payments
21 and collections in his office?

22 A I didn't say I disagreed. I was just merely
23 asking -- or answering a question.

24 Q Okay. And I'm asking you a question to make sure I
25 understood your answer because I didn't understand some of

1 them, so I have to clarify. So you do not have an
2 agreement or a disagreement with how he handled the
3 finances or collections?

4 A My personal opinion is I don't think that they were
5 handled professionally --

6 Q Okay.

7 A -- from what I had seen from 40 some years before.
8 Everywhere I ever worked, I felt, in my opinion, was
9 always on the up and up. Statements were sent out.
10 Things went to the insurance. If you didn't -- if you had
11 a copay or you had something else that, you know, needed
12 to pay, it was paid. I never saw anything that looked of
13 any kind of discrepancy.

14 Q You didn't like Ms. Katchick when you worked there,
15 did you?

16 A No. That's not true.

17 Q You would get mad because the collection letters
18 would go out because someone had forgotten to send them;
19 right? And then your patients would be angry and leave
20 the practice?

21 A I think you're making that up. That's never -- that
22 never happened.

23 Q Okay.

24 A I have never -- I have never not liked Samantha.
25 There's never been a reason not to like Samantha. She's

1 never done anything toward me.

2 Q Okay.

3 A And all I did was question why are we not sending out
4 statements.

5 Q Right. And then the statements got sent out?

6 A No.

7 Q So statements never got sent out?

8 A I don't know.

9 Q Okay. Because --

10 A You know, because I never saw anything -- I mean, I
11 even asked Samantha, Why do we not send statements out?
12 And she was like, I don't know.

13 Q But didn't you just testify that the statements would
14 go out to people, and they would get mad, and then you
15 thought --

16 A I didn't say that.

17 Q Okay. I misunderstood you. That's fine. I'm not
18 here to fight with you. Okay. I'm just asking questions.

19 A No. I understand and I'm not either. I'm just
20 saying I don't want words put in my mouth.

21 Q Then you answer the question, you say "yes" or "no."
22 If you can't do that, let me know and I'll stop.

23 But we talked about the Morris'; right? I've got to
24 go through your testimony because you're here to establish
25 something and I want to find out what it is.

1 So you talked about the Morris' that are your friends
2 at the pool; right?

3 A They're my friends that live in the neighborhood.

4 Q And you had a conversation with them at the swimming
5 pool?

6 A Once.

7 Q And your knowledge of that situation that you just
8 testified to was from that conversation with them?

9 A No. It was at the office. I saw what happened at
10 the office.

11 Q And what was it that happened?

12 A That she was confronted that she had a big bill.

13 Q Okay. And what -- then what happened?

14 A I -- as far as what happened personally between
15 Dr. Chapman and them, I don't really know. I think there
16 was -- I think there was -- I think Chad came in at one
17 time and talked with Dr. Chapman about it. I think there
18 was some arguing back and forth about it. And I think
19 that from what I understand, he might have been reported.

20 Q Who was reported?

21 A Dr. Chapman.

22 Q To where?

23 A Maybe to the board.

24 Q And what happened?

25 A I don't know. I have no earthly idea.

1 Q Who told you that?

2 A Sarah.

3 Q When did Sarah tell you that?

4 A I think it was at our pool conversation. Because --

5 Q When was that?

6 A I can't recall what year. Whatever year that there
7 was a discrepancy. So, I mean, you can't necessarily hold
8 me back to what -- a lot of time has gone by. And I would
9 have no idea what year.

10 Q Okay. That's a fair answer.

11 A Maybe -- well, it was before -- I don't know.

12 Q Okay.

13 A 2000 something.

14 MR. KENDRICK: Judge, I'm not going to keep going.
15 There's nothing else to talk about. I do have an
16 argument.

17 THE COURT: You may step down.

18 All right. I will allow the Plaintiff to question
19 her about the issue of being personally paid in cash for
20 services that she did, like a cleaning, or whatever. And
21 it wasn't -- or it was zeroed out in the Eaglesoft system.
22 Those transactions that she testified to on these issues.
23 But only as to her personal knowledge, only what she
24 knows.

25 There's a lot of what she testified to that she

1 doesn't know. Most -- a lot of it was hearsay. Her
2 comments, I think it was, I think it was something, I
3 don't know, from what I understand, I never could keep up,
4 to my understanding. Her testimony was flooded with
5 speculative and hearsay testimony. But I will allow that
6 evidence on those issues.

7 The issues with the Morris', I don't find those are
8 relevant. Plus, it sounds like they were derived from
9 hearsay conversations. Although she said she was there.
10 In response to Mr. Kendrick's question, she was there.
11 But then she said, well, I really -- I don't know what
12 happened between Dr. Chapman and them. I really don't
13 know. Then she said, from what I understand. So I'm not
14 allowing that. Plus, I don't think it's relevant to the
15 issue.

16 I will allow you to ask her -- or bring out testimony
17 that she was not in the office for the eye surgery.
18 Therefore, going to the issue of somebody could have done
19 something there while she was out. However, I will not
20 allow the picture. I don't find it's relevant. Even if
21 it was relevant, I find under Rule 403 it's unfairly
22 prejudicial and substantially outweighs any probative
23 value.

24 But I will allow you to question any witness about --
25 as long as they have knowledge -- personal knowledge that

1 she was out for eye surgery. Any -- I will allow
2 testimony that there -- if the witness has personal
3 knowledge. Again, not what she understands, what she
4 heard, or anything like that, that there were people
5 around, in and out of the office at times. I will allow
6 that.

7 But I will not allow the remaining part of her
8 testimony. I will not allow her to testify about
9 comparisons to other offices. I will not allow her to
10 testify about how people in other dental practices did
11 their books.

12 I will not allow her to give any kind of opinions as
13 far as Brooke wanting her out of there.
14 Her testimony was not admissible under the rules of
15 evidence. She said that Brooke never told her that. It
16 was just her opinion on what she thought. She was,
17 specifically, asked did Brooke tell her anything. And she
18 said, Brooke never said anything. So I would not allow
19 any testimony on that. I believe -- the eclipse, it
20 sounds like the eclipse was after Ms. Katchick was gone.

21 MR. FEW: It was. Yeah, it was.

22 THE COURT: So I'm not going to allow any testimony
23 on that. I'm not going to allow this witness to give any
24 kind of opinions, or what she thinks, or what she thought,
25 only as to her personal observation and that -- again,

1 with the zeroing out issues she was involved in that --
2 and does have personal observations or knowledge about
3 that.

4 But, quite frankly, a lot of what the witness
5 testified to in the proffer is opinions, speculation,
6 hearsay, other than the issues that I did -- or am
7 allowing you to bring out.

8 All right. Is there anything else that we need to
9 address?

10 MR. FEW: Your Honor, could I just be on record on
11 your rulings right now?

12 Thank you, Your Honor.

13 Rule 701 says if a witness is not testifying as an
14 expert, testimony in the form of an opinion is limited to
15 one that is rationally based on the witness' perception --
16 which she has that, she worked there -- and being helpful
17 to clearly understanding the witness' testimony or
18 determining a fact in issue.

19 The accuracy of the Eaglesoft records is, certainly,
20 a fact in issue. And then it's not based on scientific,
21 technical, or other specialized knowledge within the scope
22 of Rule 702. So what she's speaking on, she's an expert
23 by virtue of her experience.

24 THE COURT: What is the particular testimony that 701
25 comes into play?

1 MR. FEW: I think just her comparisons of the -- how
2 the bookkeeping was done compared to other places --

3 THE COURT: That's what I said. I'm not going to
4 allow you to have her compare the bookkeeping practices of
5 the dental practice here and any other dental practice. I
6 don't find that's relevant.

7 But even if it is relevant, under 403, I find it
8 would be unfairly prejudicial and substantially outweigh
9 any probative value in that regard. Plus, I don't think
10 701 -- Rule 701 is not the rule of evidence that allows
11 that type of testimony in.

12 701 testimony is, for example, at the scene of an
13 accident, I saw Mr. Smith over there -- not -- I'm not
14 going to use Mr. Smith because we've got -- Mr. Jones and
15 he appeared to be intoxicated. That's what 701 is for.
16 That's what qualifies a witness that is not an expert
17 under 702 to testify to.

18 But the opinions and the testimony that I heard from
19 Ms. Holland do not fall under the 701 category. That's
20 not what that rule really was designed for.

21 So those are my rulings.

22 Anything else?

23 MR. FEW: Nothing from the Plaintiff.

24 MR. KENDRICK: Just real quick, Your Honor. I
25 previously objected to this entire proceeding, based on

1 the way it's being presented by the Plaintiff. I maintain
2 that objection.

3 I, also, want to state, for the record, so there's
4 not a time where I --

5 THE COURT: Let me just make sure I'm clear what your
6 objection is. Your objection is how the proceedings -- in
7 what way?

8 MR. KENDRICK: In the fact that, essentially, the
9 Plaintiff is not making a proper punitive damages
10 argument. So I'm, specifically, objecting that everything
11 he's putting in is completely unrelated to the punitive
12 factors.

13 I'm not going to go on and on. But I will say when
14 he concentrates on culpability, that makes sense in that
15 the Ford Motors case because that's a negligence case.
16 And you want to say they did something more than
17 negligence. This is an intentional tort. So culpability
18 is not in play. The intent has been formed. So it's just
19 not relevant.

20 So I think there's a due process problem with him
21 being allowed to enter this evidence that is not in any
22 way tied to not only the factors, but the ultimate issues
23 in this case. He's, basically, coming in here to say the
24 bookkeeping records were not done, I guess, the way Ms. --

25 THE COURT: Well, I'm not allowing him to come in

1 here and talk about bookkeeping records. That's what I,
2 specifically, ruled that I'm not allowing him to do that.

3 What I am allowing him to do is that specific
4 instance that she testified to about the exchange of cash
5 and zeroing out. Those could relate to the issue of
6 whether or not collection of proceeds, the Eaglesoft
7 account, and what could or could not be missing, and any
8 people that may have had access to that. I'm limiting him
9 to that. I'm not allowing him to bring any testimony of
10 comparison or other alleged shotty bookkeeping.

11 And I said, Ms. Holland testified there -- that she
12 compared it to other places that she worked. And she was
13 surprised that end of the month didn't go out, those kind
14 of issues. I'm not allowing that. Because I don't think
15 that's relevant under our case law, nor the statute on the
16 issue of punitive damages.

17 MR. KENDRICK: And nothing she testified to just now
18 was relevant. And nothing they intend to offer is
19 relevant. And that's my argument, it's not relevant.

20 But I make the additional argument that in the
21 punitive damages stage that would implicate due process
22 concerns that we are, essentially -- I don't know what
23 this is, being piled on with he wasn't a good -- I don't
24 know that that's not good business. But it doesn't have
25 anything to do with malicious prosecution or false

1 imprisonment. It has nothing to do with that. So I'm,
2 for the record, stating that.

3 THE COURT: Again, my ruling is very narrow on the
4 testimony that can be brought in on that issue. And,
5 again, I want to remind the parties that I want to try to
6 keep it between the ditches as much as we can. I know
7 there may be some objections. But I'm trying to do that
8 and I've tried to do that.

9 I, also, want to remind both counsel that let's ask
10 the proper questions on examinations under 611, leading
11 only when you are cross-examining a witness. And let's
12 make sure we abide by those rules.

13 All right. Is there anything else before we bring in
14 the jury?

15 MR. FEW: Your Honor, I was just going to put on the
16 record in response to one thing, if the Court will indulge
17 me. The issues, if you'll recall in this case, have
18 everything to do with the extent of the Defendant's
19 knowledge of what was going on. Malice is -- there's even
20 a charge that says malice may be the deliberate intent
21 stating I'm going to chop your head off, but it doesn't
22 have to be.

23 And then on false imprisonment, the question is
24 intent. And so that's just my response that that is the
25 very issue in the case. One of the critical issues is to

1 what extent did Dr. Chapman know that what he told Turner
2 was not true.

3 THE COURT: All right. Let's take a five-minute
4 restroom break.

5 (WHEREUPON, a break was taken.)

6 THE COURT: All right. We're ready to bring the jury
7 in.

8 MR. FEW: Your Honor, we're going to stipulate to the
9 amount that's in that Exhibit No. 31 [sic]; right?

10 THE COURT: The net worth?

11 MR. FEW: Yeah.

12 THE COURT: Y'all are stipulating?

13 MR. KENDRICK: Sure.

14 (WHEREUPON, the jury came into open court at
15 approximately 11:18 a.m.)

16 THE COURT: All right. Good morning, ladies and
17 gentlemen.

18 The first thing I want to do is apologize. Some
19 issues came up that I had to take care of and deal with.
20 In one respect, it was helpful that we were able to take
21 care of them so we didn't have to keep sending you back
22 out. And now, we're ready to go, hopefully, with no
23 interruptions. But, again, I want to apologize for the
24 delay.

25 As I told you yesterday, as a result of your verdict

1 in finding liability and awarding actual damages, we enter
2 into a second phase. The Plaintiff is seeking -- in
3 addition to the actual damages that have been awarded
4 yesterday, the Plaintiff is seeking what we call punitive
5 damages. And it's a second phase of the trial.

6 So there will be some evidence put forth on that
7 issue. The lawyers will just give you a little brief
8 opening, put up whatever testimony that is needed, and
9 then give you a closing. I'll give you a charge which
10 will not be very long, maybe a couple of minutes. And
11 then you will deliberate to determine whether punitive
12 damages will be awarded.

13 So with that, I'll recognize the Plaintiff.

14 OPENING STATEMENTS

15 MR. FEW: Thank you, Your Honor.

16 May it please the Court.

17 Good morning again, everyone.

18 And I concur with the Judge's apologies that we had
19 to keep you here another day. We were hoping to finish
20 yesterday. But we have to follow what the law tells us to
21 do. And that goes for the Judge and all of us. The
22 Defendants have a statutory right to ask that the trial be
23 bifurcated like this.

24 So as a result, there was certain types of evidence
25 that I was not allowed to present to you yesterday. For

1 example, the Defendant's net worth. I guess the
2 legislature, and our court system, and the smart people
3 have decided that when the jury deliberates, they need to
4 deliberate on the facts and not necessarily be influenced
5 by the Defendant's net worth. But we can talk about the
6 Defendant's net worth now because we're in the punitive
7 damages stage.

8 So to that end, there's a stipulation in the case
9 that the Defendant's net worth is \$2,415,905. And that's
10 something that you can consider when you deliberate and
11 decide on whether or not to award punitive damages and, if
12 so, how much.

13 So the Judge is going to charge you that these are
14 some of the factors that you are to consider in reaching
15 an award of punitive damages, if you decide that punitive
16 damages are to be awarded.

17 First is the Defendant's degree of culpability.
18 We're going to put up a witness who's going to give you
19 some testimony about Eaglesoft. You heard from her
20 yesterday. Her name is Althea Holland. She's going to
21 testify again today about how she would enter data into
22 Eaglesoft. And when she entered in an X-ray or cleaning,
23 the amount was already in the system. And that
24 Dr. Chapman would sometimes come along to her and -- that
25 patient would pay cash. And he would take that cash and

1 he would zero it out of the system.

2 And she's, also, going to testify that the reason
3 that was done -- not reason, but she was not paid on an
4 hourly basis. So if he zeroed it out of the system at the
5 end of the month or whatever she got paid, she wouldn't
6 get paid for that service she provided because it was
7 zeroed out of the system because of the way he ran the
8 practice.

9 And that goes to the first issue of the Defendant's
10 degree of culpability. So you can consider that when you
11 consider what he knew about his practice when he convinced
12 Elliott Turner that Samantha was solely responsible for
13 the practice.

14 You're, also, going to hear about Sam being out for
15 eye surgery, which is just, yet, one more example when she
16 was not at the front desk and not handling and not
17 entering. And then you're, also, going to hear about
18 people that had access in and out of the business.

19 And the Judge is going to charge you on the elements
20 of punitive damages, just like he did yesterday. But what
21 we're intending to put up is to help you understand
22 exactly the depth, that this was not a mistake. He knew
23 exactly what he was doing. He did it intentionally. He
24 did it with the intent to, basically, ruin her life, not
25 just have her arrested, but get her fired from her job.

1 And he nearly did it. And I'm sure he never expected she
2 would fight back like she did.

3 The other thing that a punitive damage award does --
4 this is right out of the statute, you're to consider the
5 likelihood that the amount of the punitive damages award
6 will deter the Defendant or others from similar conduct.
7 So you get to speak about what's happened to this young
8 lady.

9 And we'll be a lot quicker today. We have one
10 witness, I believe, is the plan right now. You'll hear
11 from Mr. Kendrick, his opening. And we'll make a brief
12 closing and should be done real quick.

13 Thank you very much.

14 MR. KENDRICK: Thank you, Judge.

15 So the punishment is an important concept in our
16 system. And yesterday, you were asked to send a message
17 to Dr. Chapman with the verdict that you returned, and you
18 did. And that verdict was significant. It was heard. It
19 was understood.

20 So one of the things you found in the course of
21 reaching that verdict is that Dr. Chapman acted
22 intentionally. So you have accounted for that in the
23 hundred thousand dollars that you have awarded
24 Ms. Katchick. We heard what you said. We understand what
25 you said. And we understand why you said it.

1 Dr. Chapman accepts responsibility for what happened.
2 And in the course of paying that verdict, he will accept
3 responsibility for what happened during this course of
4 time that you've heard. And he will respect what you did.
5 And I'm sorry and he's sorry.

6 The net worth statement that you heard about, you
7 will take a look at it. And you will see this does not
8 mean that he is walking around with \$2.5 million. You
9 will see that a vast majority of that money is invested in
10 the home that he lives in. You will hear that some of
11 that is invested in vehicles, invested in the building
12 where he practices dentistry. And the amount of cash he
13 has on hand is nowhere near that. Much of it is tied up
14 in retirement accounts, investment savings for his child's
15 college.

16 The \$102,000 that you have awarded was general
17 damages, it was special damages. But, again, it was asked
18 as part of sending a message. The message was sent, and
19 it was received, and it was understood. We're not going
20 to fight your verdict. We understand the verdict.

21 Punishment is an important concept. It's a
22 significant amount of money for the fact that Dr. Chapman
23 did not do a good job of keeping his accounting records.
24 And he did not make a good decision when he went to the
25 police. And on reflection and sitting in this courtroom

1 and listening to how you ruled yesterday, which was
2 resoundingly against him, he understands and has heard
3 what he would need to do in the future.

4 So to some degree, there has been a punishment
5 imposed. That will not be an easy amount of money for him
6 to pay. But that's part of the idea at this stage is that
7 we don't want to impose such an amount of money that he
8 can't ever pay. Because then we wouldn't be punishing
9 him, we would destroy him. There comes a point when
10 retribution is determined. And it has been and it is
11 enough.

12 So I would ask you to -- to listen, essentially, to
13 the evidence that the Eaglesoft records were a bit of a
14 mess. And that his recordkeeping practice at the time --
15 and this is a witness from years ago -- was a bit of a
16 mess. We admit it.

17 But we know that's not some simple thing and some
18 simple mistake that no one cares about that. That because
19 of that, in combination with him making a terrible
20 intentional decision, he caused damage. And you have
21 given an appropriate number to fix that damage. In the
22 course of giving that number, he understands.

23 So there is no need to impose further punishment.
24 And I think you will listen to a very short witness that I
25 don't think will change your opinion from yesterday. And

1 I will ask you to leave the punishment you have imposed in
2 place and the message you have imposed in place and, at
3 least, grant some mercy that that was enough. Because I
4 can tell you that we believe it was enough. And we
5 understand what happened here and what was done.

6 Thank you.

7 THE COURT: All right. Call your first witness.

8 MR. FEW: Thank you, Your Honor.

9 The Plaintiff calls Althea Holland.

10 DIRECT EXAMINATION

11 BY MR. FEW:

12 Q Good morning, again, Ms. Holland.

13 How are you?

14 A Hello.

15 Q The jury has already met you from your testimony the
16 other day, so I won't go into your background. I just
17 have a few quick questions for you. Okay.

18 A Okay.

19 Q During the time period that you worked at Chapman
20 Dental and Samantha Katchick worked at a Chapman Dental,
21 were there occasions where people had -- people had access
22 in and out of the office?

23 A Yes.

24 Q And which -- which occasions do you remember?

25 A We had several picnics, parking lot kind of picnics

1 that they would have had access. And then a lot of his
2 friends would come over and then -- I think on the
3 weekends.

4 MR. KENDRICK: Your Honor, I'm sorry. We've
5 established that she doesn't know this stuff.

6 THE COURT: Sustained.

7 Lay the foundation.

8 THE WITNESS: I do know --

9 BY MR. FEW:

10 Q Don't talk about what you think. Just say -- my
11 question was --

12 A On the weekends, there would be people in the office.

13 Q And they would be using the bathroom and have access
14 in and out of the office?

15 A Yes.

16 Q And Samantha Katchick was not there?

17 A No.

18 Q Okay. Do you remember when Sam had eye surgery?

19 A Yes.

20 Q What did her eye look like?

21 A She looked like -- she had, like, a puffy big black
22 eye -- I mean, it wasn't black. I take that back. It was
23 really red. But it was really puffy, almost like she had
24 a black eye.

25 Q So it's something you remember?

1 A Oh, yeah.

2 Q And it was something that was obvious to anybody that
3 got this far away from her?

4 A Uh-huh.

5 Q And it was something that everybody in the office
6 knew about?

7 A Uh-huh.

8 Q And everybody in the office knew that she was out for
9 eye surgery?

10 A Uh-huh.

11 Q And do you recall if when she was recovering from the
12 eye surgery if she was prohibited from working at the
13 front desk?

14 A Say that again.

15 Q She couldn't look at a computer screen?

16 A It would probably have been, I guess, difficult. I
17 mean --

18 MR. KENDRICK: Your Honor, I'm worried this testimony
19 seems to be -- I don't know what it's about, but it's
20 conjecture.

21 THE COURT: Sustained.

22 BY MR. FEW:

23 Q You do know, specifically, she had the eye surgery
24 and she was out of the office?

25 A Yes.

1 Q Do you know who worked the front desk during that
2 time period?

3 A It would have either been Dr. Chapman or Angie
4 Hawthorne.

5 Q Could it have been Brooke Chapman? Do you know?

6 A She could have come in. I don't -- I don't --

7 MR. KENDRICK: Your, Honor could we approach, please?

8 (WHEREUPON, a bench conference was held.)

9 BY MR. FEW:

10 Q Okay. Tell the jury how you were compensated when
11 you worked at Chapman Dental.

12 A I got paid commission for whatever amount of money I
13 brought in for cleanings and X-rays.

14 Q Okay. And when -- you probably did more cleanings
15 than X-rays; right?

16 A Probably.

17 Q So do you remember how much a cleaning was?

18 A It depended. Because there was, like, a regular
19 cleaning of what we call a prophylaxis. And then there's
20 a more of an in-depth deeper cleaning. So that's a more
21 of a charge -- more of a charge, a higher charge.

22 Q And when you were doing the cleaning, did you
23 interact with Eaglesoft and enter that information into
24 Eaglesoft?

25 A Yes.

1 Q Okay. And --

2 A It was preprogrammed in.

3 Q And so when you entered in the lower grade cleaning,
4 the charge for that was automatically put in Eaglesoft
5 immediately when you were doing it?

6 A Yes, it would have been.

7 Q The front desk didn't have the responsibility to
8 enter that number. They just dealt with the number when
9 the patient got walked out; right?

10 A Right. It was just a preprogrammed number in it.

11 Q And so -- and that's how you got paid; right?

12 A Uh-huh.

13 Q So was it -- do you recall -- did you get a
14 percentage of what that charge was?

15 A I was supposed to.

16 Q And so same thing with -- were there other services
17 other than X-rays, or lighter cleaning, or deep cleaning
18 that you would enter into Eaglesoft?

19 A I would put in X-rays, cleaning, exam. I think that
20 was about it.

21 Q And then you were entering things related to this
22 prophylaxis?

23 A Just entering things that I did.

24 Q And then there were, also, things entered on the
25 other side of the business where people were getting

1 crowns, and that type of thing; right?

2 A Yes.

3 Q All right. And at any point in time, did you get
4 paid in cash by Dr. Chapman?

5 A Yes.

6 Q About how many times do you remember that happening?

7 A Probably 10 or 12 times.

8 Q Okay. And then what would he say was going on when
9 he would pay you in cash?

10 A Just that the patient paid in cash and here was my
11 portion.

12 Q And did he say anything about Eaglesoft?

13 A No -- I mean, like I say, I would always enter it
14 into Eaglesoft because I didn't know when this was going
15 to happen. So I would walk it out in Eaglesoft. And
16 then, like, maybe immediately or maybe later in the day,
17 he would come to me and give me cash and say so and so --
18 this is for so and so.

19 Q And then --

20 A And I was like, I walked it out.

21 Q And then what -- do you have any knowledge of what
22 happened with the Eaglesoft records when that happened?

23 A It would -- it would get zeroed out.

24 Q By who?

25 A Dr. Chapman.

1 MR. FEW: That's all the questions I have.

2 THE COURT: Any cross?

3 MR. KENDRICK: Just briefly, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. KENDRICK:

6 Q Good morning, Ms. Holland.

7 There were times when Dr. Chapman would not charge
8 customers if they were friends or family; right?

9 A Uh-huh.

10 Q And if you had done work for those -- I say
11 customers, but patients is a better word. But if you had
12 done work for them, you still got paid; right?

13 A I was supposed to.

14 Q Yeah. I know I heard you say that. But you just
15 testified under oath before that you did get paid when he
16 zeroed it out; right?

17 A I got paid. But there were times that I know -- I
18 knew when I first started working there, my husband told
19 me since --

20 MR. KENDRICK: Your Honor, I'm objecting. She's
21 already testified and is now changing it.

22 THE COURT: Sustained.

23 THE WITNESS: No. I'm not changing anything.

24 MR. KENDRICK: I'm going to make my --

25 THE WITNESS: I was just trying to keep a track --

1 THE COURT: Let him ask the question.

2 THE WITNESS: I'm sorry.

3 MR. KENDRICK: I can't. I mean, she's testified and
4 now it's different, so I can't.

5 THE WITNESS: I didn't --

6 THE COURT: Ma'am, you need to, please, be quiet.

7 THE WITNESS: I'm sorry.

8 BY MR. KENDRICK:

9 Q Do you remember earlier this morning testifying in
10 that chair?

11 A Yes.

12 MR. KENDRICK: Okay. Thank you.

13 That's all I have.

14 THE COURT: Any redirect?

15 MR. FEW: No further questions, Your Honor.

16 THE COURT: You may step down.

17 Thank you, ma'am.

18 THE COURT: All right. Next witness.

19 MR. FEW: That's it, Your Honor.

20 THE COURT: All right. Any witnesses from the
21 Defense?

22 MR. KENDRICK: No, Your Honor.

23 THE COURT: Ladies and gentlemen, I just want to
24 excuse you just for a few minutes. I need to take a
25 matter up. And then I'll bring you back in.

1 (WHEREUPON, the jury was excused from open court at
2 approximately 11:38 a.m.)

3 MOTIONS

4 THE COURT: All right. Any motions, first of all,
5 from the Plaintiff?

6 MR. FEW: No motions from the Plaintiff, Your Honor.

7 THE COURT: Any motions from the Defense?

8 MR. KENDRICK: Your Honor, I move for a mistrial.

9 She got up there and made it sound like Dr. Chapman was
10 not paying her for work she did. And I wrote down when
11 she was proffering outside the presence of the jury. That
12 was not what she testified to. She changed her testimony
13 to pile on to him.

14 My notes are not as good as yours. She talked about
15 cash arrangements. She talked about bartering. She
16 talked about knowledge of cash payments, which she really
17 didn't know. But she still got paid fairly.

18 THE COURT: Mr. Few, what about it? Because I have
19 in my notes he zeroed that out and Ms. Holland was paid in
20 cash. In fact, she said he gave -- that Dr. Holland [sic]
21 gave her money for it. The Defendant would give her \$40
22 here and \$50 there and give her money for the work she
23 did.

24 MR. FEW: Your Honor, I understood her testimony to
25 be -- I mean, obviously, it wasn't identical to the

1 proffer. But she said what I was limited to ask her
2 about. That Dr. Chapman would come back to her and say
3 somebody paid in cash and that she checked Eaglesoft and
4 saw that it got zeroed out. So that's -- and I was not
5 allowed to go into the things that --

6 THE COURT: Well, I don't think that's really what
7 his issue is. I think his issue is in the proffered
8 testimony, she testified that when Dr. Chapman would do
9 that that he would zero it out, that she would still get
10 paid her money. She specifically -- and I wrote it down.
11 She, specifically, testified under oath that she would
12 receive her money when that happened.

13 However, when she was questioned there, she did not
14 give that answer. In fact, she said something along the
15 lines of, well, not all the time or sometime, which I have
16 to admit kind of perked me up, too. Because that was not
17 what she testified to earlier.

18 MR. FEW: Well, Your Honor, the reason is because she
19 didn't know -- I mean, she was keeping track. She didn't
20 really keep track of it is what she's saying. She
21 wouldn't know because the patient got walked out. She had
22 nothing to do with that.

23 So if Chapman later took the cash, he would
24 independently come to her and say -- I guess it was his
25 way of trying to be fair to her. He's saying, I took

1 payment in cash. And, therefore, since that's not going
2 to be in the Eaglesoft system for you to get paid
3 commission on it, here's your money. And he didn't tell
4 her -- there was no accounting or anything provided for
5 it. So the purpose of the testimony was to show that he
6 was taking payments in cash and zeroing out Eaglesoft.
7 And that's what she testified to.

8 THE COURT: I agree with that. And I think we all
9 agree that that's the testimony she gave in the proffered
10 testimony. And it was clear that she was paid to -- even
11 when that happened that Ms. Holland was paid for the work
12 that she did.

13 However, when she testified the second time when she
14 was, specifically, asked about that, she gave different
15 testimony and said that sometimes -- or not all the
16 time -- I can't remember the exact wording. And so she's
17 leading -- based on that testimony, it does tend to lead
18 the jury to think that not only did Dr. Chapman take in
19 the money and zero it out in Eaglesoft, but he missed her
20 over and didn't pay her.

21 And her testimony absolutely came out that way. That
22 it looked like that he -- he didn't pay her. And he was
23 taking advantage of her by doing that when he zeroed it
24 out in the books or didn't charge anybody.

25 MR. FEW: Your Honor, I think that what -- the only

1 point that she's saying -- because -- is -- is that when
2 he would come and pay her cash, that was the first she
3 would know about it. So what she's saying is I know about
4 the times that he did it. And she must have been saying
5 that there may have been other times that he did it and
6 didn't pay me. And she doesn't know about that. That's
7 all she's saying.

8 THE COURT: I agree with that, if that's all that
9 really came up. The issue I think that's being raised
10 is -- is when she was asked questions in the proffer under
11 oath, specifically, did she get paid, she said that she
12 did. And that he would come in and give her money for the
13 work she did. She did some cleanings. And that -- in
14 fact, her comment was \$40 here, \$50 there for whatever the
15 proceeding was. So she, specifically, testified she did
16 get paid.

17 But, again, when asked here in front of the jury that
18 question, her testimony was not the same. And she -- the
19 way that -- the way the testimony came out was that, well,
20 sometimes he paid her and sometimes he didn't, which leads
21 the jury to think that Dr. Chapman gave somebody a break,
22 or zeroed it out, or didn't charge them for the work that
23 she did as part of his office and then didn't get to pay
24 her. And that's -- I think that's the issue.

25 I agree with you that the issue -- or the testimony

1 that she gave -- that I allowed her to give over objection
2 from the Defendants that it was not related to punitive
3 damages. And it is, quite frankly, a close call.

4 But I did allow her to testify to that about zero.
5 Because that related to the Eaglesoft software, and the
6 balancing, and whether that matches up with what the money
7 is there. So that's why I allowed that on the issue of
8 culpability -- or degree of culpability and the Gamble,
9 Mitchell, and other cases.

10 But what's being raised here is that her testimony is
11 completely different on that particular issue from the
12 proffer. Because when -- she did say in the proffer she
13 got paid. So that makes Dr. Chapman look like he did pay
14 her, even though he zeroed it out or he gave some friends
15 a break, or relatives, or whoever it was with the work.

16 Now, it's kind of left with, well, he did that and
17 then -- he didn't charge anybody. I did my work. He
18 didn't charge anybody for it. And, sometimes, he didn't
19 pay me.

20 MR. FEW: Well, I had no intention of eliciting any
21 such testimony --

22 THE COURT: I'm not saying -- this is not you. Let
23 me be clear. I am not -- I'm not saying that you did
24 anything.

25 She -- the witness was the one that did that on a

1 direct question that was similar to what you brought out
2 with her in the proffer. I'm not saying you had anything
3 to do with it, because you did not. Let me be clear, you
4 did not have anything to do with it.

5 MR. FEW: Right, Your Honor. And I think, honestly,
6 my head was down and I may have missed that question. So
7 if we could -- but is this not cured by a charge that says
8 don't consider her testimony to be saying that Chapman
9 didn't -- didn't pay her?

10 And, I mean, that was -- and besides, Your Honor,
11 they stopped their cross. They could have gone into --
12 into that situation. But they just -- when she answered a
13 question, which was truthfully, she didn't know all the
14 times that it was cash. That -- that's the reality of it.

15 THE COURT: Well, she should have -- in the proffer
16 testimony when answering that question, she should have
17 gone into that. And the Defense did -- in an effort to
18 impeach her did ask her, Didn't you testify to that
19 earlier this morning? And that's a different thing.
20 There's not a statement or transcript to look at -- a
21 written transcript, at least.

22 MR. FEW: Well, I would have been fine to give them
23 the earlier testimony. It's a lot to do to ask a witness
24 to come in and answer every single question verbatim.

25 Is there any way we can bring her back and clarify

1 that?

2 THE COURT: I -- you asked me to give a curative
3 instruction and I will do that.

4 I'll hear from you. Is there anything else on the
5 mistrial?

6 MR. KENDRICK: That's my motion, Your Honor. I have
7 been concerned about this witness since Monday. I keep
8 saying -- and it's not Mr. Few's fault. But if we were
9 swimming together and he brought a shark in and it ate me,
10 then it's somebody's fault. I kept saying let's don't let
11 the shark in the courtroom.

12 And she just sat up there and left this jury with the
13 idea that my client is a thief. And that is absolutely --
14 I mean, it is not too much to ask someone to give the same
15 testimony they gave 30 minutes prior. And she wouldn't do
16 it.

17 And, yes, I did stop my cross. Because, again, I
18 hate to keep the same analogy, but I'm not going to go
19 back for round two of the shark attack. I mean, get out
20 of the water. That's not me giving a position up.
21 There's nothing to impeach her with. She knows what she
22 said. In fact, she started fighting me on denying what
23 she said this morning enough that I came back here
24 concerned that I maybe misremembered it --

25 THE COURT: It was enough for me to interject. I try

1 not to ever interject when a witness is on the stand. And
2 even after an admonishment from me on one occasion, she
3 continued to do it another time.

4 MR. KENDRICK: But I've made my motion.

5 THE COURT: I note your motion. I will deny it. I
6 don't -- although it does give me concern about how this
7 witness testified, but I don't think it rises to the level
8 for a mistrial. So on those grounds, I'll deny the
9 motion.

10 Now, let me ask you this, Mr. Kendrick, Mr. Few has
11 offered a curative instruction on that. What is your
12 position? Do you want the Court to give a curative
13 instruction?

14 MR. KENDRICK: I do not believe a curative
15 instruction will cure the prejudice. So I'll just
16 maintain my motion and, obviously, accept whatever the
17 Court does.

18 THE COURT: I will only give her [sic] a curative
19 instruction if you request it. I will not give one if
20 it's not requested.

21 MR. KENDRICK: I mean, I think this is egregious,
22 Your Honor. And I think if I ask you for a curative
23 instruction, then I've lost my mistrial argument. So I
24 cannot request a curative instruction.

25 I think this was as bad as you can get. I mean, it's

1 just completely flipped testimony. It was already close
2 to irrelevant. And now we've introduced some serious
3 prejudice. A curative instruction won't fix it. And I
4 think I would be disservicing my client to ask for one.

5 THE COURT: All right. So I will not give the
6 curative instruction.

7 All right. Any other motions from the Defendants?
8 (WHEREUPON, there was no response.)

9 THE COURT: Any other motions from the Defendants?

10 MR. KENDRICK: I mean, I renew all my previous
11 motions, Your Honor, only because I feel like it has come
12 to pass. So I renew the motion to strike --

13 THE COURT: To be clear, the previous motions on the
14 directed verdict in the other phase of the case.

15 MR. KENDRICK: Well, Your Honor, I guess I'm -- I
16 think that based on my due process argument and the
17 irrelevant testimony that's been presented, I think the
18 punitive stage here is completely improper. I think it's
19 gone into a due process issue where I don't mean --
20 generally, you shouldn't be allowed to argue for
21 punitives. But I think this has gone so far afield that
22 it would be a violation of my client's rights to let the
23 jury go back and consider punitive damages.

24 THE COURT: Is that based -- so what is your
25 argument? Is it based on the -- that there's not evidence

1 for punitive damages?

2 MR. KENDRICK: So there's two issues. So I would
3 first move that what you have heard from the stand doesn't
4 have anything to do with any of the factors that are used
5 to appropriately determine punitive punishment.

6 So we're going to let the jury just make a number up.
7 It won't have anything to do -- unless it's zero, it won't
8 have anything to do with any of the factors that the
9 statute and the Supreme Court -- both the Supreme Courts,
10 including the U.S., have asked juries to assess.

11 So I guess I'll make a directed verdict of zero for
12 punitives to Your Honor, based on the lack of evidence.

13 THE COURT: Mr. Few, what gets the conduct to
14 reckless, willful, and wanton? Let me hear from you on
15 that.

16 MR. FEW: Your Honor, everything does. I mean --

17 THE COURT: And, remember, it's got to be clear and
18 convincing evidence. So what is the clear and convincing
19 evidence this was reckless, willful, and wanton?

20 MR. FEW: Well, this witness, despite people's
21 objections to her, just testified, specifically, that
22 Dr. Chapman would take cash and zero it out in Eaglesoft.
23 So that's an example of him being, specifically, aware --
24 not having to be, specifically, aware of other people
25 doing it. He was, specifically, aware of doing it.

1 Your Honor, the false imprisonment is based on a
2 false statement. They provided false information to law
3 enforcement. The jury has already decided that. The jury
4 has already decided a claim -- or a second claim based on
5 false imprisonment, which has an intentional element in
6 it, which is the trigger to punitive damages as well.

7 And then on the other side, we have a claim of
8 malicious prosecution. And I was alluding to earlier how
9 the definition of malice says it might be this. It
10 doesn't have to be -- if it is this, then it could -- it
11 says it could be.

12 But, Your Honor, I can go back through the testimony
13 and the exhibits that was -- there was a plan to have her
14 arrested. And I know the Earl Simmons e-mails -- I mean,
15 we can't pretend like the Earl Simmons e-mails don't
16 exist.

17 There was two e-mails about a month before they go
18 down to report to say let's take this to the police. And
19 it said if we don't -- even if they don't take it, you can
20 still call her employer and tell them what she did. So
21 there was an intent to just cause -- the damage that they
22 caused speaks for itself.

23 But in terms of the intention, Your Honor, it's just
24 the totality of it. I mean, I -- I could probably -- I'd
25 be obligated, for the record, to go through everything.

1 And I can if I need to, Your Honor. But the fact that --
2 I think the fact that the jury has already decided that
3 the conduct was intentional and that the other element
4 involved malice and lack of probable cause. I mean, lack
5 of probable cause is -- is, essentially, synonymous in a
6 situation like this with dishonesty.

7 THE COURT: Yeah. But, as you know, malice under
8 malicious prosecution can be determined from the lack of
9 probable cause. So to that degree, it's not necessarily
10 the -- it's a definition within the cause of action for
11 malicious prosecution. It can be inferred from the lack
12 of probable cause, so used a little bit different in that
13 cause of action.

14 MR. FEW: I agree with that, Your Honor. But the
15 intentional conduct is in there. All four of the claims
16 that went to the jury provide for punitive damages and
17 require a high level of proof.

18 As far as it being clear and convincing, we have
19 numerous witnesses testifying. And, further, Your Honor,
20 clear and convincing would exist in the fact that
21 Dr. Chapman took that witness stand and testified
22 completely contrary to everything that's in the
23 solicitor's file.

24 He took the witness stand and said that this had
25 nothing to do with Samantha Katchick. And not only is

1 that contrary to the facts in evidence by virtue of
2 Exhibit No. 12, I believe, which is the 25 pages of the
3 Brady response, but, also, Elliott Turner's testimony by
4 itself.

5 And then everything leading up to that, all of the --
6 the fact that when Earl Simmons sends an e-mail, it -- on
7 the spreadsheet, it says, Note, client records solely by
8 Samantha Katchick. So this was all about -- I mean,
9 that's evidence that -- and then --

10 THE COURT: That's evidence that Earl Simmons wrote
11 an e-mail. But where does that go to the conduct of
12 Dr. Chapman or anybody at Chapman Dental?

13 MR. FEW: Your Honor, Brooke Chapman, who was the one
14 that received that e-mail --

15 THE COURT: That's the key, though. She received
16 that e-mail. But what is the evidence that --

17 MR. FEW: She's a Chapman Dental employee. She then
18 sent that e-mail to Doug Schmieding. And then it's in the
19 letter -- the two-page letter in the solicitor's file
20 that's, actually, a one-page letter. If you look at that
21 second page -- I think it's Exhibit -- I think it's 22 or
22 21.

23 In Exhibit No. 12, it says that exact same thing
24 again. All these records were kept by Samantha Katchick.
25 So there it is. It's Page 22, Note, client records and

1 bank deposits were maintained solely by Samantha Katchick.

2 And so, Your Honor, there's just -- we have upwards
3 of 20 documents in evidence that establish this common
4 scheme or plan to call her employer and tell them that she
5 stole, which was what Angie Hawthorne said Dr. Chapman
6 told her. They had already reached that conclusion in
7 February. And that's uncontested testimony.

8 She said that she had told -- she heard it from two
9 people that day. She had told him and she said, I wanted
10 to make him say it to my face. And -- and then he denied
11 that. He denied even saying that to Angie Hawthorne.
12 She's a Chapman Dental employee. That shows that they had
13 made up their mind that -- that she had stolen money.
14 That was their conclusion.

15 And then everything that was done afterwards was just
16 manipulation. And it's a lot of manipulation. You've got
17 the Earl Simmons e-mails, Exhibit Nos. 4, 5, and 6. Those
18 are unbelievable e-mails.

19 When we got those in discovery, I nearly fell out of
20 my chair. I mean, I will probably never have another
21 case, if I practice another 25 years, where I have a party
22 in a case or someone who's involved in a case saying to
23 another person, go get them prosecuted. But if it doesn't
24 work, you can, at least, call people and tell them that
25 she stole from you. That's --

1 THE COURT: There's no evidence in the record that
2 any of the Defendants made any comment like that in this
3 case. There's no evidence of that.

4 MR. FEW: They acted on it, Your Honor.

5 THE COURT: But you just said that they said that.
6 You just said they said, let's go prosecute. You -- and I
7 just want it clear for the record and make sure that I
8 didn't miss any testimony.

9 MR. FEW: No, you didn't. But Earl Simmons sent
10 that. I mean, that's not a third party e-mail between
11 unrelated people. That's from Earl Simmons, who testified
12 in this case. And his e-mails are in evidence. He's
13 having that conversation. So there is a plan to do this.

14 THE COURT: What evidence is there that anyone at
15 Chapman Dental said those words or had any -- any evidence
16 of any of this plan or scheme, other than what Earl
17 Simmons is saying?

18 MR. FEW: They did exactly what he's put in the
19 e-mail. We talked about this yesterday. They did it. So
20 they want everybody to think that, oh, well, crazy old
21 Earl, he was just -- he said all these crazy things.
22 Well, they are crazy and you did them. You did them. You
23 took this stuff and you manipulated it further after crazy
24 old Earl said, I'm not signing it, but you can sign it.

25 So, Your Honor --

1 THE COURT: All right.

2 MR. FEW: -- I think that's probably, you know, all
3 that documentary evidence and just the whole -- the -- the
4 development of the plan. It even goes as far back to when
5 he was e-mailing Ruth Stevens in March of 2016 and talking
6 about embezzlement.

7 And then a year later, he's already dating Brooke,
8 probably engaged to her at that time. Then she comes in.
9 Sam gets fired. They say that she stole. They tell
10 people that she stole. They have no evidence that she
11 stole. So the case is about lies. And the lies are
12 documented over and over.

13 THE COURT: Well, actually, there's no evidence in
14 the record that any of the Defendants said or did any of
15 the things you just listed. There's nothing. There's no
16 evidence of that.

17 You've got e-mails from Earl Simmons making some
18 comments. But on those issues, there's no evidence that
19 they said anything about going and prosecuting her. And
20 there's no testimony about that.

21 But -- all right. I note your motion at this stage.
22 At a directed verdict stage, I am to view the evidence
23 most favorable to the nonmoving party. There was more
24 than one reasonable inference to be drawn from the
25 evidence and it survives a directed verdict. So I do --

1 candidly, it is a -- a close call. But as far as whether
2 or not there is a reasonable -- more than one reasonable
3 inference to be drawn, I do find there is. So on those
4 grounds, I'll deny the directed verdict motion.

5 Is there any other motions from the Defendants?

6 MR. KENDRICK: Your Honor, will you give me one
7 second?

8 THE COURT: Yeah.

9 (Pause.)

10 MR. KENDRICK: Your Honor, I was wrong. I can admit
11 that. According to State vs. Bantan, which is 387 S.C.
12 412, if I reject your offer of a curative instruction,
13 I've waived the issue for appeal. So I had that
14 backwards. So I will ask you to issue a curative
15 instruction, please.

16 THE COURT: All right. That is the correct statement
17 of the law.

18 MR. KENDRICK: That's why you bring the brains with
19 you to trial, Your Honor.

20 THE COURT: All right. Anything else from the
21 Plaintiff?

22 MR. FEW: I guess just --

23 THE COURT: And, for the record, y'all did see the
24 proposed charge that I gave?

25 Plaintiff, did you see it?

1 MR. FEW: Yes, Your Honor. I guess maybe we should
2 similarly pre-approve the corrective charge or, at least,
3 hear about it in case we have any objections to it. I
4 don't think that we will. I just didn't want it to be a
5 surprise to anybody.

6 THE COURT: Mr. Kendrick, what is the proposal from
7 the Defense on my curative instruction?

8 MR. KENDRICK: I mean, when she testified about not
9 being paid, that was in conflict with under-oath testimony
10 earlier this morning. I mean, I think that's --

11 THE COURT: I don't believe I can -- my curative
12 instruction has got to be that they've got to disregard --
13 the testimony that she provided or testified to about not
14 being paid, they're to disregard that testimony.

15 I don't think I can go that next step and tell them
16 that that is in contradiction to the testimony she gave
17 earlier. Because they didn't hear that testimony for one.
18 And, two, I don't think I really have the authority to go
19 that far in a curative instruction.

20 MR. KENDRICK: You're probably right, Your Honor.
21 I'm frustrated because I think I got set up by her and I
22 should have seen it coming. Actually, I did see it
23 coming. She outsmarted me. That's fine. Whatever you're
24 willing to say to them to disregard that testimony, then
25 I -- that's fine.

1 THE COURT: Okay. Anything else before we bring them
2 in?

3 MR. FEW: Your Honor, so we're just going to say to
4 disregard --

5 THE COURT: To disregard the testimony from
6 Ms. Holland that -- where she testified that she was not
7 paid when the charges were zeroed out. I'm just trying to
8 think on the top of my head right now what I might say.

9 MR. FEW: How about -- I think the objection is --
10 we're going to have to have -- the objection was that she
11 called him a thief. So maybe disregard any testimony -- I
12 don't want to make his arguments for him.

13 THE COURT: Her testimony was -- her testimony -- she
14 testified this morning that she was paid when that
15 happened and then it was zeroed out. And when she
16 testified in front of the jury when asked that question,
17 she testified maybe not. And that was in direct
18 contradiction to her testimony given earlier -- I mean, 10
19 minutes earlier.

20 MR. FEW: It's just because she didn't know. She
21 didn't know when he would do that because he would come to
22 her --

23 THE COURT: Well, actually, I don't really think
24 that's really how -- that testimony was explored in her
25 proffer. And she had plenty of opportunity both in your

1 questioning and in the Defense's questioning to when asked
2 if she was paid -- you know, quite frankly, when she was
3 asked if she was paid in her second testimony, she said
4 not all the time, basically. And she didn't say that in
5 her proffer testimony. In fact, as I read to you my notes
6 exactly pretty much verbatim what she did testify to.

7 MR. FEW: And, Your Honor, she started to explain
8 that when she started to say that her husband told her to
9 keep better records of it. And so that has to do with --
10 and to be clear, there's no intent by me --

11 THE COURT: And as I've told you --

12 MR. FEW: I know. And I don't think there was any
13 intent by her. But she was trying to explain what she was
14 talking about. And they could have cross-examined her on
15 that, but they quit. That's part of the problem is they
16 just quit.

17 THE COURT: Well, the problem if you cross-examine a
18 witness that's giving testimony that differed from her
19 prior testimony under oath is you emphasize it a little
20 bit more. And you don't know what -- it's the old thing
21 we know as lawyers, you don't ask a question you don't
22 know.

23 So the Defense was put on -- in a bad position there
24 and blocked in. She gave a -- she gave an answer that
25 differed. And she volunteered something in her second

1 testimony that she did not give in her first testimony.

2 And she had the opportunity in that first testimony.

3 And she was, specifically, asked did you get paid
4 when you performed a cleaning or other dental service and
5 it was zeroed out by Dr. Chapman? She, specifically,
6 said, yes, I did get paid, \$40 here, \$50 there, whatever
7 the charge was. And she, specifically, testified -- and
8 she could have either in your questioning or
9 cross-examination at that point in the proffer at that
10 time said -- when asked that question, she could have
11 testified as she did the second time. Her response was
12 not all the time, sometimes.

13 So she could have -- there wasn't really any
14 explaining that needed to be done there.

15 MR. FEW: Well, it's a conflation of the two issues
16 of being paid the commission like you're supposed to be
17 paid. And I've interviewed her twice and she's told me
18 this two times. All she was saying -- and I didn't catch
19 it or I would have followed up on it. She was intending
20 to say that she didn't think that she got paid all the
21 commissions that she should have got paid. And they could
22 have brought that out on cross, but they just quit.

23 THE COURT: But that's a little unfair to say that
24 the Defense could have brought that out when the witness
25 was put up by the Plaintiff --

1 MR. FEW: But I wasn't asking her about --

2 THE COURT: In the first questioning, she was,
3 specifically, asked did she get paid in those situations.
4 And she said, Yes. When she was asked that question in
5 the second phase, the second go round, she didn't say
6 that. She didn't say yes. She went and said a completely
7 different answer.

8 And, again, it's not your fault. You didn't have
9 anything to do with it. And this witness kept -- I had --
10 as you know, I admonished her. And she had something that
11 she wanted to get out in front of this jury is what it
12 appeared to be. Whether she was doing it intentionally --
13 I don't know what her motives were. But it was,
14 certainly, different the second time around. And I
15 don't -- again, I don't know what her motive was. And why
16 she didn't in the first go round explain what you're
17 talking about.

18 MR. FEW: Well, Your Honor, I didn't -- and they
19 could have -- she worked for them. They could have taken
20 her deposition. They didn't take her deposition.

21 THE COURT: Well, I recognize that. But I don't
22 think that's the issue before us right now. I think the
23 issue before us right now is the curative instruction,
24 based on the testimony that that witness gave the first
25 time and the difference in the testimony she gave the

1 second time.

2 And so I'm -- our sole issue here is what my curative
3 instruction is going to be. The Defense has moved for a
4 mistrial. I have denied that motion for a mistrial.
5 However, I will give a curative instruction that the jury
6 is to disregard the testimony of Ms. Holland that she gave
7 that stated that she was not paid all the time when the
8 charges were zeroed out in Eaglesoft. And I think I'm
9 going to limit it at that. And that's what I'm going to
10 do.

11 MR. FEW: And, again, it's because she didn't know.

12 THE COURT: Well, Mr. Few, I just disagree -- have to
13 disagree with you. She didn't -- that's not how she came
14 across in her testimony.

15 MR. FEW: Your Honor, she would only know --

16 THE COURT: Let me ask you, what are you arguing
17 about? Do you want me to do a different curative? I've
18 already denied --

19 MR. FEW: I'm probably hung up on the fact that
20 there's a difference here that's not being recognized.
21 She only -- if Chapman took cash if he did it and he paid
22 her. That's all she was saying.

23 THE COURT: But she didn't say that. She had the
24 opportunity to say that. She had the opportunity to say
25 that and she didn't say that. So I denied the motion.

1 MR. FEW: So what's the curative --

2 THE COURT: So the curative instruction will be that
3 the jury is to disregard the testimony from Ms. Holland
4 where she testified that she was not paid when -- not paid
5 at times when the charges were zeroed out in Eaglesoft.

6 All right. Anything else?

7 MR. FEW: Not paid at times; right?

8 THE COURT: Let me write it.

9 All right. My proposal is to say they are to
10 disregard the testimony from Ms. Holland that she was not
11 paid at times by Dr. Holland [sic] when the charges were
12 zeroed out in Eaglesoft.

13 MR. FEW: And, Your Honor, just to give -- forgive my
14 poor brain power. But that's because it's prejudicial or
15 because it -- they say it conflicts with what she said
16 earlier?

17 THE COURT: It's because she gave testimony that
18 differed from her sworn testimony 10 minutes earlier when
19 asked a specific question as to whether or not she was
20 paid and she said she was. And then when testifying in
21 front of the jury when asked that same question, she
22 testified not all the time, sometimes. It's completely
23 different testimony, which is the motion for the mistrial.

24 It gives the opinion -- misleads the jury that
25 Dr. Chapman is bad character evidence. It makes it look

1 to the jury that Dr. Chapman helped his buddies out, or
2 his relatives out, or his friends out when they would come
3 in and he would zero it out. The work she did allowed him
4 to bring -- to give his family and friends free dental
5 work. And based on her work, she didn't get paid for it.
6 And that is improper -- it's improper character evidence
7 in the first place.

8 But the concern I have in this case on the motion for
9 the mistrial is that it was completely different from what
10 she testified to in the proffer. And that -- although it
11 may sound very minor that, well, sometimes he did and
12 sometimes he didn't. But to me, it is misleading.

13 And it's very misleading and very concerning that it
14 makes it look to the jury that Dr. Chapman doesn't pay
15 her. For what he wasn't charging friends and family for
16 the work she was doing that he wasn't paying her.

17 MR. FEW: Improper character. That's all I wanted to
18 know.

19 THE COURT: It's improper character. And it's not
20 the testimony of what she testified to earlier. So it's a
21 combination of improper character testimony, based on her
22 different testimony in the proffer. And that -- that's
23 the concern that I have. And that was the basis for the
24 mistrial motion. But I have denied the motion for the
25 mistrial.

1 MR. FEW: And I'm sorry to beat a dead horse. But
2 they had the opportunity to cross-examine her.

3 THE COURT: You've brought that up several times.

4 MR. FEW: Yeah. Okay. I mean, they could have
5 cross-examined her on the prior inconsistent statement.

6 THE COURT: Well, it's difficult to start
7 cross-examining a witness who has just given testimony
8 that differed from her proffer. And he did cross-examine
9 her. And he, specifically, asked her, You just testified
10 this morning, didn't you, that -- that you were paid?

11 So he did try to cross-examine. But he's -- it's out
12 in front of the jury. The jury heard it. And that's --
13 you can't unring the bell on that. And the Defense did
14 make the effort to cross-examine.

15 I think we all in the courtroom when she said -- gave
16 that answer in her second testimony -- because she,
17 specifically -- I wrote her testimony down in the proffer
18 and what, specifically, she testified to. And when she
19 testified differently and the way she testified, I mean,
20 the first thing you think of is that he -- he ripped her
21 off. He got his friends and family to come in here and
22 get free dental work for the work that she did. And,
23 sometimes, she didn't get paid for it. So I think that's
24 just --

25 MR. FEW: Understood.

1 THE COURT: But I have denied the motion for a
2 mistrial.

3 MR. FEW: Certainly, none of that benefits my case.

4 MR. KENDRICK: Your Honor, real quick, when you read
5 out the curative, I think you said Dr. Holland, which is
6 probably just a misspeak --

7 THE COURT: I mean, Ms. Holland.

8 MR. KENDRICK: It's Dr. Chapman and Ms. Holland. I
9 think you had Holland in both names.

10 THE COURT: I'm sorry.

11 MR. KENDRICK: Just so we don't have anything else to
12 argue about.

13 THE COURT: All right. Bring the jury in.

14 (WHEREUPON, the jury came into open court at
15 approximately 12:21 p.m.)

16 THE COURT: All right. Ladies and gentlemen --
17 Is the Defense going to call any witnesses?

18 MR. KENDRICK: We are not, Your Honor. We don't
19 intend to.

20 THE COURT: All right. Ladies and gentlemen, all the
21 evidence is in with regards to this phase.

22 I do want to give you what we call a curative
23 instruction that the testimony from Ms. Holland, who just
24 testified here, that you are to disregard any testimony
25 from Ms. Holland that she was not paid at times by

1 Dr. Chapman when the charges were zeroed out in Eaglesoft.

2 So you are to disregard any testimony from
3 Ms. Holland on that issue.

4 All right. Now, I'll recognize the Plaintiff.

5 CLOSING ARGUMENTS

6 MR. FEW: Thank you, Your Honor.

7 May it please the Court.

8 All right. Ladies and gentlemen, we're, finally,
9 reaching the end here. I want to address a few things
10 that were said in opening statement by the Defendants
11 that, I think, puts this whole matter in perspective.
12 They said that their client accepts responsibility. They
13 want to accept responsibility now that you've already held
14 them accountable.

15 They asked you to have mercy on them now that we've
16 had to go through this lawsuit and do everything that's
17 required to come in here and get justice. And, now, they
18 accept responsibility.

19 They even suggested that you didn't follow the law
20 yesterday when you awarded damages to my client --

21 MR. KENDRICK: Your Honor, I object to that. I
22 didn't say that. That's not --

23 THE COURT: Stick within the evidence. Stick within
24 the evidence.

25 MR. FEW: You were told to follow the law yesterday

1 and you did when you awarded general damages and special
2 damages to my client on three of the four claims that are
3 in this case. Each of those three claims that you've
4 already ruled in her favor on provide for an award of
5 punitive damages. You can award any amount you want
6 following the Judge's instructions on any of the three
7 claims, the defamation, the false imprisonment, and the
8 malicious prosecution.

9 While the defamation is sinister because, once
10 somebody's reputation is tarnished, you can never get it
11 back. So that in and of itself, along with the plan that
12 you've seen to damage this sweet woman, is enough to award
13 punitive damages on the defamation claim.

14 You've seen that they accused her of stealing. They
15 had a plan to call her employer and tell him that she
16 stole. And they continued to tell people that she stole
17 even after the charges were dismissed.

18 And, now, we come in this courtroom and there's not
19 one shred of evidence that she took a single penny from
20 that man. Not a single shred of evidence that she took
21 any money. They've admitted it. They've admitted it so
22 much to the effect that when Dr. Chapman took the stand,
23 he changed his story. That's the first time we've ever
24 heard anybody say, I just went and handed it over to the
25 solicitor.

1 He had a plan. He thought he could bully her with
2 his influence and his ability to have access to CPAs and
3 just his determination to get Elliott Turner to have her
4 arrested. Not just to go down there so that he could then
5 call Jim Nasim and tell him that she stole, which is what
6 Earl Simmons talks about in not one, but two different
7 e-mails that he sends to them.

8 And what do they do with those e-mails? They act on
9 them. They do exactly what he told them to do. This was
10 a plan. I don't know what motivated it. He didn't answer
11 that question. Only he knows why he did this. Only he
12 knows why he was so determined to take this woman down.
13 Why? Why?

14 You can award punitive damages, like I said, on any
15 of the claims. Malicious prosecution. The elements are
16 the institution or continuation. Not only did they
17 institute it, not only did they continue to give Elliott
18 Turner information, anything that he needed. Rest
19 assured, Dr. Chapman was going to -- he was going to get
20 her arrested until -- until it got to the point where
21 Turner says, Look, I'm not going to do it. And in order
22 to do it, he told him that she was the only one
23 responsible.

24 And I don't even have to tell you about all of the
25 evidence that you've heard about how absurd that is, that

1 she was solely responsible for this money for all this
2 time period.

3 False imprisonment. Boy, that warrants punitive
4 damages. Don't we want to send a message that it's just
5 not acceptable? It's not acceptable to go and lie to law
6 enforcement to have someone arrested and humiliated.

7 Now, you've already awarded her for her humiliation.
8 You followed the Judge's charges. He's going to give you
9 charges again today. And there's going to be factors.

10 And the reason we brought Althea Holland in here
11 today is because her testimony was intended solely to get
12 to the point that Dr. Chapman, while handling cash -- I
13 think she said 10 or 12 times, so it wasn't all the time,
14 but he did it. He did it.

15 He would pay her -- basically, call it under the
16 table, call it whatever you want. And he would go in and
17 zero out Eaglesoft. He knew that. He didn't forget he
18 did it. He knew what he had done. And then he went down
19 to the sheriff's office and he had her prosecuted on a lie
20 saying that she was solely responsible for it.

21 Did he tell Elliott Turner, well, sometimes I go in
22 and make modifications in Eaglesoft when I take cash?
23 Heck, no, he didn't tell him that. He wasn't going to
24 tell him that. He wasn't going to tell him anything he
25 didn't want him to know.

1 And you know what? Exhibit No. 3 is worth looking at
2 again. It seems a rather innocuous e-mail, but I brought
3 it to your attention during the trial. In Exhibit No. 3
4 when he's e-mailing Ruth Stevens about embezzlement in
5 March of 2016, she's the front desk person. What does he
6 say that contradicts what's in that affidavit? Sam takes
7 most of the payments. He typed that up. He was telling
8 the truth then. He knew it then. He knew it on December
9 6th of 2017. He knew it every day between December 6th of
10 2017 up until February the 8th of 2018 when he
11 accomplished his purpose, his sinister purpose to destroy
12 a law abiding, sweet, wonderful single mother.

13 She didn't deserve that. Nobody ever deserves this
14 to happen to them. You have the power. You have the
15 power to send a message to employers that this is not
16 going to be tolerated in the State of South Carolina. So
17 the testimony you just heard from her that he would zero
18 these things out and take cash, it further goes to his --
19 his knowledge of what he had done.

20 A lot of the other factors, frankly, are not quite as
21 relevant as that one, I think. The severity of the harm
22 caused by the Defendant. That's the second factor. Well,
23 she went to jail. She had the worst day of her life. She
24 had to spend all of her money, all of her money. She
25 doesn't have a lot of money. She doesn't make a huge

1 salary. And it was a huge burden on her. She couldn't
2 even pay the defense lawyer upfront. She had to make
3 payments to him, \$750 upfront.

4 The third factor is the extent to which the
5 Plaintiff's own conduct contributed to the harm. She
6 didn't do anything. She had nothing to do with this.

7 The duration of the conduct. The Defendant's
8 awareness and any concealment by the Defendant. I've
9 already gone over it. He continued to give -- he had no
10 choice. He, finally, had to confront you. That is the
11 day that he never wanted to see coming. He never wanted
12 to be in this courtroom having to explain to 12 of his
13 peers what he had done to this woman.

14 So what did he do? He lied. He lied and said, I
15 just went down to Mr. Turner and gave him this thing. And
16 then I told him who all our employees were. But somehow,
17 he zeroed in on Sam. I don't need to go through that any
18 further.

19 Factors five and six are not really applicable, the
20 existence of similar past conduct for the profitability.
21 I don't think he earned anything by this. That would
22 relate to a corporation probably.

23 The Defendant's ability to pay. There's been a
24 stipulation as to what that amount is and you'll have that
25 in the jury room. And you can take that into

1 consideration. The statute says that you are to take into
2 consideration the Defendant's ability to pay. And the
3 reason for that is because if we were suing Ford Motor
4 Company -- and, I mean, certain amounts of money are big
5 to those of us individuals; right? Because we evaluate it
6 all based on our mortgages, and how much vacations cost,
7 and things like that. But a billion dollar company, you
8 can slap them with what seems a punitive award and it
9 doesn't even bother them. So you are to consider the
10 Defendant's ability to pay and his net worth, which is
11 considered only on his net worth.

12 And then the big one, the likelihood that an award of
13 punitive damages will deter others from like conduct.
14 This is where you get to really make it be known that
15 malicious prosecution, which is starting it and then --
16 and then not giving up. Not only not giving up until you
17 can get the arrest made, but even after the person goes
18 and hires an attorney that she can't afford, and then
19 somehow gets fortunate to have one of the best forensic
20 accountants to come in and feel so sorry for her because
21 he sees what's been done to her that he does all this work
22 for a dollar. If he hadn't done that, I don't know what
23 would have happened. The solicitor's office probably
24 would have, finally, figured it out, but we don't know.

25 But after he sends his first report back and says you

1 don't have enough information here, what did the Chapmans
2 do? They went and got all these bank statements, and all
3 these other things, and all these documents and policies
4 that they had and said, go look at this.

5 So Mike O'Shea does more work. They never took their
6 foot off the gas. He never took his foot off the gas. He
7 wanted some kind of retribution. And it's just not right.
8 We all know it's not right. It makes me sick to my
9 stomach.

10 So, ladies and gentlemen, I want to thank you so much
11 for your attentiveness. And I know that you're going to
12 listen carefully to what my opposing counsel is going to
13 have to say. And then the Judge is going to charge you.
14 And barring any unforeseen things, we will be done today.

15 And I ask you -- you're going to get a verdict form
16 similar to the one that you had yesterday. But there's no
17 civil conspiracy because you didn't rule in her favor on
18 that. The verdict form is even more self-explanatory.
19 All you've got to do is check -- if you're going to award
20 punitive damages, then there's a spot where you can put
21 the amount.

22 And, again, you can -- you have the discretion that
23 if you find after following what the Judge charges you
24 that we have met the requirements to get an award of
25 punitive damages, which I believe we have, you can award

1 on any of the three claims.

2 Thank you.

3 THE COURT: All right.

4 MR. KENDRICK: Thank you, Judge.

5 I'm going to be very short because you've been here
6 too long. Lawyers talk too much. And we aren't often
7 direct with what we're talking about.

8 What I said to you at the beginning of today's case
9 was very direct. And I didn't accuse you of not following
10 the law. I think I did the opposite. I told you we're
11 not taking issue with what you did and the decision you
12 reached. And we can respect the jury's verdict after
13 having tried a case. We're allowed to do that. We're
14 allowed to come up here and tell you that we understand,
15 that we accept responsibility.

16 So I take issue with the Plaintiff telling you that
17 my words of remorse on behalf of Alex Chapman, which is
18 what my role is in the system, to speak for him, are
19 somehow now meaningless. And they aren't. I did mean it.

20 All you've heard from the stand today that changed
21 the analysis is there were times he didn't handle the
22 money well. But you've heard that since Monday. And we
23 know that is true. He did not do a good job of handling
24 his money. So when he did what he did by going to the
25 police, he did the wrong thing.

1 And, yesterday, you held him accountable for that.
2 And what you did yesterday was enough. I assume that the
3 accusation of me trying to say you didn't follow the law
4 was related to the sending a message. But I didn't tell
5 you to do that, the Plaintiff did. And you did it. And I
6 am telling you that we heard the message. It's not
7 something to assign a nefarious purpose to. It's me
8 telling you on behalf of Dr. Chapman, on behalf of Chapman
9 Dental that we get it. We understand. He should not have
10 done what he did.

11 And you will look through the net worth statement and
12 look at where most of that money is, land, office
13 building. He doesn't have a lot of cash, but \$102,000
14 will put a dent in what cash there is. It will teach him
15 a lesson. And this won't happen again.

16 Punishment is very different than some of the other
17 things we have talked about this week. I ask you for
18 mercy. And I think what the Plaintiff was saying is that
19 we don't deserve it, Dr. Chapman doesn't deserve it.
20 That's not when you give mercy. You don't bestow mercy on
21 those who deserve it. Mercy is extended by the person
22 giving it. So I'm asking you to do it.

23 And I'm asking you to leave your verdict in place and
24 not add an additional punitive award because I don't
25 believe it's necessary. I don't believe it will serve the

1 purposes that you're going to hear about from Judge
2 Morgan. But, more importantly, I don't think it will
3 serve the ultimate purpose we're here for, which is to
4 find some measure of justice, which you have done. You
5 have awarded.

6 Thank you.

7 MR. FEW: Your Honor, I'll waive any further
8 argument.

9 CHARGE ON THE LAW

10 THE COURT: All right. Ladies and gentlemen, if
11 you'll just give me a few minutes here. This will be very
12 short. I will instruct you -- further instruct you on the
13 issues before you.

14 All right. Since you have awarded actual damages
15 against the Defendants in this case, you may, also,
16 consider an award of punitive damages. Punitive damages
17 are intended to punish the Defendants for extraordinary
18 and outrageous misconduct, and to prevent the Defendant
19 and others from committing similar acts in the future.

20 The evidence must establish the Defendant's acts were
21 reckless, willful, and wanton, meaning there was a
22 conscious failure to exercise due care, or a conscious
23 indifference to the rights and safety of others, or a
24 reckless disregard thereof.

25 If you find that the Defendant's conduct was willful,

1 wanton, or reckless, you may award the Plaintiff punitive
2 damages. To support an award of punitive damages, the
3 Plaintiff must prove by clear and convincing evidence that
4 the conduct complained of included a conscious --
5 consciousness of wrongdoing at the time of the conduct.

6 Now, clear and convincing is more than a
7 preponderance or greater weight of the evidence. And that
8 requires, as I told you yesterday and at the beginning of
9 trial, that the -- when I gave you the scales and the
10 preponderance of the greater weight of the evidence.

11 On the other hand, clear and convincing proof is not
12 as high as the standard of burden of proof in a criminal
13 case, which is beyond a reasonable doubt. But it is
14 more -- is more than a preponderance of the evidence.

15 So it's between a preponderance of the evidence and
16 beyond a reasonable doubt. Clear and convincing proof
17 leaves no substantial doubt in your mind. It means that
18 the evidence is not ambiguous, doubtful, equivocal, or
19 contradictory causing one to believe in the truth of what
20 is asserted. Clear and convincing proof established in
21 your mind not only that the fact is probable, but that it
22 is highly probable.

23 If you find that the Plaintiff has proven by clear
24 and convincing evidence that she is entitled to punitive
25 damages, then in determining the amount, you may consider

1 the evidence that has been presented to you, including the
2 Defendants degree of culpability, the severity of the harm
3 caused by the Defendants, the extent to which the
4 Plaintiff's own conduct contributed to the harm, the
5 duration of the conduct, the Defendants awareness and any
6 concealment by the Defendants, the existence of similar
7 past conduct, the profitability of the conduct to the
8 Defendants, the Defendants ability to pay, and the
9 likelihood the award will deter the Defendants or others
10 from like conduct.

11 Now, the verdict form, Madam Forelady, it is
12 self-explanatory. But I'll just -- and you'll have this
13 back with you, of course. The verdict -- possible
14 verdicts are as follows: Paragraph number one -- and each
15 one relates to three causes of action. So the first one
16 is Plaintiff's claim for malicious prosecution against
17 Defendants, Marshall Alexander Chapman and Chapman Dental,
18 do you find that there is clear and convincing evidence to
19 support an award of punitive damages? And you have the
20 option to check "yes" or "no." Again, the order has no
21 relevance.

22 If you do check "yes" to the answer, then you would
23 write in the amount of punitive damages. And the same
24 goes for the next cause of action, the false imprisonment,
25 and the next cause of action for defamation. It should be

1 self-explanatory.

2 And so I'm going to excuse you to deliberate. I've
3 just got to check to make sure there's no exceptions from
4 the lawyers on my charge. And then I will instruct the
5 bailiff to tell you to start deliberating.

6 Thank you.

7 (WHEREUPON, the jury was excused from open court at
8 approximately 12:42 p.m.)

9 THE COURT: All right. Any exceptions to the charge?
10 Any from the Plaintiff?

11 MR. FEW: Nothing from the Plaintiff, Your Honor.

12 But I'm not sure that Exhibit No. 30 is in evidence.
13 There was talk that we were going to put it into evidence.

14 THE COURT: What is Exhibit No. 30?

15 MR. KENDRICK: It's the net worth statement, Your
16 Honor. But in candor, I said prior to starting -- first,
17 I maybe eluded that I might do that, but I said we
18 stipulated to it.

19 THE COURT: So any objection to the --

20 MR. KENDRICK: No. We can -- just on the record,
21 I'll say it should be moved in.

22 THE COURT: Exhibit No. 30 is admitted into evidence
23 without objection.

24 (WHEREUPON, Plaintiff's Exhibit No. 30 was admitted
25 into evidence.)

1 THE COURT: All right. So Mr. Hallberg, if you would
2 take the verdict form back there to them.

3 THE BAILIFF: Yes, sir.

4 MR. FEW: I think we might need to stick the exhibit
5 in there as well.

6 THE COURT: Okay.

7 (WHEREUPON, the proceedings were recessed at
8 approximately 12:48 p.m.)

9 THE COURT: I understand we have a verdict; is that
10 correct?

11 THE BAILIFF: Yes, sir.

12 THE COURT: All right. Let's bring the jury in.

13 (WHEREUPON, the jury came into open court at
14 approximately 1:23 p.m.)

15 THE COURT: All right. Madam Forelady, I understand
16 you have reached a verdict; is that right?

17 JUROR #141, REBECCA NIX: Yes.

18 THE COURT: If you would hand it to Mr. Smith.

19 All right. If you would publish the verdict, please.

20 VERDICT

21 THE CLERK: Your Honor, this is case number
22 2019-CP-223-01522, Samantha Katchick vs. Marshall
23 Alexander Chapman, DMD, and Chapman Dental, PA.

24 Number one, as to Plaintiff's claim for malicious
25 prosecution against Defendants Marshall Alex Chapman, DMD,

1 and Chapman Dental, PA, do you find there is clear and
2 convincing evidence to support an award of punitive
3 damages? Yes.

4 Number two, if you checked "yes" to question one,
5 write the amount of punitive damages here. Punitive
6 damages is \$75,000.

7 Number three, as to Plaintiff's claim for false
8 imprisonment against Defendants Marshall Alexander
9 Chapman, DMD, and Chapman Dental, PA, do you find there's
10 clear and convincing evidence to support an award of
11 punitive damages? Yes.

12 If you checked -- you checked "yes" to question
13 three, write the amount of punitive damages here.
14 Punitive damages, \$70,000.

15 Number five, as to Plaintiff's claim for defamation
16 per se by slander against Marshall Alexander Chapman, do
17 you find that there is clear and convincing evidence to
18 support an award of punitive damages? Yes.

19 If you checked "yes" to question five, write the
20 amount of punitive damages here. Punitive damages
21 \$30,000, signed Rebecca Nix, Foreperson, April 25th, 2024.

22 If this is your verdict, so say you all, please,
23 signify by raising your right hand.

24 (WHEREUPON, all of the jurors raised their right
25 hand.)

1 THE CLERK: Thank you.

2 THE COURT: All right. Before I excuse the jury, any
3 motions as to the verdict from the jury?

4 MR. FEW: Nothing from the Plaintiff, Your Honor.

5 THE COURT: Anything from Defendants?

6 MR. KENDRICK: No, Your Honor.

7 THE COURT: All right. Ladies and gentlemen, now
8 we're ready for our third -- no, I'm just kidding.

9 Thank you for your service.

10 I sure do appreciate it. I know it has extended your
11 time. And I do want to thank you. You are excused for
12 today, and for the week, and for the next three years if
13 you get summoned to jury duty. Although if you get
14 summoned, we would love to have you come back again.

15 So I'm going to excuse you. I want to just step back
16 and speak with you a minute before I let you go home.

17 And, again, thank you for your service.

18 (WHEREUPON, the jury was excused from open court at
19 approximately 1:27 p.m.)

20 THE COURT: All right. Any post-trial motions at
21 this time? Or I'll be glad to give you 10 days under the
22 rules, if you'd like.

23 MR. KENDRICK: Your Honor, I read the rule that you
24 might give us longer than that. I don't know if you have
25 a position that that's incorrect. We're just starting

1 another trial immediately after this one. So I would ask
2 for 30 days, if you would consider it.

3 THE COURT: Any objection from the Plaintiff's on that?

4 MR. FEW: Well --

5 THE COURT: I may not give you 30. But I may -- due
6 to having a trial start up, I remember as a trial lawyer --

7 MR. FEW: I want to give him whatever he's asking
8 for. But I'm mindful of that Nance case, I think it is,
9 that says that if -- it's a jurisdictional thing. And it
10 may be that Your Honor doesn't have the ability --

11 THE COURT: Yeah. I think that may be the case. I'm
12 willing to give it, but I may not be able --

13 MR. FEW: Nance, 2018, I think that -- you know, you
14 could file something and do a memorandum afterwards.

15 MR. KENDRICK: Here's what I'll ask for, Your Honor.
16 If you'll give us the 10 days, I will look at that case.
17 If that's what it says, we'll get everything into you that
18 we can --

19 THE COURT: And I'll look at it, too.

20 MR. KENDRICK: Yes, sir. And as Mr. Few said, it may
21 be that we have to send you the legal argument and then
22 supplement it. But I'll make sure I do it correctly,
23 however I do it.

24 THE COURT: All right. We're adjourned.

25 *****END OF TRANSCRIPT OF RECORD*****

CERTIFICATE OF REPORTER

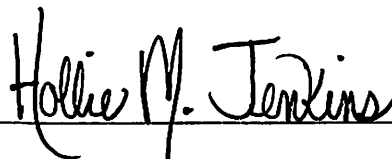
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 22nd, 23rd, 24th, and 25th days of April, 2024.

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

December 4, 2024

A handwritten signature in cursive script that reads "Hollie M. Jenkins". The signature is written in dark ink and is positioned above a horizontal line.

Hollie M. Jenkins, Court Reporter