

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T Mullen, Presiding Judge

Case No. 2011-CP-07-04796

Rodney Allgire,

Respondent,

v.

Marshall C. Blanton,

Appellant

RECORD ON APPEAL

Volume II

E Mitchell Griffith
Kelly Dennis Dean
Griffith, Sadler & Sharp, P.A.
Post Office Drawer 570
Beaufort, South Carolina 29901

James H Moss
Moss, Kuhn & Fleming, P.A.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Rodney J. Allgire,

PLAINTIFF,

v

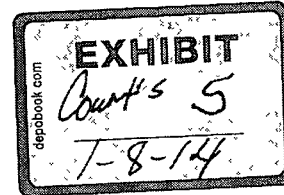
Marshall C. Blanton,

DEFENDANT

IN THE COURT OF COMMON PLEAS

Civil Action No 2011-CP-07-04796

Defendant's Request to Charge _____
(Self Defense)



There are four elements required by law to establish a case of self-defense:

First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984); State v. Curry, 2013 S.C. Lexis 320 (2013)

GRIFFITH, SADLER & SHARP, P.A

By

E Mitchell Griffith
600 Monson Street
PO Drawer 570
Beaufort, SC 29901
843-521-4242
843-521-4247 (fax)
mgriffith@griffithsadlerssharp.com

ATTORNEYS FOR MARSHALL BLANTON

January 8, 2014
Beaufort, South Carolina

CERTIFICATE OF SERVICE

On January 8, 2014, I served **DOCUMENT NAME* pursuant to Rule 5, SCRCR by depositing it in the United States mail, with postage prepaid, and addressed as follows:

O Edworth Lupfert III

Beaufort, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Rodney J. Allgire

Plaintiff,

vs.

Marshall C. Blanton

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO.: 2011-CP-07-04796

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

14 JAN 16 PM 2:52
BEAUFORT COUNTY, SC

Plaintiff's Attorney:

James H. Moss

Address:

PO Box 507

Beaufort, SC 29901-0507

Phone: (843) 524-3373 Fax

E-mail: jim@mossandkuhn.com

Defendant's Attorney:

E. Mitchell Griffith, Bar No. 2287

Address:

PO Drawer 570

Beaufort, SC 29901

Phone: (843) 521-4242 Fax (843) 521-4247

E-mail: mgriffith@griffithsadlersharp.com Other:

☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for New Trial

Estimated Time Needed: 15 min

Court Reporter Needed: ☒ YES/ ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$**

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCPP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$** _____

☐ **CONTESTED - AMOUNT DUE: \$** _____

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Rodney J. Allgire,

PLAINTIFF,

v.

Marshall C. Blanton,

DEFENDANT.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-07-04796

**MOTON FOR NEW TRIAL, NEW
TRIAL NISI REMITTITUR, AND
NEW TRIAL JNOV**

14 JUN 16 PM 2:52
RECEIVED
CLERK OF COURT
S.C.

**TO: THE HONORABLE CARMEN T. MULLEN, PRESIDING JUDGE,
FOURTEENTH JUDICIAL CIRCUIT:**

The Defendant, Marshall C. Blanton, hereby moves the Court pursuant to Rule 59 of the South Carolina Rules of Civil Procedure for a New Trial, New Trial NISI Remittitur, and New Trial JNOV on the following grounds:

For a new trial on the grounds that the trial judge erred in charging the "collateral source rule" to the jury in this matter on the grounds the only evidence of a collateral source was introduced by the Plaintiff and/or the Plaintiff's witnesses.

For a new trial on the grounds that the trial judge erred in failing to direct a verdict in favor of the Defendant on the grounds that the evidence taken on the light most favorable to the Plaintiff showed that the Defendant acted in self-defense and with due care.

For a New Trial JNOV on the grounds that the evidence taken on the light most favorable to the Plaintiff showed that the Defendant acted in self-defense and with due care.

For a New Trial NISI Remittitur on the grounds that the verdict was unduly excessive.

For a New Trial NISI Remittitur on the grounds that the verdict was so excessive that it was attenuated by passion, prejudice, or caprice.

For a New Trial on the grounds that the verdict was so excessive that the Court, sitting a Thirteenth Juror, should set aside the verdict of the jury.

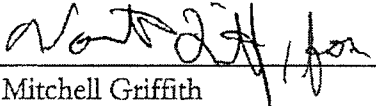
For a New Trial Absolute on the grounds that the verdict was so excessive, so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives. See Cock-n-Bull Steak House, Inc. v. Generali Ins. Co., --- S.C. ---, 466 S.E.2d 727 (1996), McCourt by and Through McCourt v. Abernathy, 318 S.C. 301, 457 S.E.2d 603 (1995); Allstate Ins. Co. v. Durham, 314 S.C. 529, 431 S.E.2d 557 (1993); O'Neal v. Bowles, 314 S.C. 525, 431 S.E.2d 555 (1993); Vinson v. Hartley, 324 S.C. 389, 404, 477 S.E.2d 715, 723 (S.C.App,1996)

For an order striking the award of punitive damages on the grounds that the Plaintiff failed to produce evidence to sustain and award of punitive damages under the Gamble factors set forth by the South Carolina Supreme Court

[Signature Page to Follow]

GRIFFITH, SADLER & SHARP, P.A.

By.



E. Mitchell Griffith

600 Monson Street

PO Drawer 570

Beaufort, SC 29901

843-521-4242

843-521-4247 (fax)

mgriffith@griffithsadlerssharp.com

ATTORNEYS FOR MARSHALL BLANTON

January 15, 2014
Beaufort, South Carolina

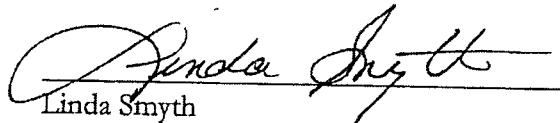
CERTIFICATE OF SERVICE

On January 15, 2014, I served *MOTION FOR NEW TRIAL, NEW TRIAL NISI REMITTITUR, AND NEW TRIAL JNOV* pursuant to Rule 5, SCRCP by depositing it in the United States mail, with postage prepaid, and addressed as follows:

The Honorable Carmen T. Mullen
Post Office Drawer 1128
Beaufort, South Carolina 29901

James H. Moss
Moss, Kuhn & Fleming, PA
PO Box 507
Beaufort, SC 29901-0507

14 JAN 16 PM 2:52
RECEIVED
CLERK OF COURT
JAMES H. MOSS
JAN 16 2014


Linda Smyth

Beaufort, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Rodney J. Allgire,

PLAINTIFF,

vs

Marshall C. Blanton,

DEFENDANT.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-07-04796

**MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION FOR A NEW
TRIAL**

2014 FEB 18 AM 11:10
CLERK OF COURT
SOUTH CAROLINA

TO: THE HONORABLE CARMEN T. MULLEN, RESIDENT JUDGE, FOURTEENTH
JUDICIAL CIRCUIT

The Defendant, Marshall C. Blanton, hereinafter "the Defendant," hereby moves the Court pursuant to Rules 50(b) and 59 of the South Carolina Rules of Civil Procedure for a New Trial, New Trial NISI Remittitur, and New Trial JNOV, on the grounds stated hereinafter.

FACTUAL BACKGROUND

This suit arises out of an incident that occurred on November 13, 2011. The Plaintiff, Mr. Rodney Allgire, had been playing golf with a group at the Ocean Creek Course on Fripp Island, SC. He was playing with Paul Cole and they were paired with Doug Trogdon and Dennis Robinson. They played through the first nine (9) holes and there were no problems. As they reached the tenth (10th) hole, and began to start the back nine, they noticed a foursome in front of them. The foursome was playing rather slow and they caught up with them. At hole 13 or 14, they noticed that they were having to wait and extended period of time and there was very slow play. One of their foursome, Dennis Robinson, yelled up ahead to "Please pick up the pace." Mr. Allgire stated that the group in front then turned around and yelled back and words were exchanged. They then

continued to play and had no further interaction with them until they got to the 18th green. As they approached the 18th green, Mr. Allgire testified that Dennis Robinson and Doug Trogon played up to the green and he believes that Dennis Robinson finished his round. He then went to the golf cart and began to leave and, as he approached the clubhouse, he was approached by a man who started having words with him. Mr. Allgire also noticed that at the clubhouse there were other people screaming profanities at them as they finished their round. This was another group that was from Myrtle Beach and Mr. Blanton was part of this group. Mr. Allgire noticed that Mr. Robinson went on to his car and he did not see him again. He then took Mr. Cole and they drove their cart to the truck and unloaded their clubs. They then went to the golf cart storage and left their cart there and started walking to the clubhouse.

The Plaintiff recalls that as he got near the steps, he was about six (6') to fifteen (15') feet from the steps when, out of the blue, a man just hit him. He recalls being knocked to the ground and was unconscious for a brief period of time as he came to. He then noticed that there was a man standing over him and someone said, "You hit the wrong guy." Another man came over to him and stated that it was just a misunderstanding. Mr. Allgire then stated that he was quite groggy and Doug Trogon began to follow the men as they herded Mr. Blanton away into his SUV and drove off. He then recalls Mr. Blanton being brought back in his SUV and the security guard was with him. As the security guard began his investigation, Mr. Blanton apologized to Mr. Allgire and told him that he was sorry, and that he had hit the wrong guy. Mr. Allgire stated that he did not accept the apology and he wanted Mr. Blanton to be arrested. The investigating officer completed his investigation and then arrested Mr. Blanton, taking him to the Beaufort County jail. Mr. Allgire stated that the entire event was very tense and the group with Mr. Blanton was all using vulgarities and they did not ever say anything untoward to any of them.

INJURIES

After the incident, Mr. Allgire got home went to the Emergency Room where he was x-rayed and had a CT scan, but not admitted to the hospital. The next day he woke up and he was unable to go to work and he missed about three (3) to five (5) weeks' worth of work. He states that at that time his gross salary was around \$1,100.00, and he netted \$831.00 per week. A couple of weeks later his back began hurting him more and more. He then went to Dr. Ned Blocker, an Orthopaedic surgeon at Lowcountry Medical Group. Mr. Allgire stated that he could not work and he continued to see Dr. Blocker, who performed an MRI. Dr. Blocker diagnosed him with a mild compression fracture at the T12 vertebra. Then Dr. Blocker referred him to physical therapy. Mr. Allgire went to physical therapy and that did not seem to be helping him. Dr. Blocker testified that the mild T12 Compression fracture would heal in about three (3) months and the pain should be gone in about six (6) months. Dr. Blocker then performed another MRI approximately two (2) weeks ago, and as a result of that MRI he referred him to Ruben Spine Specialists. As a result of the Plaintiff landing on his rear-end, there was sufficient axial loading to cause a compression fracture at the T-12 level in the Plaintiff's vertebra. This diagnosis was confirmed by Dr. Blocker on an MRI. After being treated by Dr. Blocker, the Plaintiff's symptoms changed and Dr. Blocker sent the Plaintiff to see a spine specialist, Dr. Craig Boatright. Dr. Boatright treated the Plaintiff for back issues that originated at the L5 -S1 level and caused radicular pain. Dr. Boatright testified that this was not related to the T-12 compression fracture. However, he also indicated that he thought there was some midline pain at the T-12 level. However, the radiating pain that he treated the Plaintiff for could not be related to the incident giving rise to this litigation.

The Plaintiff also complained that he had broken ribs as a result of this accident. He was having trouble breathing one day and so he went to Doctor's Care where they x-rayed him and saw

that he had fractured ribs. He states that he has no other falls or other incidents, therefore, he believes that the fractured ribs are a result of the incident at the golf course. The Plaintiff claimed that the medical expenses were \$22,740.77 which included \$3,341.25 in wages.

DEFENDANT'S POST TRIAL MOTIONS

I The Defendant moves for a New Trial Absolute on the grounds that the verdict was so grossly excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence.

If the amount of the verdict is grossly inadequate or excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial court must grant a new trial absolute. See O'Neal v Bowles, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (1993). A new trial absolute should be granted where the verdict was so excessive, so as to shock the conscience of the court and clearly indicates that the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives. See Cock-n-Bull Steak House, Inc v General Ins Co, --- S.C. ---, 466 S.E.2d 727 (1996); McCourt by and Through McCourt v Abernathy, 318 S.C. 301, 457 S.E.2d 603 (1995); Allstate Ins Co v Durham, 314 S.C. 529, 431 S.E.2d 557 (1993), O'Neal v Bowles, 314 S.C. 525, 431 S.E.2d 555 (1993), Vinson v Hartley, 324 S.C. 389, 404, 477 S.E.2d 715, 723 (S.C.App, 1996). Here, the Defendant is entitled to a new trial absolute because the verdict of \$400,000.00 actual damages and \$100,000.00 punitive damages was clearly grossly excessive given the testimony at trial.

Moreover, a review of the punitive damages award shows that it was also grossly excessive. The practice of awarding punitive damages originated in principles of criminal law "to deter the wrongdoer and others from committing like offenses in the future." Laird v Nationwide Ins. Co., 243 S.C. 388, 393, 134 S.E.2d 206, 210 (1964) (internal citation omitted). Because punitive damages are quasi-criminal in nature, the process of assessing punitive damages is subject to the protections

of the Due Process Clause of the Fourteenth Amendment of the United States Constitution
Atkinson v. Orkin Exterminating Co., 361 S.C. 156, 164, 604 S.E.2d 385, 389 (2004)

In Gamble, this Court developed an eight factor post-verdict review that trial courts are required to conduct to determine if a punitive damages award comports with due process. The United States Supreme Court has also set forth three guideposts that trial courts must apply to an award of punitive damages to determine whether the award violates due process. BMW of North America, Inc. v. Gore, 517 U.S. at 575, 116 S.Ct. at 1598-99, 134 L. Ed. 2d at 826

The Gamble factors are: (1) the defendant's degree of culpability, (2) the duration of the conduct; (3) the defendant's awareness or concealment; (4) the existence of similar past conduct, (5) the likelihood the award will deter the defendant or others from like conduct, (6) whether the award is reasonably related to the harm likely to result from such conduct, (7) the defendant's ability to pay, and (8) other factors deemed appropriate. Gamble, 305 S.C. at 111-12, 406 S.E.2d at 354

A review of the punitive damages award reflects that it does not comport with due process under Gamble. Moreover, a trial court must make a review of a punitive damages award under Gore, supra. A trial court shall review the constitutionality of a punitive damages award by determining whether the award was reasonable under the following guideposts: (1) the degree of reprehensibility of the defendant's misconduct, (2) the disparity between the actual and potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. Gore, 517 U.S. at 575, 116 S.Ct. 1598-99, 134 L. Ed. 2d at 826, see, e.g., Atkinson, 361 S.C. at 166-71, 604 S.E.2d at 390-93

A review under Gore reflects that this award violates due process. Accordingly on post-trial review, the court should consider the eight factors. Here, the jury found that the Defendant was culpable in this matter, but the duration of the conduct was minimal. The evidence was that there was only one time that the defendant made contact with the Plaintiff. As for past similar conduct, the testimony was that the Defendant had one prior charge in his twenties where he was in a fight and a charge brought against him. There was no evidence that the Defendant participated in any conduct of this nature and that the incident that led to this suit was threatening words by many at the golf course on that day. Clearly, as the punitive damages award was unreasonable, there was no evidence of the defendant's ability to pay. However, at trial the Court requested that the Defendant be prepared to show, if asked, his net worth. The Defendant was prepared to testify and files an financial statement herewith evidencing his net worth of less than \$25,000.00. A verdict of \$100,000.00 in punitive damages will result in financial ruin of the defendant and potentially force him into bankruptcy. A post-trial review of the Gamble factors shows that the verdict does comport with the elements under either Gamble or Gore, the Defendant is entitled to a new trial absolute or substantially reduced to an amount consistent with the Gamble factors.

II. The Defendant moves for a New Trial Nisi Remittitur should be granted, as the jury's verdict was clearly excessive.

A motion for new trial nisi remittitur, reducing the verdict is appropriate where the verdict is merely excessive. James v. Horace Mann Ins. Co., 371 S.C. 187, 193, 638 S.E.2d 667, 670 (2006). "The consideration for a motion for a new trial nisi remittitur requires the trial judge to consider the adequacy of the verdict in light of the evidence presented." Proctor v. Dep't of Health & Envtl. Control, 368 S.C. 279, 320, 628 S.E.2d 496, 518 (Ct. App. 2006). In this matter, the actual and punitive verdicts were excessive at best, and the Court should therefore order a new trial nisi remittitur.

Here the evidence showed that the Plaintiff had a mild T-12 compression fracture. According to Dr. Blocker, the Plaintiff's treating and testifying expert witness, testified that the mild compression fracture would heal in three (3) months and should be without pain in six (6) months. Clearly, a verdict of Four Hundred Thousand and no/100 (\$400,000.00) dollars indicates that the jury possibly confused or did not understand that medical evidence that was presented.

- III. The Defendant moves for a New Trial on the grounds that the verdict was so excessive that the Court, sitting as Thirteenth Juror, should set aside the verdict of the jury.

The thirteenth juror doctrine "entitles the trial judge to sit, in essence, as the thirteenth juror when he finds the evidence does not justify the verdict, and then to grant a new trial based solely upon the facts." Norton v. Norfolk S. Ry. Co., 350 S.C. 473, 567 S.E.2d 851 (2002) (citation omitted). Because, as discussed above, the evidence in this case does not justify the jury's verdict, the Defendant respectfully requests that the Court grant a new trial pursuant to the thirteenth juror doctrine.

- IV. The Defendant moves for a New Trial JNOV on the grounds that the Court erred in failing to direct a verdict in favor of the defendant when the evidence showed that the Defendant acted in self-defense and with due care.

The evidence in this case showed that there was clearly a verbal altercation that occurred at Frapp Island leading up to this incident. Witnesses for both parties admitted that words and profanities were exchanged. The matter became heated and it was undisputed that the last words by the witness Mr. Cole were "I'll be back", indicating that there would be something further to occur. When Mr. Cole and the Plaintiff returned there was a confrontation and the Defendant believes that there was no other option than to defend himself. As a result, the incident took place and the Plaintiff went down. Both parties were approaching each other and in the mind of the Defendant there was no escape. As such, the court should have directed a verdict for the defendant in this matter.

1

GRIFFITH, SADLER & SHARP, P.A.

By



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Beaufort, SC 29901

843-521-4242

843-521-4247 (fax)

mgriffith@griffithsadlerssharp.com

ATTORNEYS FOR MARSHALL BLANTON

February 17, 2014

Beaufort, South Carolina

PERSONAL FINANCIAL STATEMENT

CONFIDENTIAL

Personal Financial Statement as of FEBRUARY 13, 2014

NAME(S) MARSHALL C BLANTON

☐ E MAIL - Home

☐ E MAIL - Office

HOME ADDRESS 592 OXBOW DRIVE

MYRTLE BEACH SC 29579

Social Security #
250-49-4305
Spouse's Social
Security #

HOME PHONE 843-236-9066

Assets	In Even Dollars	Liabilities and Net Worth	In Even Dollars
Cash on hand and in Banks—See Schedule A	3,085	Notes Payable This Bank—See Schedule A	\$
U S Government Securities—See Schedule B		Notes Payable Other Institutions—See Schedule A	
Listed Securities—See Schedule B		Notes Payable—Relatives	
Unlisted Securities—See Schedule B		Notes Payable—Others	
Other Equity Interests—See Schedule B		Accounts and Bills Due	
Accounts and Notes Receivable		Unpaid Taxes	
Real Estate Owned—See Schedule C	781,800	Real Estate Mortgages Payable—See Schedule C or D	808,953
Mortgages and Land Contracts Receivable—See Schedule D		Land Contracts Payable—See Schedule C or D	
Cash Value Life Insurance—See Schedule E	10,000	Life Insurance Loans—See Schedule E	
Other Assets. Itemize		Other Liabilities. Itemize	
1. 2005 BASS TRACKER	4,500		
2. FURNITURE AT BOTH PROPERTIES	30,000		
3. RIFLES OWNED	3,500		
		TOTAL LIABILITIES	\$808,953
		NET WORTH	\$23,932
TOTAL ASSETS	832,885	TOTAL LIABILITIES AND NET WORTH	832,885

Sources of Income	In Even Dollars	General Information
Salary	\$124,800	Employer MYRTLE BEACH T-N-T AUTO SALES, LLC
Bonus and Commissions	NA	Position or Profession PRESIDENT No Years 11
Dividends		Employer's Address 21441 HWY 501 MYRTLE BEACH SC 29577
Real Estate Income	NA	Phone No 843-626-8686
*Other Income: Itemize	NA	Partner, officer or owner in any other venture? ☒ No ☐ Yes If so, explain. PARTNER
TOTAL	\$124,800	
*Alimony, child support or separate maintenance payments need not be disclosed unless relied upon as a basis for extension of credit. If disclosed, payments received under ☐ court order ☐ written agreement ☐ oral understanding Alimony 1500 00		Are any assets pledged? ☐ No ☐ Yes Detail in Schedule A
		Income taxes settled through (Date)

Contingent Liabilities	In Even Dollars	General Information (continued)
As endorser, co-maker or guarantor	\$	Are you a defendant in any suits or legal action? ☐ No ☐ Yes If so, explain.
On leases		Have you ever taken bankruptcy? ☒ No ☐ Yes If so, explain.
Legal claims		Do you have a will? ☒ No ☐ Yes With whom?
Provision for federal income taxes		
Other special debt, e.g., recourse or repurchase liability		

TOTAL

Schedule E: Life Insurance Carried

Name of Company	Face Amount	Cash Surrender Value	Loans	Beneficiary
FARM BUREA	250,000	10,000		KATHY BLANTON
TOTAL				

I/we have carefully read and submitted the foregoing information provided on all three pages of this statement to the Bank named above. The information is presented as a true and accurate statement of my/our financial condition on the date indicated. This statement is provided for the purpose of obtaining and maintaining credit with said Bank. I/we agree that if any material change(s) occur(s) in my/our financial condition that I/we will immediately notify said Bank of said change(s) and unless said Bank is so notified it may continue to rely upon this financial statement and the representations made herein as a true and accurate statement of my/our financial condition.

I/we authorize the Bank to make whatever credit inquiries it deems necessary in connection with this financial statement. I/we authorize and instruct any person or consumer reporting agency to furnish to the Bank any information that it may have or obtain in response to such credit inquiries.

I/we also hereby certify that no payment requirements listed herein are delinquent or in default except as follows; if "NONE" so state.

I/we fully understand that it is a federal crime punishable by fine or imprisonment or both to knowingly make any false statements concerning any of the above facts, pursuant to 18 U.S.C. Section 1014.

Applicant's
Signature

Michael C. Blanton

Date
Signed

2/14/14

Social
Security No

250-49
4305

Date of
Birth

2/14/69

Spouse's or
Co-Applicant's
Signature

Date
Signed

Social
Security No

Date of
Birth

PERSONAL FINANCIAL STATEMENT

CONFIDENTIAL

Personal Financial Statement as of FEBRUARY 13, 2014

NAME(S) MARSHALL C BLANTON

☐ E MAIL - Home

☐ E MAIL - Office

HOME ADDRESS 592 OXBOW DRIVE

MYRTLE BEACH SC 29579

Social Security #
250-49-4305
Spouse's Social
Security #

HOME PHONE 843-236-9066

Assets	In Even Dollars	Liabilities and Net Worth	In Even Dollars
Cash on hand and in Banks—See Schedule A	3,085	Notes Payable: This Bank—See Schedule A	\$
U S Government Securities—See Schedule B		Notes Payable Other Institutions—See Schedule A	
Listed Securities—See Schedule B		Notes Payable—Relatives	
Unlisted Securities—See Schedule B		Notes Payable—Others	
Other Equity Interests—See Schedule B		Accounts and Bills Due	
Accounts and Notes Receivable		Unpaid Taxes	
Real Estate Owned—See Schedule C	781,800	Real Estate Mortgages Payable—See Schedule C or D	808,953
Mortgages and Land Contracts Receivable—See Schedule D		Land Contracts Payable—See Schedule C or D	
Cash Value Life Insurance—See Schedule E	10,000	Life Insurance Loans—See Schedule E	
Other Assets Itemize		Other Liabilities' Itemize	
1. 2005 BASS TRACKER	4,500		
2. FURNITURE AT BOTH PROPERTIES	30,000		
3. RIFLES OWNED	3,500		
		TOTAL LIABILITIES	\$808,953
		NET WORTH	\$23,932
TOTAL ASSETS	832,885	TOTAL LIABILITIES AND NET WORTH	832,885

Sources of Income	In Even Dollars	General Information
Salary	\$124,800	Employer MYRTLE BEACH T-N-T AUTO SALES, LLC
Bonus and Commissions	NA	Position or Profession PRESIDENT No. Years 11
Dividends		Employer's Address 21441 HWY 501 MYRTLE BEACH SC 29577
Real Estate Income	NA	Phone No 843-626-8688
*Other Income: Itemize	NA	Partner, officer or owner in any other venture? ☒ No ☐ Yes If so, explain: PARTNER
TOTAL	\$124,800	
*Alimony, child support or separate maintenance payments need not be disclosed unless relied upon as a basis for extension of credit. If disclosed, payments received under ☐ court order ☐ written agreement ☐ oral understanding. Alimony 1500 00		Are any assets pledged? ☐ No ☐ Yes Detail in Schedule A
		Income taxes settled through (Date)

Contingent Liabilities	In Even Dollars	General Information (continued)
As endorser, co-maker or guarantor	\$	Are you a defendant in any suits or legal action? ☐ No ☐ Yes If so, explain.
On leases		Have you ever taken bankruptcy? ☒ No ☐ Yes If so, explain.
Legal claims		Do you have a will? ☒ No ☐ Yes With whom?
Provision for federal income taxes		
Other special debt, e.g., recourse or repurchase liability		

TOTAL

Schedule E: Life Insurance Carried

Name of Company	Face Amount	Cash Surrender Value	Loans	Beneficiary
FARM BUREA	250,000	10,000		KATHY BLANTON
TOTAL				

I/we have carefully read and submitted the foregoing information provided on all three pages of this statement to the Bank named above. The information is presented as a true and accurate statement of my/our financial condition on the date indicated. This statement is provided for the purpose of obtaining and maintaining credit with said Bank. I/we agree that if any material change(s) occur(s) in my/our financial condition that I/we will immediately notify said Bank of said change(s) and unless said Bank is so notified it may continue to rely upon this financial statement and the representations made herein as a true and accurate statement of my/our financial condition.

I/we authorize the Bank to make whatever credit inquiries it deems necessary in connection with this financial statement. I/we authorize and instruct any person or consumer reporting agency to furnish to the Bank any information that it may have or obtain in response to such credit inquiries.

I/we also hereby certify that no payment requirements listed herein are delinquent or in default except as follows; if "NONE" so state.

I/we fully understand that it is a federal crime punishable by fine or imprisonment or both to knowingly make any false statements concerning any of the above facts, pursuant to 18 U.S.C. Section 1014.

Applicant's
Signature Michael C. Blanton

Date
Signed 2/14/14

Social
Security No. 250-49 4305

Date of
Birth 2/14/69

Spouse's or
Co-Applicant's
Signature _____

Date
Signed _____

Social
Security No. _____

Date of
Birth _____

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF COMMON PLEAS
CASE NO. 2011-CP-07-04796

RODNEY ALLGIRE

PLAINTIFF

ORIGINAL

VERSUS

FEBRUARY 18, 2014

TRANSCRIPT OF POST-TRIAL MOTIONS

BEAUFORT, SOUTH CAROLINA

MARSHALL C. BLANTON

DEFENDANT

B E F O R E:

HON. CARMEN T. MULLEN, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

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BEGINNING 10:07 A.M.

BY THE COURT:

BAILIFF: All rise, please. The Honorable Carmen Mullen. Court's now in session.

THE COURT: All right. Thank you all. Please be seated. Good morning.

Well, good morning.

MR. MOSS: Good morning, your Honor.

THE COURT: Mr. Moss, Ms. Smith, Mr. Griffith, you all, good morning. I took the opportunity this morning to go ahead and, of course, I've read your motion. I've read your brief, Mr. Griffith. Thank you very much.

I went back and re-read my notes, my law clerk's notes, during the trial of this case, as well as some of Dr. Boatwright's deposition, just to kind of let you know what I did as far as reviewing for this hearing.

This is your motion, Mr. Griffith, so whenever you are ready, sir.

MR. GRIFFITH: Yes, ma'am. The defendant, Mark Blanton, or Marshall C. Blanton, as the pleadings show, would move for post-trial motions following the verdict that occurred January, the first week in January. Judge, briefly, you've read my motion, so you understand the facts. You heard the case. I sort of -- I won't go into the details of the motion very much, but I do want

1 to briefly touch on them, because it's an incident that
2 took place at Fripp Island at the Ocean Creek Golf
3 Course.

4 There was some banter, I guess, would be a good
5 word, on the course between two groups at that time.
6 The words sort of flowed over to the clubhouse after the
7 groups were coming in. There were, admittedly, words
8 exchanged. They were what would be termed as hostile
9 words and profanity back and forth between the parties.

10 Thereafter, Mr. Allgire, who was with the group who
11 denied having any words, which was disputed by several
12 people from other testimony. But in any event, they
13 left, and when they came back, there was a threat. At
14 least Mr. Blanton perceived it to be a threat, based
15 upon the words that were said, that being by Mr. Cole,
16 who's indicated, I believe, even by his testimony, we'll
17 be back.

18 Thereafter, --

19 THE COURT: And Mr. Cole, just so I'm clear, Mr.
20 Cole was with Mr. Allgire. Is that correct?

21 MR. GRIFFITH: He was his playing partner that day,
22 as I understand the testimony.

23 THE COURT: Okay.

24 MR. GRIFFITH: And he was the gentleman that was, I
25 would say, sort of, of the size of Mr. Allgire. The

1 other two playing people were Mr. Robinson and Mr.
2 Trogden, who were both, I would say, similar to my size.

3 THE COURT: Okay.

4 MR. GRIFFITH: If that helps you remember the --

5 THE COURT: And for the record, what, roughly, is
6 that, just so --

7 MR. GRIFFITH: Ma'am?

8 THE COURT: And for the record, how tall are you,
9 Mr. Griffith?

10 MR. GRIFFITH: I'm about -- I don't want to give
11 them away, and I'd like to brag about that. I'm about
12 5-8.

13 THE COURT: Okay.

14 MR. GRIFFITH: Between 5-8 and 5-10. I don't ever
15 know what the last one is.

16 THE COURT: Okay.

17 MR. GRIFFITH: Mr. Robinson, I will say I'm a
18 little bit taller than Mr. Robinson. Mr. Trogden and I
19 are about the same size. And Mr. Allgire and Mr. Cole
20 are somewhere around 6 --

21 THE COURT: 2?

22 MR. GRIFFITH: 1-1 to 2.

23 THE COURT: 6-2 and half, is what I saw.

24 MR. GRIFFITH: Yes, ma'am. Both of them pretty
25 sizeable fellows. Mr. Blanton is also a sizeable

1 fellow, too, but I won't go into that.

2 Having gone into the facts briefly and refreshing
3 your memory about the case, Judge, we move for a new
4 trial on several grounds, as well as a new trial --
5 excuse me -- remittitur.

6 The first basis that I'm going to go into is the
7 new trial absolute. The standard for that, as the Court
8 is aware, is that the verdict is so grossly excessive to
9 shock the conscience of the Court, and it indicates that
10 the verdict was a result of some type of passion,
11 prejudice, partiality, or improper motives in the case.

12 In this case, Judge, we have an incident that took
13 place. In talking about the damages, the jury returned
14 a verdict for \$400,000.00 in actual damages for the
15 plaintiff. And additionally, they returned a verdict
16 for \$100,000.00 in punitive damages.

17 The damages that were alleged in this case were
18 basically that Mr. Allgire went down; landed on his
19 buttocks; came up; later went to the hospital that day;
20 had about 11,000.00 dollars' worth of initial treatment,
21 is what I recall. I can pull it up here.

22 Thereafter, he goes to follow up with an orthopedic
23 surgeon, Dr. Ned Blocker, who is with Memorial
24 Orthopedic Specialists. Dr. Blocker initially saw him
25 for some pain that he had in his back. Dr. Blocker

1 first thought that it was degenerative problems, based
2 on the X ray.

3 But in order to confirm his differential diagnosis,
4 he ordered an MRI, which was ultimately done, and he
5 said it ended up being a mild compression fracture of
6 T12.

7 Thereafter, he treated him conservatively. Never
8 put him in a back brace, never --

9 THE COURT: Did he testify that it was a mild
10 compression fracture?

11 MR. GRIFFITH: Those were his words, your Honor.

12 THE COURT: Because I was reviewing today Dr.
13 Boatwright's testimony, and he talked about, you know,
14 repeatedly a significant -- and I think you all went
15 back and forth -- that it was a significant, high-energy
16 event that occurred at this T12 level.

17 MR. MOSS: Right.

18 THE COURT: I just wanted to make sure, because,
19 just in re-reading it, again, I don't have Blocker's
20 testimony in front of me, because he testified,
21 obviously. But Boatwright throughout this has said it
22 was a high-compression fracture event, a high-energy
23 event, is what he kept saying. And nowhere do I find
24 that he used the word *mild*. But be that as it may --

25 MR. GRIFFITH: Dr. Boatwright never used the word

1 *mild*, Judge.

2 THE COURT: Okay. I just want to make sure. Okay.

3 MR. GRIFFITH: Dr. Blocker used the term, *it was a*
4 *mild compression fracture*.

5 THE COURT: Okay.

6 MR. GRIFFITH: And I believe that I am not
7 misstating the record on that, because when he said it
8 in his deposition, I reiterated it on my cross-
9 examination of him.

10 THE COURT: Cross. Okay.

11 MR. GRIFFITH: One of the things that Dr. Blocker
12 also said in his testimony that I don't think is
13 reflected in his deposition, but I don't believe that
14 I'm misstating the record is, that this compression
15 fracture should heal within about three months, and the
16 pain should be gone in about six months.

17 And again, that was not in his deposition
18 testimony, so I can't present that to you, although I've
19 already ordered a copy of the transcript. And I'm not
20 sure how far away we are from it, but I'm certainly not
21 putting any pressure on the court reporter. But that is
22 my strict recall and my notes of his testimony, is that,
23 three months to heal; six months, that it should be
24 without pain.

25 The evidence was, Judge, that on May 25, 2012 --

1 now, this incident took place on November 13, 2012. So,
2 we've got November, December, January, February, March,
3 April, May, which is almost about six months.

4 Dr. Blocker testified that, when he came -- when he
5 saw the plaintiff on May 25, 2012, that the plaintiff,
6 he, Mr. Allgire, had a one-month history of a new
7 complaint, and that was right, lower-extremity
8 parasthesis, from the right buttocks, down to the top of
9 the right foot, and he denies any left, lower-extremity
10 symptoms.

11 I think this is important, because, originally, he
12 had had some problems in the left side, which ultimately
13 moved over to the right side, through the testimony of
14 Dr. Blocker. And he even termed it a new -- new
15 complaint.

16 THE COURT: Right. And I think --

17 MR. GRIFFITH: Almost six months after the
18 incident.

19 THE COURT: And Dr. Boatwright clearly, in his
20 deposition, said that he could not state within a
21 reasonable degree of medical certainty that the numbness
22 and disthesia into the right leg was a result of the T12
23 compression fracture. But Dr. Boatwright went through
24 very detailed, and I thought, obviously, he did a very
25 good job when you took his deposition, of was that, in

1 fact, he did continue to have low back pain and at the
2 T12 level.

3 And I think the one other thing he said, too, was
4 that, you also would cause it to have pain, I believe,
5 also, I think he said was it the lumbar or the higher
6 level. Which one was it?

7 MS. SMITH: Lumbar.

8 MR. MOSS: Lumbar.

9 THE COURT: It was the lumbar level as a result.
10 And so, there was continued complaints.

11 But I would agree that Dr. Boatwright clearly said
12 that the numbness and disthesia into the right side,
13 that he could not state whether or not that was a result
14 of the incident.

15 But he did say he had continued low back pain, and
16 again, at the lumbar level; and that the back pain, he
17 did relate within a reasonable degree of medical
18 certainty was a result of this T12 compression fracture.
19 Again, that was Boatwright, so.

20 MR. GRIFFITH: Yes, ma'am.

21 THE COURT: He was the pain management expert. So,
22 okay.

23 MR. GRIFFITH: And as you read Doctor -- but since
24 you did read Dr. Boatwright's deposition, I tried to
25 email it to your law clerk. I hope --

1 THE COURT: She got it, and I appreciate that.

2 MR. GRIFFITH: She got it.

3 THE COURT: And we're going to go ahead and we'll
4 make that -- I understand that you've requested a
5 transcript, but obviously, this was just read into the
6 record, so it wasn't taken down. So, we'll make it a
7 part of this motion, as well. We'll attach it.

8 MR. GRIFFITH: That'll be fine, Judge.

9 THE COURT: Okay?

10 MR. GRIFFITH: But I also believe that it becomes a
11 part of the record if we make it a part of the record
12 since it's -- the original should be with the Court.

13 THE COURT: I agree.

14 DEPOSITION OF DR. BOATWRIGHT

15 MARKED COURT'S EXHIBIT NUMBER 1.

16 MR. GRIFFITH: In any event, what I wanted to say
17 was about Dr. Boatwright's testimony, and your Honor
18 picked up on the main things I wanted to talk about, was
19 that he first saw him, and at least Dr. Blocker
20 indicated that the referral was because of this new
21 parasthesis, this new complaint that he was seeing about
22 May 25, 2012.

23 He then saw Dr. Blocker on the 12th. And as Dr.
24 Blocker -- excuse me -- Dr. Boatwright on June 19, 2012,
25 and Dr. Blocker, as the Court noted, stated that the T12

1 was treated appropriately by Dr. Blocker; that the T12
2 was not the cause of the radicular pain. He never said
3 it was.

4 I believe, quoting from Page 7:

5 *There was a discussion about the*
6 *right leg pain, and that he had indicted*
7 *that was coming from a different problem*
8 *somewhere. I believe he said a lumbar*
9 *T45 [sic] issue that he was having, maybe a*
10 *bulging disc.*

11 *We talked about the spondylolisthesis.*
12 *He said that, that was a chronic issue that*
13 *was in his back. We talked about the disc*
14 *bulge at L45, which he said he could not*
15 *date.*

16 So, he could not relate that to a reasonable degree
17 of certainty, which would have been the -- on Page 11 of
18 his deposition, and should be a part of the record in
19 this case.

20 And on Page 12, he said he gave him an epidural
21 injection at L45.

22 THE COURT: And S1. He said two levels, actually.

23 MR. GRIFFITH: Yes, ma'am. But in any event, I
24 think it was L45-S1, which is at the base of the spine.

25 THE COURT: Right. Right.

1 MR. GRIFFITH: Whereas, the fracture that we talked
2 about that Dr. Boatwright, the only thing that's been
3 related to this injury, was at the T12. Now, granted
4 the last thoracic vertebra, but it is at least four or
5 five vertebrae above where he was treating.

6 THE COURT: But he clearly -- I mean, I would say
7 this. I'm reading it off of Page 26 in the deposition
8 when he says as to the fracture of the T12, again he
9 also said within a reasonable degree of medical
10 certainty it also doesn't just cause pain there. It can
11 definitely also cause pain in the lumbar area, which is
12 next to the T12, and he said absolutely. It's all part
13 of the same area. So, I don't think there's a question
14 on that.

15 MR. MOSS: No.

16 MR. GRIFFITH: Sure. He said that the T12, that he
17 was -- basically that he thought the compression
18 fracture, I believe he called it midline, that it was
19 the back issue.

20 And I think I asked him at one time, I can't cite
21 the page right now, about differentiating between the
22 L45 issue and the midline issue. And that's back at the
23 first part of the deposition.

24 THE COURT: Yeah, he wouldn't differentiate between
25 the two. He pretty much held tight.

1 MR. GRIFFITH: He did not. Now, but in any event,
2 on Page 12, the question was asked:

3 *The epidural steroid injection was for*
4 *the L45 area.*

5 And he said, yes, it was for. And he treated him
6 conservatively. I think maybe gave him two epidural
7 steroid injections, which we don't think were
8 necessarily related -- or necessary because of this. It
9 was more because of the radicular problem, is the way I
10 took the testimony at Page 12.

11 But then, on Page 17, he started talking about a
12 new complaint at the thoracic area, again, which he
13 said, in no uncertain terms on Page 19, that it was not
14 related to that. And one of the things that I asked
15 both he and Dr. Blocker was, once a compression fracture
16 heals, it heals and it's not going to compress anymore.

17 THE COURT: Can I ask you a question, Mr. Griffith?
18 And I didn't quite understand this, but you might be
19 able to explain it to me. On Page 19 of Dr.
20 Boatwright's deposition, -- and also we need to be clear
21 for the record, that Dr. Boatwright is a specialist in
22 the spine; whereas, Dr. Blocker being an orthopedic.
23 And I believe he's an orthopedic surgeon, not just an
24 orthopedist, correct?

25 MR. MOSS: Right.

1 THE COURT: That he doesn't necessarily specialize
2 in backs, and that Dr. Boatwright would be the one that
3 specialized in actual spines.

4 But he asks, he says:

5 *And in this case, the records I've*
6 *seen say that it's about a 13 percent*
7 *compression fracture, I think anterior.*

8 And he says:

9 *I believe that's the number I read*
10 *in Dr. Blocker's note; that was his estimate.*

11 Did Dr. Blocker testify that he had a 13 -- and was
12 it a 13 percent compression fracture, or is it a 13
13 percent -- what's the word I'm thinking of -- disability
14 to his back? I just don't remember what Dr. Blocker
15 testified to as to that.

16 MR. GRIFFITH: He did not testify to a percentage
17 of disability.

18 THE COURT: Okay. And I just didn't remember it.
19 So, I guess he got that from a note.

20 MR. GRIFFITH: Actually, it's my question.

21 THE COURT: Okay.

22 MR. GRIFFITH: I picked it up from a note of Dr.
23 Blocker.

24 THE COURT: Okay. Okay.

25 MR. GRIFFITH: I mean, it is my question. I asked

1 it because Dr. Blocker had placed some significance on
2 the fact that it was 13; that it was, as you -- I think
3 there is actually -- I'm not sure if we went through it
4 with Dr. Blocker, but there is a rating scale for
5 compression fractures, like a 1, 2, and 3.

6 THE COURT: Okay.

7 MR. GRIFFITH: A 1 being a mild compression
8 fracture; a 2 being where there is wedging of both the
9 anterior and the posterior.

10 THE COURT: Right.

11 MR. GRIFFITH: And 3 where it is a burst fracture,
12 where there will be retropulsion back into the spinal
13 column.

14 THE COURT: I just didn't remember you going
15 through that with Dr. Blocker, either one of you, in his
16 testimony. And I don't know if we did or if we didn't.
17 I just don't have it in my notes, and I didn't -- I
18 can't recall right now.

19 MR. GRIFFITH: I think that was probably in his
20 deposition, or either from my experience with prior
21 compression fractures.

22 THE COURT: Okay.

23 MR. GRIFFITH: Because I've got another compression
24 fracture case right now.

25 THE COURT: Okay.

1 MR. GRIFFITH: But in any event, there was
2 testimony by Dr. -- at least in his deposition. I don't
3 want to reference that this is --

4 THE COURT: Um-hmm.

5 MR. GRIFFITH: -- I don't want to represent this is
6 in the record.

7 THE COURT: Okay.

8 MR. GRIFFITH: But there was a question about
9 retropulsion, which would have been bone fragment going
10 back into the spinal cord or spinal canal. I don't know
11 that that's in the record. We didn't go into that,
12 because, once the term -- at least I didn't, because
13 once the term *mild* came out, --

14 THE COURT: You didn't need to hear anymore.

15 MR. GRIFFITH: -- that's certainly the term that I
16 thought was important.

17 THE COURT: Okay.

18 MR. GRIFFITH: But in any event, now that -- going
19 through the facts and the medical injuries in this case,
20 obviously, we believe that, certainly, Judge, that a new
21 trial absolute would be appropriate in this case,
22 because the verdict, when it came back of \$400,000.00 on
23 a mild compression fracture with somewhere around 25,
24 \$30,000.00 in medicals, testimony that it should have
25 healed within about six -- or it should have been pain-

1 free within about six months.

2 Granted Dr. Boatwright says that he saw some
3 problems, but he never talked about any future problems
4 after the -- he came in with the new complaint. And I
5 think that was some time in 2013, where he continued to
6 treat him for this new problem.

7 The \$400,000.00 verdict just sort of came out of
8 nowhere. I mean, and what I see as being excessive
9 there is, based on all this evidence, was the jury
10 confused about all these different issues that were
11 going on in his back? And that's what the Court needs
12 to look at when they're talking about a new trial
13 absolute, because this is just an issue that was
14 probably clearly confusing.

15 If you recall, Dr. Boatwright sort of stalled about
16 being here, so we allowed his deposition to be read.
17 And that's why we can talk about that's what's in the
18 record today, because we know that's what was in the
19 record.

20 THE COURT: Right.

21 MR. GRIFFITH: And as a result, I think that, with
22 all these issues that went on in his back, maybe the
23 jury became confused and said, I don't exactly
24 understand all this, but it looks like he had it -- had
25 it then, now he's got it on. And therefore, I think

1 that that \$400,000.00 verdict only actual is clearly a
2 result of some type of passion, prejudice, caprice,
3 confusion, on the part of the jury, Judge. And as a
4 result, I think you could grant a new trial absolute in
5 this matter.

6 THE COURT: Can I ask you a question, Mr. Griffith.
7 And we talk about -- in looking at it, they put about
8 \$30,000.00 in medicals on the board from, you know,
9 Beaufort Emergency Medicine. The hospital with all the
10 MRI's was expensive, clearly. There was physical
11 therapy treatment. There was, obviously, both Dr.
12 Blocker and Dr. Boatwright, as far as testimony. There
13 was a little bit of pharmacy.

14 So, in meds, it was \$30,000.00 put on the board.
15 It was this 13 percent compression fracture. My
16 question to you is, when we talk about a verdict being
17 so grossly excessive as to also the damages and what the
18 damages are, I know that Mr. Moss put on the board --
19 and there was a life expectancy issue we talked about,
20 because he said he had continued pain; that Mr. Allgire
21 had a life expectancy of an addition 10,950 days. And I
22 think the number that Mr. Moss put in the board was for
23 \$50.00 a day, is what I recall --

24 MR. MOSS: Yes, ma'am.

25 THE COURT: -- you know, you suggesting as a

1 number. And based on that number and the medicals of
2 \$30,000.00, and there was lost wages of \$3,341.25.

3 And then, I think you also did -- I think you also
4 did the number of the time spent that he was at the
5 physical therapy that, you know, which is, of course,
6 appropriate, that the number I remember you putting on
7 your board was \$547,000.00. Am I correct in that, Mr.
8 Moss?

9 MR. MOSS: That's correct. Yes, ma'am.

10 THE COURT: Okay. I guess the question is, is,
11 even before we go to a punitive damages issue and a
12 look, that, again, is that verdict so grossly excessive,
13 based on the numbers and what occurred as far as the
14 medical damages were concerned.

15 I guess that's what you're saying, Mr. Griffith, is
16 just based on \$30,000.00 in meds; based on the type of
17 injury; and again, the lost wages; and that he's able to
18 go back and eventually golf again; that, that it's so
19 grossly excessive. Is that correct?

20 MR. GRIFFITH: Well, Judge, the only medical
21 testimony was that he should have -- he should have
22 recovered from the pain in about six months. We don't
23 have any problems -- any medical testimony about back
24 . pain from the T12 area. Granted, the plaintiff said,
25 *look, I'm still in pain.* Well, yeah, but he was in pain

1 for a lot of different reasons that weren't caused by
2 this accident.

3 THE COURT: But Dr. Boatwright clearly testified
4 that he would have continued low back and lumbar pain.
5 And he did state within a reasonable degree of medical
6 certainty that it was caused by this compression
7 fracture and related to it. So, I think he covered it,
8 clearly, on that.

9 Remind me, there is a D.J. action in this case,
10 because there is a coverage issue, as well, correct?

11 MR. GRIFFITH: My understanding is, it is. Mr.
12 Sandefur, who is here on behalf of Mr. Blanton, can
13 speak to that, your Honor.

14 THE COURT: Okay. Yes, sir. There is an
15 outstanding declaratory judgment action. Is that
16 correct?

17 MR. SANDEFUR: That's correct. My name is Joseph
18 Sandefur. I represent Mr. Blanton in that D.J. action.

19 THE COURT: Okay. And that is a case by the
20 carrier against whom? Mr. Blanton?

21 MR. SANDEFUR: Mr. Blanton.

22 THE COURT: Okay.

23 MR. SANDEFUR: Yes, your Honor.

24 THE COURT: Just so I'm clear. And it didn't have
25 to do with any punitive damages award, if I'm correct.

1 It had to do with whether or not there, in fact, was
2 coverage, with the idea that there is the potential that
3 there was an -- this was an intentional act. Is that --
4 not that it matters for today's purposes, but let's just
5 make sure we're clear for the record. Is that --

6 MR. SANDEFUR: When the D.J. action was filed, your
7 Honor, it was before this case had gone to trial. So,
8 the punitives weren't an issue at that time. But yes,
9 they are asking the federal court to find that there is
10 no coverage for the incident that took place.

11 THE COURT: Okay. Where is that in federal court
12 right now? What stage are you at?

13 MR. SANDEFUR: We are at the bare -- at the
14 infancy, your Honor. I have answered -- I just amended
15 my answer to the D.J. action to conform to the facts of
16 this case of the trial going forward. My discovery has
17 been served. They have not responded yet. And I
18 believe Mr. Moss has a motion to change venue in the
19 federal court case to Charleston court. But no
20 depositions, no discovery has taken place. It's at the,
21 still, very beginnings.

22 THE COURT: Okay.

23 MR. MOSS: I have filed a summary judgment in that
24 case, based on this and the general verdict that the
25 jury issued.

1 THE COURT: Okay.

2 MR. MOSS: And as I understand it, counsel has also
3 filed a similar motion based on that. And we think
4 that, under the case law, that it's their baby now, and
5 they need to cough it up, so.

6 THE COURT: Okay.

7 MR. MOSS: To put it simply.

8 THE COURT: All right. I appreciate that. My
9 understanding, if I recall, when we were actually
10 looking at this, was, if Mr. Blanton had thought he was
11 in some type of fear, a reasonable amount of fear, that
12 there would possibly be coverage under the policy.
13 Clearly, I haven't read the policy, so I do not know.
14 And I know there was talk about whether or not there was
15 any kind of punitive damages exclusion, although my
16 understanding is there wasn't.

17 MR. SANDEFUR: I have read the policy, your Honor.
18 I don't see any punitive damages exclusion in the
19 policy.

20 THE COURT: Okay. Okay. Well, that was just our
21 little aside for the Court of Appeals or the Supreme
22 Court, whoever gets it.

23 So, with that said, let's go back to talking about
24 whether or not the verdict was so grossly excessive that
25 it had to be, you know, the result of passion or

1 prejudice. Anything more you need to say on that issue,
2 or? I mean, obviously, as to the punitive damage award,
3 we need to go through the *Gamble* factors, and certainly
4 the *Gore* case, but.

5 MR. GRIFFITH: Yes, ma'am.

6 THE COURT: Yes.

7 MR. GRIFFITH: Well, somewhat on that issue, but
8 not on that issue, obviously, is a new trial nisi
9 remittitur that we've asked for in this case, which is a
10 different standard from the new trial absolute, based
11 upon the excessiveness of the verdict.

12 The standard there is basically that the Court
13 places conditions on the verdict where the Court finds
14 that it was merely unduly large. And in this case, that
15 certainly would be something that, based upon the
16 evidence that you've heard or that we've talked about,
17 that the Court could reduce the amount of actual damages
18 in this case, based upon -- and reduce it.

19 Obviously, the Court, I understand, must give
20 deference to the jury's verdict; that the Court has to
21 look at that. But the Court has its sound discretion
22 that it can rely on and actually make what would be a
23 conditional ruling. I'm going to give you a new trial
24 unless you accept this. That's basically what nisi
25 means: *unless*.

1 I will point out to the Court there is a new case
2 that came down very recently on actually additure, which
3 is the same standard, and that's the *Riley versus Ford*
4 *Motor Company* case. I think it may have come out even
5 last week.

6 THE COURT: Where Judge Early tripled the award,
7 was my understanding. I think it came back as a
8 \$300,000.00 award, and he ended up giving him
9 \$900,000.00 on an additure. This was our sheriff from
10 Jasper County, which is certainly one of my counties,
11 was killed in an automobile accident. And I believe it
12 was tried to Jack Early, and he added, am I correct on
13 that? I think that was the right number.

14 MR. GRIFFITH: Yes, ma'am.

15 MR. MOSS: Yeah.

16 MR. GRIFFITH: That's exactly right.

17 THE COURT: Yes.

18 MR. GRIFFITH: It was a \$300,000.00 verdict that he
19 granted in additure the \$900,000.00.

20 THE COURT: Um-hmm.

21 MR. GRIFFITH: I would point out for the Court
22 several things about that case, though, Judge. In that
23 case, the Court found there were no compelling reasons
24 given for the additure, and that was basically why they
25 overturned it.

1 All the law in the past has dealt with this is
2 within the sound discretion of the trial court, and they
3 did not find abusive discretion.

4 THE COURT: Um-hmm.

5 MR. GRIFFITH: I've actually talked to some counsel
6 in this case and understand that they have their 15 days
7 to file their notice for re-hearing, and certainly
8 intend to pursue that. So, I would point out that I
9 don't think this is necessarily a final case. So, I
10 sort of fall back --

11 THE COURT: Okay.

12 MR. GRIFFITH: -- to a case that was written and
13 well-reasoned by Judge Anderson, where he set forth all
14 of these standards, with regards to new trials, new
15 trial nisi additures, and a new trial on the basis of
16 the thirteenth verdict. And that's the case of *Howard*
17 *versus Longhorn* -- or *Robinson and Longhorn* -- excuse
18 me, *Roberson*, *R-o-b-e-r-s-o-n*, which is at 654 Southeast
19 2nd, 877. Happy to pass that up, although it does have
20 some notes on it so that I can remember what my
21 standards are on all of these.

22 THE COURT: That's fine.

23 MR. GRIFFITH: And then, as the Court pointed out
24 there, it is just the standard is it merely excessive.
25 And in this case, I think the Court can find that it is

1 merely excessive; that it's something that's just -- the
2 Court can give a new trial unless the plaintiff accepts
3 a lower amount. And Judge Ness used to say that we had
4 to put parameters on it, but I've never found that in a
5 case. So, that's within the Court's sound discretion.

6 I also ask for a new trial on the *Thirteenth Juror*
7 *Doctrine*. The *Thirteenth Juror Doctrine* basically says
8 that the Court sits as the thirteenth juror, and does
9 not have to state a reason. Again, does not have to
10 state a reason.

11 Basically, sitting as the thirteenth juror, you can
12 hang the jury and say, let's go back and do it again.
13 No reason is necessary there, and the Court could deal
14 with the issues of allowing this case to go back to the
15 jury for a total new trial.

16 Judge, I also filed a motion. One of our grounds
17 for the motions for a new trial was on the issue of the
18 punitive damages. And certainly, on the issue of
19 punitive damages, -- and I will say that, during the
20 trial of this case, the Court actually pointed out and
21 said, if the plaintiff asks for it, I want you to have a
22 financial statement of net worth prepared. That was
23 never asked.

24 Today, though, we have filed with our motion that
25 financial statement of net worth that Mr. Sandefur

1 helped prepare. I actually got it late last night and
2 attached it to my brief last night, actually, when I was
3 preparing for this.

4 We've got to look at the *Gamble* factors and the
5 eight factors in the *Gamble*. This is a post-trial
6 review by the Court where you need to look at the degree
7 of culpability, the duration, the awareness or
8 concealment in this matter, past conduct, will it deter
9 like conduct, and is it reasonably related to the harm
10 and the defendant's ability to pay?

11 In this matter, that's why I put in the facts,
12 Judge, to talk about the degree of culpability. Mr.
13 Allgire was not into everything that was leading up to
14 it. He basically testified that nobody really said that
15 he was in any of the mouthing; that what happened was
16 one of his friends said, *were you going to let me get*
17 *beat up down there. No, I'm not. They left. We'll be*
18 *back. They came back. Mr. Allgire goes down.*

19 So, his degree of culpability in this is that
20 nothing bubbled up. It was just all of the sudden it
21 was maybe an impact or -- not an impact, but an
22 impulsive reaction. So, his degree of culpability
23 wasn't in the mouthing, which led up to all of this.

24 THE COURT: Let me ask you, though. My
25 understanding is, in taking the testimony in the light

1 most favorable to the plaintiff, again, the jury had to
2 weigh that, was that your client, Mr. Blanton, was up
3 above at the club and came down. So, he came to the
4 problem, whatever it was, if there was words.

5 And again, I don't even know, you know. It could
6 very possibly be that Mr. Blanton thought he was, again,
7 defending one of his other gentleman, but I mean, in his
8 group, in his golf group.

9 But again, the testimony I recall, again, taking it
10 in the light most favorable to the plaintiffs, and
11 again, Mr. Blanton absolutely said he did not run down
12 those stairs. He was very strict and adamant about
13 that, and very serious about that he came down to the
14 stairs, this met up, and you know.

15 This was a one-punch fight, as we all know.
16 According to Mr. Allgire, he didn't see it coming, and
17 it landed, and it -- there was no fight, because it was
18 over.

19 MR. MOSS: Um-hmm.

20 MR. GRIFFITH: Which goes to the duration, which is
21 the second issue.

22 THE COURT: Right.

23 MR. GRIFFITH: And I just point that out.

24 THE COURT: Yes.

25 MR. GRIFFITH: That's what I was going to say. It

1 was a --

2 THE COURT: And I appreciate that, definitely. And
3 again, like we said, even taking the facts in the light
4 most favorable to the plaintiff, that Mr. Blanton went
5 to the problem.

6 MR. GRIFFITH: Again, --

7 THE COURT: The duration of the conduct, I agree.
8 And there was this back and forth. And I think at the
9 end of the trial, I think we all kind of figured out --
10 and I don't want to say figured out, but I think we
11 heard enough testimony where we could probably deduce
12 who was the person with the mouth. At least, again,
13 that's for the jury to weight. But in my facts, and I
14 don't think it was Mr. Blanton. I can say that for
15 sure. So, anyway, go ahead.

16 MR. GRIFFITH: Then, we go to the third factor,
17 which is the awareness of the concealment of it.

18 THE COURT: Right.

19 MR. GRIFFITH: Testimony, while the plaintiff may
20 argue, well, he got in his car and left, the only
21 testimony there -- and their testimony was that somebody
22 had to chase them down. I believe it was Mr. Trogden.

23 However, the officer said, *as I came up toward them,*
24 *they pulled over and stopped.* The officer said, *I don't*
25 *remember Mr. Trogden being there. I asked them to come*

1 with me, and they followed me back to the clubhouse.

2 Once they got there, there was certainly no trying
3 to conceal that he did it, because this incident -- that
4 he was involved in the incident, because there was
5 conversation about, well, if I hit the wrong person, I'm
6 sorry. So, I don't think that there is any real, true
7 concealment. He's certainly aware of the problem at
8 this time.

9 And then, we've got to go to the next issue, which
10 is past conduct. And in the past conduct, there was
11 some testimony, I believe, Mr. Blanton is about 45 years
12 old.

13 MR. MOSS: Yes, sir.

14 MR. GRIFFITH: And there was some testimony that,
15 in his early twenties, he had been in a scrape up in
16 Columbia, I believe. I would say when he was in
17 college, but when he was college-age, but Mr. Blanton
18 didn't go to college, is from what I -- his testimony --
19 or, I think his testimony, at least he's told me.

20 So, it was somewhere 20, 25 years ago that there
21 was one other issue. It's not like -- and certainly, in
22 a criminal case, there's some issues about, you know,
23 the ten-year rule. Nothing within the past ten years,
24 nothing within the past 20 years. So, I think, you
25 know, when we talk about past conduct, you know,

1 everybody may have a little blemish on their record
2 somewhere. But this is not like it's something that is
3 repetitive or habitual.

4 Deter the conduct or to deter like conduct, which
5 is the fifth issue, and certainly a punitive award does
6 deter like conduct. So, the Court needs to determine
7 whether a punitive award is necessary on that. But is
8 it reasonably related to the harm? That's something
9 that, basically, I would think, is more within the sound
10 discretion of the judge. And in this case, was a
11 punitive award necessary? I don't necessarily think so,
12 but the jury, obviously -- the Court charged them on
13 that fact. They came back with that.

14 The ability to pay is an issue that is obviously
15 one of the eight factors that need to be considered.
16 And in this case, there was no testimony about his
17 ability to pay for the damages.

18 THE COURT: My understanding is there was testimony
19 that what he did for a living was owned a used car
20 dealership. I'm correct?

21 MR. GRIFFITH: Yes, ma'am.

22 THE COURT: And that's what --

23 MR. MOSS: Four of them.

24 THE COURT: -- that's what the -- pardon?

25 MR. MOSS: Owned four of them.

1 THE COURT: Owns, well, four, apparently, lots.

2 MR. MOSS: Yeah, locations, yeah.

3 THE COURT: Of which he has partners, my
4 understanding was, in some, although I could be
5 incorrect on that. But again, that he had used car
6 lots, and that that's what he did for a living.

7 MR. GRIFFITH: That's correct.

8 THE COURT: And that's how he earned his money.
9 Okay. So, I do think there was some testimony as to
10 some financials, but okay. Not that it's necessarily
11 required for the *Gamble* factors. We all know it's not a
12 complete bar, so.

13 MR. GRIFFITH: Certainly, your Honor.

14 THE COURT: Let's keep going.

15 MR. GRIFFITH: And when I talk about ability to
16 pay, he owns a used car lot, and he has, I believe,
17 three locations.

18 THE COURT: Um-hmm.

19 MR. MOSS: Four.

20 MR. GRIFFITH: Four locations.

21 THE COURT: Four locations.

22 MR. GRIFFITH: There was no testimony about the
23 volume of sales or anything like that, you know, what
24 his -- although that documentation was produced to Mr.
25 Moss in discovery about, I believe, tax returns, et

1 cetera.

2 But in any event, if a punitive -- a punitive
3 verdict in this case of \$100,000.00 would basically work
4 financial ruin on him, which is one of the things, based
5 upon the financial statement, we think is clear.

6 As a result, Judge, we would ask that the Court
7 review that punitive award, and if the Court sees fit,
8 to throw it out altogether, however, at least to modify
9 that in accordance with the *Gamble* factors and the
10 evidence that was presented in court.

11 Finally, your Honor, I also move for a new trial on
12 the issue of self-defense. In this case, obviously, it
13 was what Mr. -- Mr. Blanton felt threatened by that.
14 That was his testimony. He came down as they were
15 approaching each other. Then, the incident took place.
16 As a result of the incident, the defendant was injured.

17 And certainly, I think that there was at least, in
18 this case, taking it in the light most favorable to the
19 plaintiff, that the defendant -- there was no evidence
20 that there was any way for Mr. Blanton to escape.
21 Therefore, the incident took place.

22 That being said, your Honor, I think I've made my
23 argument on this. I'm willing to answer any questions
24 that the Court may have. I think we've entered into a
25 very clear discussion about most issues as we went

1 along, but if you have anything remaining, I'll be happy
2 to address them.

3 THE COURT: I think I fully interrupted you, and I
4 apologize for that, Mr. Griffith.

5 MR. GRIFFITH: No, ma'am.

6 THE COURT: But there were just some certain
7 questions that I had, but I appreciate it.

8 MR. GRIFFITH: I much prefer to take them as they
9 come up in your mind, Judge. Thank you.

10 THE COURT: Thank you, sir. All right.

11 MR. MOSS: Please the Court, your Honor.

12 THE COURT: Yes, sir.

13 MR. MOSS: He did not argue the collateral source
14 issue. I'm sorry. I assumed he's given that. He also
15 didn't argue the directed verdict, which your Honor, of
16 course, didn't grant to either side, even though you had
17 indicated.

18 THE COURT: He just did argue the directed verdict
19 as to the self-defense.

20 MR. MOSS: Yeah. Okay.

21 THE COURT: He did argue that, so that's to the
22 point.

23 MR. MOSS: But in any event, I will now address the
24 *Collateral Source Rule* taken under Judge Anderson's
25 charge book, and I think you charged it, and it was the

1 proper charge in the case.

2 So, in any event, in regards to the damages, your
3 Honor, I want to talk a little bit about the facts of
4 the case, because they've been somewhat misstated.

5 Okay?

6 Basically, what happened is, Mr. Blanton was not
7 even in the foursome that was called down and asked to
8 speed up by Dennis Robinson. Mr. Allgire didn't --
9 never said anything to anybody either way.

10 They were the foursome, and Joey Blythe was the
11 individual in the last foursome. Okay? And Mr. -- not
12 Mr. Blanton. Mr. Blanton was already finished and up in
13 the clubhouse. And then, Mr. Blanton, as you recall,
14 drank about a pint of Crown Royal while they were
15 playing. Then, he says, *well, I think all four was*
16 *drinking*, but --

17 THE COURT: They split it, but yeah, that was his
18 testimony, between the four of them.

19 MR. MOSS: But he drank -- and anyway, they were
20 out there drinking. And I, you know, I know everybody
21 drinks beer on the golf course occasionally, but I don't
22 know anybody that really drinks liquor on a golf course.
23 But in any event, I guess they do in Myrtle Beach. But
24 anyway, they admitted that. Okay?

25 When they got back to the clubhouse, Joey Blythe,

1 and I refer to him as Squeaky, probably -- I don't think
2 I did at trial -- but Mr. Blythe went down and had words
3 with Dennis Robinson. And I think Dennis Robinson
4 basically told him, well, you know, go to H, I'm
5 leaving. And he left. Got in his car and left.

6 Now, meanwhile, Mr. Blanton was apparently upset
7 because Joëy didn't like what, apparently, Mr. Robinson
8 said. So, if you recall, Mr. Blanton went to the front
9 of the building to see when these guys were coming back.
10 That is, Paul Cole. Paul Cole was the guy that talked
11 to him and said, *oh, I'll be back*, you know. They were
12 cussing him or whatever, and he hadn't done a thing.
13 Rod Allgire never said a thing to anybody.

14 But Mr. Blanton, using the upstairs, goes up to
15 survey what's going on in the parking lot, and he sees
16 them putting their clubs up, and he sees Allgire walking
17 back. Well, Allgire hadn't been involved in anything.

18 He then runs back down; apparently, talks to Joëy;
19 goes down the steps; and as Mr. Allgire -- there's a
20 board out there where they put scores on, and Mr.
21 Allgire's walking by the board, and as soon as he comes
22 by the board, bam. He gets floored, and everything goes
23 black, and he's knocked down on the pavement, which is
24 uneven pavement, at that.

25 And there happened to be a car -- the car man

1 testified, who didn't have a dog in the fight, as you
2 know. He was sitting right there, and he said, *yeah, he*
3 *just hit him; I don't know why he hit him; wasn't any*
4 *words, wasn't anything; bam,* and he was down on the
5 ground. Okay?

6 Now, the other thing is, is he testified in his
7 deposition in August of '12 that we took his deposition,
8 he testified that Mr. Allgire never said a word to him,
9 never opened his mouth prior to being hit, and was not
10 charging him or doing anything. Okay? In the trial, he
11 tried to change his testimony, I think, to self-defense,
12 which I certainly brought it up to the jury.

13 But any event, and then, of course, he was stopped
14 by the police and brought back to the scene, where he
15 admitted he hit the wrong guy, I guess. And then, he
16 tried to apologize, and Mr. Allgire said, *I'm not having*
17 *an apology; you all go take him on to jail.*

18 He plead nolo contendere on the charge down here in
19 Beaufort, which keeps you from using it in a civil
20 trial, as you know, by pleading nolo contendere. He
21 first asked for a jury trial, which we welcomed, but he
22 didn't come down for that. He plead nolo contendere.

23 THE COURT: To what charge? Assault and battery?

24 MR. MOSS: He plead nolo contendere to assault and
25 battery. Yes, ma'am.

1 THE COURT: Okay. Simple assault and battery.

2 MR. MOSS: Simple assault and battery. Well,
3 assault and battery in the third degree. Okay?

4 THE COURT: In the third degree. Okay.

5 MR. MOSS: Yeah. But in any event, he plead guilty
6 to it -- or plead nolo contendere to it. Excuse me.

7 So, in any event -- and he did have a prior charge.
8 Okay? Well, the other thing is, is, if you recall the
9 testimony, Mr. Cooper testified, Mr. Cooper used to own
10 -- his daddy used to own the Beaufort Gazette here, and
11 that's how I think the case got in the paper.

12 But in any event, Mr. Cooper testified that Mr.
13 Blanton and Squeaky ran out into the parking lot. Joey
14 Blythe ran out into the parking lot, and he's not sure
15 which one said it, but he said one of them said *man*,
16 *come on; anybody else want some more of this?* That was
17 after Mr. Allgire had been knocked down, you know?

18 So, I mean, I think the punitive damage verdict of
19 \$100,000.00 is diminimous, considering what they did,
20 quite frankly, you know. And I've been involved in a
21 lot of things through my number of years, but I've never
22 seen a fight break out on the golf course in my years of
23 playing golf, 40-some years.

24 THE COURT: You mean a fist fight.

25 MR. MOSS: A fist fight, yeah. An actual fist

1 fight or any kind -- well, I mean, people argue about
2 the scores, and I shot better than you shot, or
3 whatever.

4 Now, but an important thing about Mr. Allgire is he
5 did have a back brace. Mitch must have forgot that
6 testimony. But he wore a back brace for a substantial
7 period of time that was given to him by Dr. Blocker.
8 But Dr. Blocker transferred the care over to Dr.
9 Boatwright. And Dr. Boatwright was still treating him
10 at the time of the trial here. Still giving him medical
11 care.

12 We don't know what those bills are going to be in
13 the future. We didn't have an expert testify to that.
14 But the important thing is, Mr. Allgire was of a six or
15 seven handicap, which is pretty good golfer. I've never
16 gotten that low. I think I'm about a ten or something,
17 but -- nine or ten.

18 But he is -- was an excellent golfer, and his
19 handicap now is about 14 or 15. He can't turn. You'll
20 recall the witnesses came here that played with him and
21 said he's had to stop in the middle of a round and say,
22 well, look, guys, I just can't -- I can't do it anymore.

23 And so, in any event, he has got a 13 percent
24 decrease in his vertebra. And you're absolutely right,
25 your Honor, because Dr. Boatwright testified that,

1 absolutely, when you put that much force on that
2 vertebra, it's going to affect the ones below it, and it
3 has.

4 Now, another thing was not mentioned was the fact
5 that he also had two broken ribs.

6 THE COURT: No one related that, though, because it
7 was discovered after a time at Doctor's Care. And I
8 believe your testimony was, is that, Dr. Blocker felt
9 bad that he didn't catch that at first.

10 MR. MOSS: I think he did because he went to
11 Doctor's Care and found out that he had two --

12 THE COURT: Right. But no one related that,
13 necessarily, and --

14 MR. MOSS: Well, I think that --

15 THE COURT: -- no one related it.

16 MR. MOSS: Mr. Allgire did, I think. But in any
17 event --

18 THE COURT: Right. You're right.

19 MR. MOSS: Yeah. But, and so, you know, nobody
20 mentioned. But the two broken ribs are on the right
21 side, on this side, where this mysterious pain that
22 Mitch talks about.

23 But I think you've got a really -- as you said, Dr.
24 Boatwright is the expert on the spine, and he's the one
25 that gave the testimony, and I don't think there's any

1 question about it.

2 And the jury saw Mr. Allgire testify. He was very
3 credible witness, and you know, he didn't go out getting
4 in fights all the time. He's really a quiet, peaceful
5 guy. And this 240-pound guy just sucker-punched him and
6 knocked him down.

7 And so, I think the verdict clearly -- compensatory
8 damages were fair. They didn't give me what I asked
9 for, but I'm of a -- we talked of the case before we
10 ever, you know, you came up and charged the jury. And I
11 said I think it's worth, you know, 400, a half a million
12 dollars, whatever. And of course, we attempted to
13 mediate it, and nothing happened in that before we ever
14 tried it.

15 But on the issue that Mitch is showing today about
16 the financial declaration, that was never presented to
17 us during the trial. He could have argued that to the
18 jury. He could have tried to show that -- but he didn't
19 do any of that. Okay? And to bring that in today,
20 really has nothing to do with the case. It's not even
21 relevant for him to bring it up now.

22 THE COURT: Well, it is one of the *Gamble* factors
23 to consider, so I do think it's relevant, but. Anyway.

24 MR. MOSS: I understand that. Yes, ma'am.

25 But in any event, that's basically, your Honor, --

1 and I think you charged self-defense. You charged
2 everything with the exception -- I know that I did not
3 find in here that Mitch didn't mention comparative
4 negligence, because he never submitted a charge for it.
5 So, that was not mentioned. So, but in any event,
6 perhaps he should have. If he had wanted to, he could
7 have.

8 And I would leave the Court with the statement by
9 -- that mere words, no matter how abusive, insulting,
10 vexatious, or threatening, do not justify an assault and
11 battery, and they don't. And it didn't in this case.
12 Thank you, your Honor.

13 THE COURT: Okay. Mr. Griffith, do you want to
14 respond briefly?

15 MR. GRIFFITH: Judge, just briefly on reply. There
16 was the comment about on the punitive aspect about the
17 concealment. He asked for a jury trial. He then
18 changed his plea to nolo.

19 All I'm going to say is, with regards to that
20 issue, if that's a concealment, there are many reasons
21 that you enter certain pleas, whether it be guilty to a
22 lesser charge, whether it be nolo, whether you don't
23 appear for it. Certainly had he appeared for it, it
24 might have affected Mr. Moss's case in a way that he had
25 not wanted.

1 Mr. Blanton's personal counsel here would address
2 that issue to the Court on how it may have affected it,
3 because I don't think that's in my role to address it.

4 As far as the financial declaration, *Gamble* is a
5 post-trial review. And therefore, we put that in for
6 post-trial issues. Judge, I think I've pretty much
7 stated my position previously. Thank you.

8 THE COURT: Yes, sir.

9 MR. SANDEFUR: Just briefly, your Honor. Mr.
10 Griffith is exactly right. Mr. Blanton has contended
11 through the entire incident that he felt that he was
12 acting in self-defense, and there was a threat of
13 immediate harm, and he was responding to that, which is
14 one of the reasons why, when the plea was offered, he
15 could plead nolo contendere. I'm sure it's one of the
16 reasons why he took that plea. He did not admit to
17 anything. He did not admit to assault and battery.

18 Another thing, as far as Mr. Blanton's financial
19 condition, it's been said that he owns three or four
20 used car dealerships. I want to make it clear for the
21 record that Mr. --

22 THE COURT: I've read his financial declaration.
23 Clearly, everything he owns is mortgaged to the hilt.
24 And as far as his assets are concerned, I think we can
25 all look and see, based on his financial declaration,

1 that he probably owes more than he has, so.

2 MR. SANDEFUR: And he owns an interest in a used
3 car company. His used -- the used car dealership does
4 not own any property, either. That company rents
5 space, --

6 THE COURT: Right.

7 MR. SANDEFUR: -- buys used cars as a thin margin,
8 and then tries to sell those cars on its lot. So, he's
9 -- we're not -- we didn't fly up here on a jet from
10 Myrtle Beach, your Honor. We drove, just like everybody
11 else.

12 THE COURT: Anything else?

13 MR. MOSS: Nothing your Honor.

14 MR. GRIFFITH: Thank you, Judge.

15 THE COURT: I will tell you now, I'm going to go
16 ahead and rule, if you all don't mind.

17 MR. GRIFFITH: Okay.

18 THE COURT: Because I think I certainly well-heard
19 this, and obviously, I was the trial judge in the case.
20 It was a well-trying case by both sides.

21 As far as your motion for a new trial absolute,
22 whether or not the verdict was so grossly excessive,
23 significant for me in my review is that there was a
24 compression fracture at the T12 level.

25 And the question was directly asked of Dr.

7
1 Boatwright, the spine specialist, of what does a
2 compression fracture mean? And it says, well, we all
3 know because we do this work, is that it is a crushed
4 vertebra, and think that's significant.

5 Also, Dr. Boatwright went through and stated that
6 this was a high-energy event, which, obviously, causes
7 significant damage. You know, we all know how doctors
8 are, and they're want to defer to each other, and as far
9 as relating things. But I think, clearly, both these
10 doctors, with all due respect, Mr. Griffith, were very
11 clear as to his injuries.

12 I think, oftentimes, we do see these cases, and
13 particularly in back cases where there's issues, we talk
14 about degenerative changes; we talk about other issues.
15 I think both of these doctors were excellent in their
16 testimony as to what they could and could not relate,
17 and I think they were both very fair in what they could
18 relate.

19 I think the verdict of \$400,000.00, based on
20 \$30,000.00 in meds and continued treatment, his life
21 expectancy at the time he missed, I think that, as far
22 as an actual damage award, was not grossly excessive.

23 Moving on to new trial nisi remittitur and,
24 obviously, the standard of whether it's just merely
25 unduly large. Again, when we think and look and talk

1 about a crushed vertebra, which is a broken back, I
2 don't think it's just unduly large.

3 If this had been a soft tissue injury case, Mr.
4 Griffith, I would agree with you, no question. But
5 again, we're talking about a compression fracture that
6 was absolutely clear on the MRI, I guess, the second
7 time it was looked at. So, there was no issue as to
8 that. So, I don't think that it was just merely unduly
9 large.

10 Obviously, as far as the *Thirteenth Juror Doctrine*,
11 I don't have to give any reasons necessary. I think it
12 was John Few's case out of Allendale where they said
13 that he went and actually gave reasons, and then they
14 found that that was not adequate. So, again, as far as
15 the *Thirteenth Juror Doctrine* is concerned, I am going
16 to deny that motion, as well.

17 As to the punitive damages award, I will go ahead
18 and say, again, for the record, I'm always concerned for
19 a defendant who has a punitive damages award against
20 them, certainly, to have to potentially personally
21 answer for it. Not that it should be for my
22 consideration, but it does concern me. And again, one
23 of the issues in this case was whether or not there was
24 some type of self-defense issue portion of this.

25 As far as punitive damages, in just going through

1 the *Gamble* factors, the defendant's degree of
2 culpability, taking the facts as the jury could, in the
3 light most favorable to the plaintiff, Mr. Blanton went
4 to the problem.

5 Mr. Allgire did not have any of the words, and
6 again, this is taking the facts in light most favorable
7 to what the plaintiff says, if the jury believed that
8 Mr. Allgire went -- or, excuse me -- Mr. Blanton went to
9 the problem; he landed one punch described by the
10 plaintiff as a sucker punch on the side; didn't see it
11 coming, which, with the facts of the case and how he
12 went down, it's probably most likely. But again, that
13 was for the jury to determine, and that's what they
14 determined.

15 As far as the duration of the conduct is concerned,
16 I understand it was only one punch, but again, we do
17 have the fact that Mr. Blanton went to the problem. So,
18 he made the choice to go down there. And there was some
19 argument that someone said, you know, *does anyone want*
20 *anymore of this?* There wasn't anymore, I understand.
21 Whether or not it was Mr. Blanton or his friend, again,
22 I think it supports it under the *Gamble* factors.

23 The defendant's awareness or concealment, I mean,
24 he went and hit him. I mean, I don't think he can be
25 more aware than that, than you actually hit someone.

1 The existence of similar past conduct. I think one
2 of the hard parts for me in this case is, is when you
3 think about this case and you tell someone the facts
4 of this case, this is something you'd expect from like
5 25-, 26-year-olds.

6 THE COURT: It isn't something you'd expect from
7 45- and 50-year-old men.

8 MR. MOSS: Yes.

9 THE COURT: I think that's what makes this
10 different. And kind of like Mr. Moss said, while I'm no
11 golf aficionado, we always think of golf as -- I don't
12 want to be sexist, it's not a gentleman's sport, but it
13 is a -- I don't know. What would you call it, Caroline?

14 MR. MOSS: Non-contact.

15 THE COURT: Pardon? A non-contact sport. Fair
16 enough, a non-contact sport, you expect. And quite
17 frankly, there is so much decorum and rules --

18 MR. MOSS: Right.

19 THE COURT: -- and pomp and circumstance that is
20 surrounded in golf that it's just surprising that
21 something like this would happen on a golf course, or
22 immediately afterwards.

23 On top of all that, which certainly could have
24 affected the jury, was the testimony about drinking of,
25 you know, liquor, or whether or not you drink liquor if

1 you're on a golf course. I have no idea. But again,
2 simple fact that alcohol was involved, which certainly
3 can affect people's conduct.

4 And we talked about the existence of similar past
5 conduct, and again, there was some testimony that there
6 was some issue when he was much younger, which I think
7 supports this, not maybe to a huge effect, but somewhat.

8 The likelihood that the award will deter the
9 defendant or others from like conduct, I am sure that
10 anyone who read this in the newspaper will think twice
11 before hitting anyone on the golf course or anything
12 along those lines.

13 The defendant's ability to pay, again, there was
14 some testimony as to what he does for a living. I do
15 see in the financial declaration he earns \$124,000.00 a
16 year in salary, and then any other factors that deemed
17 appropriate.

18 It's interesting, I think we had a discussion back
19 in chambers, Mr. Griffith, about this is the kind of
20 case that possibly could incite a jury. It's just one
21 of those cases. I think I relate it to the turkey case
22 here.

23 And also, I'm thinking, also, of the McElveen case.
24 It's those types of cases that a jury possibly, you
25 know, whether or not that goes to it should be or not, I

1 think it's -- it's potentially one of those cases, and
2 we don't see them very often.

3 Additionally, just looking as far as the Gore, you
4 know, review on the punitive damages. Obviously, we
5 also look at the degree of reprehensibility of the
6 defendant's misconduct. We can't go around punching,
7 you know, people. We know that.

8 The disparity between the actual and potential harm
9 suffered by the plaintiff and the punitive damages
10 award, I mean, quite frankly, taking it in the light
11 most favorable to the plaintiff, sucker punching
12 someone, him going down, and having a fractured vertebra
13 is significant. It is.

14 And the difference between the punitive damages
15 awarded by the jury and the civil penalties that are
16 authorized or imposed in comparable cases, again, I
17 don't think \$100,000.00 shocks the conscience in any
18 way. I think it was just a reminder from the jury that
19 that's not appropriate.

20 Lastly, as to a directed verdict on the self-
21 defense, again, I couldn't grant any motion for a
22 directed verdict on behalf of the plaintiff, because
23 there was testimony by Mr. Blanton that he did fear that
24 something would occur to him.

25 And again, I certainly -- there was more than

1 adequate testimony to deny the defense directed motion
2 on self-defense. Certainly, according to Mr. Allgire,
3 it was strictly, you know, he came up and I got punched,
4 and I went down. There was really no fight involved, so
5 I charged self-defense, because again, of Mr. Blanton's
6 testimony. And I still think it was absolutely
7 appropriate on both sides, for both sides.

8 It was up to the jury to decide what they believed
9 as far as the facts of this case, and there was a lot
10 of, I want to say he said/he said. There was adequate
11 testimony on both sides, and there were a number of
12 eyewitnesses or people that were playing in the golf
13 group with Mr. Allgire. And same thing as far as Mr.
14 Blanton is concerned. A number of his friends came down
15 from Myrtle Beach and testified as to what occurred.

16 So, respectfully, Mr. Griffith, I'm denying all
17 your post-trial motions. I do think the verdict was
18 fair and just, but I appreciate you making the motion.

19 MR. MOSS: Thank you, your Honor.

20 THE COURT: Thank you, you all.

 END PROCEEDING 11:03 P.M.

CERTIFICATE OF REPORTER

FEBRUARY 18, 2014 TRANSCRIPT OF HEARING

STATE OF SOUTH CAROLINA

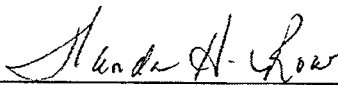
COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing February 18, 2014 Transcript of Hearing is a true, accurate, and complete record of the proceedings had on said date and exhibits admitted in the case of Rodney Allgire versus Marshall C. Blanton, Beaufort County, South Carolina, Court of Common Pleas, Case Number 2011-CP-07-04796.

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

The original of this transcript, nor any copy of same, is not certified, nor authorized for use by me, to be true, accurate, and complete without my original signature and stamp affixed hereto.

Witness my signature April 25, 2014.


Wanda H. Rowe, CVR-M
Official Court Reporter

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NOTICE OF APPEAL IN A CIVIL CASE
THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Carmen T. Mullen, Circuit Court Judge

Case No. 2011-CP-07-04796

Rodney Allgire,

Respondent,

v.

Marshall C. Blanton,

Appellant.

NOTICE OF APPEAL

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MAR 06 2014

SC Court of Appeals

Marshall C. Blanton appeals the January 8, 2014, judgment of the Court of Common Pleas, including post-trial Orders dated February 18, 2014. Appellant received notice of the entry of the final Order on Appellant's Motion for a New Trial on February 18, 2014, at oral argument on Appellant's post-trial motions.



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SC Court of Appeals

NOTICE OF APPEAL IN A CIVIL CASE
THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Carmen T. Mullen, Circuit Court Judge

Case No. 2011-CP-07-04796

Rouney Allgire,

Respondent,

v.

Marshall C. Blanton,

Appellant.

PROOF OF SERVICE

I certify that on March 4, 2014, I served the Notice of Appeal on the Respondent by depositing it in the United States Mail with postage prepaid and addressed as follows:

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NOTICE OF APPEAL IN A CIVIL CASE
THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Carmen T. Mullen, Circuit Court Judge

Case No. 2011-CP-07-04796

Rodney Allgire,

Respondent,

v.

Marshall C. Blanton,

Appellant.

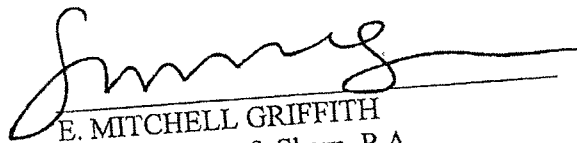
NOTICE OF APPEAL

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MAR 06 2014

SC Court of Appeals

Marshall C Blanton appeals the January 8, 2014, judgment of the Court of Common Pleas, including post-trial Orders dated February 18, 2014. Appellant received notice of the entry of the final Order on Appellant's Motion for a New Trial on February 18, 2014, at oral argument on Appellant's post-trial motions.



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NOTICE OF APPEAL IN A CIVIL CASE
THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Carmen T. Mullen, Circuit Court Judge

Case No. 2011-CP-07-04796

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v.

Marshall C. Blanton,

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In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Carmen T. Mullen, Circuit Court Judge

Civil Action No. 2011-CP-07-04796
Appellate Case No. 2014-000550

Rodney Allgire Respondent

v.

Marshall C. Blanton Appellant

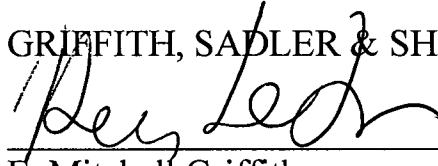
CERTIFICATE OF COUNSEL

I certify that the Record on Appeal complies with the South Carolina Supreme Court's Order dated August 13, 2007, regarding personal data identifiers and other sensitive information in appellate court filings.

[SIGNATURE PAGE FOLLOWS]

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Carmen T. Mullen, Circuit Court Judge

Civil Action No. 2011-CP-07-04796
Appellate Case No. 2014-000550

Rodney Allgire Respondent

v.

Marshall C. Blanton Appellant

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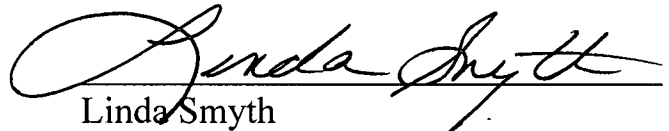
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I certify that I am a legal assistant at Griffith, Sadler & Sharp, P.A., and on November 21, 2014, I placed a copy of the *Record on Appeal* in the US Mail, with first-class postage prepaid, and addressed as follows:

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