

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
William P. Keesley, Circuit Court Judge

Case No. 2012-CP-32-0342

RECEIVED
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SC Court of Appeals

Kay F. Paschal, ... Respondent/Appellant,

v.

Leon Lott, the Duly Elected Sheriff of
Richland County, South Carolina, ... Appellant/Respondent.

RECORD ON APPEAL - VOLUME II

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INDEX

Volume I

Order Regarding Defendant's Post-Trial Motions issued by the Honorable William P. Keesley, filed December 11, 2014	1
Order Denying Motion to Alter or Amend issued by the Honorable William P. Keesley, filed April 30, 2015	12
Verdict Form, filed July 28, 2014	14
Complaint, filed January 24, 2012	16
Answer and Counterclaim, filed May 4, 2012	26
Notice of Motion and Motion to Reduce Verdict, or, in the Alternative, for a New Trial (New Trial Nisi Remittitur), filed August 4, 2014.....	41
Notice of Motion and Motion for a New Trial Pursuant to the Thirteenth Juror Doctrine, filed August 4, 2014.....	45
Notice of Motion and Motion for JNOV, or, in the Alternative, for New Trial Absolute, filed August 4, 2014	46
Plaintiff's Memorandum of Law in Opposition to Defendant's Post-Trial Motions, filed August 11, 2014	50
Defendant's Memorandum in Support of Post-Trial Motions, dated September 1, 2014	59
Plaintiff's Motion to Reconsider, dated December 19, 2014	76
Trial Transcript, July 21-24, 2014	
Lieutenant Heidi Jackson	
Direct Examination by Mr. Moore	95
Cross-Examination by Mr. Frawley	289

Lieutenant Heidi Jackson Continued

Redirect Examination by Mr. Moore.....	352

Steve Baumgardner

Direct Examination by Mr. Moore	358
Cross-Examination by Mr. Frawley	393
Redirect Examination by Mr. Moore.....	430

Volume II

Tim Peterson

Direct Examination by Mr. Moore	434
Cross-Examination by Mr. Frawley	454
Redirect Examination by Mr. Moore.....	461
Recross-Examination by Mr. Frawley.....	462

Kay Paschal

Direct Examination by Mr. Moore	467
In Camera Examination by Mr. Moore	536
Direct Examination Continued by Mr. Moore.....	541
Cross-Examination by Mr. Frawley	585
In Camera Examination by Mr. Frawley	666
Cross-Examination Continued by Mr. Frawley.....	678

Heidi Jackson

Direct Examination by Mr. Frawley	775
In Camera Examination by Mr. Frawley	779
Cross-Examination by Mr. Moore	784
Redirect Examination by Mr. Frawley	786

Kevin Isenhoward

Direct Examination by Mr. Frawley	787
Cross-Examination by Mr. Moore	793
Redirect Examination by Mr. Frawley	802

Volume III

Joanna McDuffie

Direct Examination by Mr. Frawley	804
Cross-Examination by Mr. Moore	811

James Standin Smith

Direct Examination by Mr. Frawley	817
Cross-Examination by Mr. Moore	829
Redirect Examination by Mr. Frawley	838

Leon Lott

Direct Examination by Mr. Frawley	841
Cross-Examination by Mr. Moore	846

Trial Transcript, July 25, 2014

Closing Statement by Mr. Moore.....	879
Closing Statement on Reply by Mr. Moore.....	915
Charge on the Law	923
Verdict.....	950
Plaintiff's Trial Exhibit #1	952
Plaintiff's Trial Exhibit #2	954
Plaintiff's Trial Exhibit #3	966
Plaintiff's Trial Exhibit #4	967
Plaintiff's Trial Exhibit #5	968
Plaintiff's Trial Exhibit #6	969
Plaintiff's Trial Exhibit #7	975
Plaintiff's Trial Exhibit #8	976
Plaintiff's Trial Exhibit #9	977
Plaintiff's Trial Exhibit #10	978
Plaintiff's Trial Exhibit #11	979
Plaintiff's Trial Exhibit #12	981
Plaintiff's Trial Exhibit #13	987
Plaintiff's Trial Exhibit #14	996
Plaintiff's Trial Exhibit #15	998

Plaintiff's Trial Exhibit #16	1000
Plaintiff's Trial Exhibit #17	1001
Plaintiff's Trial Exhibit #18	1003
Plaintiff's Trial Exhibit #19	1005
Plaintiff's Trial Exhibit #20	1012
Plaintiff's Trial Exhibit #21	1013
Plaintiff's Trial Exhibit #22	1015
Plaintiff's Trial Exhibit #23	1016
Plaintiff's Trial Exhibit #24	1017
Defendant's Trial Exhibit #1	1018
Defendant's Trial Exhibit #2	1019
Defendant's Trial Exhibit #3	1023
Defendant's Trial Exhibit #4	1027
Defendant's Trial Exhibit #5	1032
Defendant's Trial Exhibit #6	1038
Defendant's Trial Exhibit #8	1039
Defendant's Trial Exhibit #9	1059
Defendant's Trial Exhibit #10	1060
Defendant's Trial Exhibit #14	1061
Defendant's Trial Exhibit #15	1063

Defendant's Trial Exhibit #16	1066
Defendant's Trial Exhibit #17	1071
Defendant's Trial Exhibit #18	1077
Defendant's Trial Exhibit #20.....	1078
Motion Hearing Transcript, September 5, 2014.....	1108
Notice of Appeal.....	1148
Notice of Cross-Appeal	1170
Certificate of Counsel	
Certificate of Compliance	

1 **THE COURT:** Mr. Peterson, would you come up
2 here to the clerk, please?

3 TIM PETERSON,
4 having been duly sworn, testified as follows:

5 **THE CLERK:** If you'll have a seat and state
6 your name for the record.

7 **THE WITNESS:** My name's Tim Peterson.

8 DIRECT EXAMINATION

9 BY MR. MOORE:

10 **Q** Mr. Peterson, what do you do for a living?

11 **A** I'm the general manager of Carolina Mobility
12 Sales in Columbia here.

13 **Q** Tell us what Carolina Mobility Sales is.

14 **A** We help handicapped people to be able to be
15 transported in their wheelchairs, stay in their
16 wheelchairs in a vehicle. There's other different
17 adaptations to be able to transport people in a
18 wheelchair.

19 **Q** In your job, is it regular or irregular for you
20 to sell handicapped-accessible vans?

21 **A** That's the main portion of our business.

22 **Q** In the -- in your business, do you deal with
23 people who are pretty sick and old on a regular
24 basis?

25 **A** On a regular basis, the people we're dealing

1 with are in wheelchairs and need to be transported.

2 There are different stages of handicap.

3 Q Do a lot of your customers ultimately die soon?

4 A Yes.

5 Q Do you have a practice in your profession as to

6 how you handle the titles to the motor vehicles

7 which are sold to people who appear to be elderly?

8 A The title work is usually -- the title's

9 usually between -- if it's a husband and wife, the

10 husband or the wife depending, you know, because

11 most of the time, you don't want two signatures on

12 there because if somebody passes, it would require

13 probate, you understand. So most of our business is

14 done -- the title work is done with both parties or

15 with a power of attorney.

16 Q All right. The -- when you normally have a

17 vehicle titled, do you normally title it in the name

18 of the sick person, somebody else, or do you title

19 it "and" or "or"? How do you normally do that?

20 A We title them -- our recommendation is for

21 people title them -- if they're going to put it in

22 two names, to put the "or" between the two names.

23 Q And why is that?

24 A Because when or if one of them passes, then it

25 requires both signatures in order to sell the

1 vehicle, and that usually requires a long probate
2 court. So it's simpler for the surviving party.

3 Q In this case, the vehicle appears to have been
4 titled "David Wallace or" -- I believe it is "or Kay
5 Paschal." Would this have been done on your
6 recommendation in your standard practice?

7 A Yes. You know, if somebody asks me, this is
8 what I recommend.

9 Q And is this the way you normally try to prepare
10 the paperwork?

11 A Yes.

12 Q All right. Whose idea was it -- to the best of
13 your recollection, whose idea was it for the vehicle
14 to be titled "David or"?

15 A Well, upon my recommendation, it was -- that's
16 how it was done.

17 Q Now, the -- best of your recollection, was
18 there a power of attorney that was used in order to
19 transact the Cadillac deal?

20 A Yes. To the best of my recollection, yes.

21 Q I'm going to show you this piece of paper,
22 which appears to be a copy of a power of attorney.
23 I believe your records were destroyed in a fire; is
24 that correct?

25 A We had a fire at our location after this

1 transaction went down, yes, sir.

2 Q Does this document -- can you identify this as
3 the power of attorney that you have referred -- or a
4 copy of the power of attorney you have referred to?

5 A Yes. This would be a power of attorney that
6 would be only used at the Department of Motor
7 Vehicles.

8 Q All right. When you were asked by Lieutenant
9 Scott and Detective Baumgardner about a power of
10 attorney, what power of attorney were you referring
11 to?

12 A This power of attorney.

13 Q All right.

14 MR. MOORE: We'd like to offer this into
15 evidence, please, Your Honor.

16 MR. FRAWLEY: I'd like to see that power...

17 MR. MOORE: Yes. We provided a copy of this
18 previously to counsel, Your Honor, in discovery.

19 (Pause.)

20 MR. FRAWLEY: Your Honor, this is unsigned. I
21 would object to it coming in as a power of attorney.
22 It's not signed. It's not executed. It's not
23 recorded. It's a power of attorney form that is
24 filled out and typed and that's it.

25 MR. MOORE: Your Honor, he's basically

1 testified what happened to the original, and he
2 testified this would be a copy of what he would have
3 used during the transaction and what he was
4 referring to. He's properly identified it.

5 **MR. FRAWLEY:** It's a copy of an unsigned power
6 of attorney form that's filled in.

7 **THE COURT:** Ladies and gentlemen, step into the
8 jury room, please. Don't discuss the case.

9 (The jury retires to the jury room.)

10 **THE COURT:** May I see it?

11 **MR. MOORE:** Sure.

12 (Pause.)

13 **THE COURT:** Do y'all want anything else on the
14 record?

15 **MR. FRAWLEY:** Your Honor, just that that was
16 produced to me Friday or Thursday when there were
17 additional documents produced.

18 **MR. MOORE:** Exactly, just like they produced to
19 us additional documents last week. As soon as I got
20 them in my possession, we basically provided them to
21 Mr. Frawley.

22 They had documents. As soon as they got them
23 in their possession, they provided them to me. I've
24 expressed no objection to that. I understand that
25 documents come under one's possession late. As soon

1 as we realized the document was here, we got it,
2 gave it to Mr. Frawley.

3 **THE COURT:** Had you finished, Mr. Frawley?

4 **MR. FRAWLEY:** No, I hadn't.

5 **MR. MOORE:** I do apologize. I did not know he
6 hadn't finished. I'm sorry.

7 **MR. FRAWLEY:** We got it Friday. We did get
8 documents from them in discovery eight months after
9 we sent the discovery, some time in January of 2013.
10 We did get them. That power of attorney is not
11 included in here, that power of attorney form. That
12 document is in a package that we got -- about a
13 half-inch stack of documents that we got from
14 Carolina Mobility, purportedly, and we got that
15 Friday.

16 Apart from that, it's not executed, it's not a
17 power of attorney, and it's not something that ought
18 to come into evidence.

19 **THE COURT:** The witness testified that he was
20 acting upon this power of attorney. I think the
21 remedy is cross-examination. It goes to the weight
22 of the evidence not its admissibility.

23 **MR. FRAWLEY:** Thank you, Your Honor.

24 **THE COURT:** And I haven't looked up the rules
25 about substituting copies for originals and things

1 like that, but I think the remedy is cross.

2 Mark it in evidence, Madame Court Reporter.

3 **MR. FRAWLEY:** What number will that be, Your
4 Honor?

5 **THE COURT:** Let me see.

6 **COURT REPORTER:** 22.

7 (Plantiff's Exhibit Number 22, power of
8 attorney form, marked and admitted into evidence.)

9 **THE COURT:** Bring in the jury.

10 (The jury returns to the courtroom.)

11 **THE COURT:** The objection's overruled. The
12 document is marked into evidence, ladies and
13 gentlemen, as Exhibit 22 for the plaintiff.

14 You may continue, Mr. Moore.

15 BY MR. MOORE:

16 **Q** Mr. Peterson, explain for me how the power of
17 attorney that you've been talking about is used in
18 your business.

19 **A** This power of attorney here, what this power of
20 attorney does, it gives the representative of
21 Carolina Mobility Sales, which would be myself
22 that's on this document, the power of attorney to
23 sign vehicles at the Department of Motor Vehicles,
24 if needed to be.

25 **Q** Now, the thing is unsigned. What do you do

1 with the original?

2 **A** I guess -- I'm sure the original is somewhere.
3 When we do a deal with a customer, we make copies of
4 everything, and sometimes the copies are made before
5 they get signed and some aren't. Obviously, in this
6 case, this was one of the ones that wasn't signed,
7 because normally they're signed, and they get a copy
8 of it.

9 **Q** All right. Is there any doubt in your mind
10 that this is the copy of the power of attorney that
11 was executed that you used to transfer the title of
12 the Cadillac?

13 **A** This would have been the one that was in the
14 deal, correct.

15 **Q** I'm going to show you Plaintiff's Exhibit 1 and
16 Plaintiff's Exhibit Number 2, which are the powers
17 of attorney that were the subject of conversation in
18 an arrest warrant. Have you ever seen before today
19 either of those documents?

20 **A** I'm not sure, I'll be honest with you.

21 **Q** Did either of those documents have anything to
22 do with the transaction involving the van that you
23 know of?

24 **A** Not that I'm aware of, no, sir.

25 **Q** Now, the -- how were you initially contacted

1 about the fact that David Wallace needed a van, a
2 handicapped van?

3 A Kay Paschal came into our business, I don't
4 remember the exact date, to inquire about what
5 exactly we did. And I proceeded to show her exactly
6 what we sold and how it could help her.

7 Q Who was she needing a van for?

8 A At the time, I thought it was her husband,
9 David, David Wallace.

10 Q And when she explained to you that he was in
11 need of a van, did you know where he was and what
12 was wrong with him?

13 A Not at first I didn't, no.

14 Q Did you learn?

15 A Yes, I did later.

16 Q What was wrong with him then?

17 A I understood that he had had a stroke.

18 Q All right. Now, did you consummate the deal
19 the day first -- the day Kay first came in or did
20 the negotiations take a period of time?

21 A The transactions on these vans normally take
22 some time. Sometimes they could take up to months
23 to happen. But what happened was that he was in a
24 rehabilitation center, and I went to show her how
25 the van would work. I went to the rehabilitation

1 center and picked him up and took him home in the
2 van, in one of our vans.

3 Q All right. So you went with one of your vans
4 to the rehabilitation center and took him where from
5 there?

6 A I picked him up from the rehabilitation center
7 and took him home, just to show her how this van
8 could help her.

9 Q Where was she when you took him home?

10 A She was with me the whole time.

11 Q So you left from Carolina Mobility Center. Was
12 Kay driving a separate vehicle or was she in the van
13 with you, or do you remember?

14 A I think that I met her at the rehabilitation
15 center.

16 Q All right. And did he have a wheelchair at
17 that time?

18 A Yes.

19 Q How was his ability to do affirmative
20 communication, to talk? Was he limited in his
21 ability to talk?

22 A His talking was limited, correct, but he
23 understood what was happening.

24 MR. FRAWLEY: Objection. He can't testify to
25 what he understood, Your Honor.

1 **THE COURT:** Sustained. Ladies and gentlemen,
2 one person can't say what was in another person's
3 mind.

4 BY MR. MOORE:

5 **Q** In communicating with him, did you have any
6 problem communicating with him and understanding
7 what he wanted?

8 **A** I don't think so, no.

9 **Q** Did you explain things to him?

10 **A** Well, I explained to him how the van worked. I
11 showed him how it worked, and how he would be put in
12 the van and how it would, you know, how we would tie
13 him down and how he would be able to remain in the
14 wheelchair while he was in the vehicle.

15 **Q** Were there things that he liked about the van?

16 **MR. FRAWLEY:** Objection. He can't testify to
17 what he liked, Your Honor.

18 BY MR. MOORE:

19 **Q** Were there things that you understood he said
20 he liked about the van?

21 **A** Well, he liked the fact that I could remove the
22 front seat, the front passenger seat, and he could
23 ride up front as a passenger.

24 **Q** What, if any, modifications did David want?

25 **A** The van pretty much comes one way. The only

1 other modifications normally is how you secure the
2 wheelchair down inside the van.

3 Q When the deal was negotiated, when the
4 agreement was reached in regard to the van, do you
5 recall exactly where you were?

6 A I think we were -- well, what happened was, the
7 day I took him home, you know, I guess it was
8 decided that they wanted a different type of van
9 than the one I used that day. The van I used that
10 day was not the one they bought.

11 Q All right.

12 A And so we had discussed that Ms. Paschal wanted
13 a Toyota van.

14 Q And was David good with that?

15 A Yes, he was.

16 Q Did he also want the Toyota van?

17 MR. FRAWLEY: Objection. He can't say what he
18 wanted.

19 THE COURT: Sustained. You can rephrase --
20 BY MR. MOORE:

21 Q What, if anything, did you understand he was
22 telling you about his desire for the Toyota van?

23 A He didn't speak that much to either, you know,
24 say either way.

25 Q All right. From what you gathered in his

1 presence, who had the authority to act for him?

2 A My understanding was that Ms. Paschal was the
3 one that was, you know, acting in his behalf.

4 Q All right. In his presence, did she mention
5 anything to you about the fact that she was his
6 attorney-in-fact, his power of attorney?

7 A She did say that she was representing him, yes.

8 Q And did he affirm that or disaffirm that or
9 make any comment?

10 A I don't remember --

11 MR. FRAWLEY: Objection to the --

12 THE COURT: Hold on just a moment.

13 MR. FRAWLEY: Objection to the hearsay.

14 THE COURT: I think he said he didn't know,
15 but...

16 THE WITNESS: I didn't -- I don't remember.

17 THE COURT: Do you still wish to object?

18 MR. FRAWLEY: No. I'm good now. Thank you,
19 sir.

20 THE COURT: Okay.

21 BY MR. MOORE:

22 Q When she said to you that she was representing
23 him in the transaction, was he present?

24 A Yes.

25 Q Did he express any negative desire in that

1 regard?

2 **MR. FRAWLEY:** Objection to the hearsay, Your
3 Honor.

4 **THE COURT:** You wish to be heard?

5 **MR. MOORE:** Your Honor, I -- I'm simply -- the
6 discussion in regard to why this man did what he did
7 and how he did it is certainly relevant. What was
8 in his mind at the time he did the transaction is
9 certainly relevant. We've had communication all
10 over the place about who said what or why or what
11 they want. It certainly seems to me that the
12 question's legitimate.

13 **MR. FRAWLEY:** Right up to the point where we
14 have Mr. David Wallace saying things. Nobody's
15 agreed to that, and I'm not agreeing to it now.

16 **THE COURT:** It's hearsay. No exception's been
17 cited. The objection is sustained.

18 BY MR. MOORE:

19 **Q** When Kay indicated that she was representing
20 him in the transaction, what, if anything, did
21 Mr. Wallace do to lead you to believe that that
22 wasn't so?

23 **A** Nothing really. He didn't object or say
24 anything.

25 **Q** Once it was under -- once Kay indicated in his

1 presence that she was dealing on his behalf, did you
2 continue with your discussions about which van would
3 be the right one?

4 A We discussed the, you know, the different
5 options that were available between different types
6 of vans.

7 Q All right. And based upon the discussions that
8 day, in the presence of David Wallace and Kay
9 Paschal, did you order the van?

10 A At that point, we had determined that the
11 Toyota van would be the proper one for them, and at
12 that point, I proceeded to get her a Toyota van.

13 Q And when you delivered the van, do you recall
14 who you delivered it to?

15 A No, I don't. I'll be honest with you. It's
16 over four years ago.

17 Q And did the check come for the van?

18 A Yes.

19 Q And who gave you the check?

20 A Ms. Paschal gave me the check.

21 Q Did you perceive there to be anything wrong
22 with that?

23 A No.

24 Q And why is that?

25 A To me, it was just a normal business

1 transaction.

2 Q And was the title made out like you recommended
3 it to be made out?

4 A It was.

5 Q And did you get a trade-in?

6 A I did. A Cadillac.

7 Q And was the power of attorney executed for the
8 Cadillac?

9 A It was.

10 Q And were you paid in full for the van?

11 A Yeah, I was.

12 Q Now, did Kay Paschal ever get any cash out of
13 this deal?

14 A No.

15 Q Well, the value for the Cadillac went as a --
16 toward the purchase price?

17 A Yes. It was traded in, and the value of it was
18 applied toward the purchase price.

19 Q How much did you apply toward the purchase
20 price?

21 A I don't remember, but it's probably on this
22 bill of sale.

23 Q Now, I want to get to the discussions you had
24 with Detective Heidi Scott. Did Heidi Scott come
25 and visit with you?

1 A Yes, she did.

2 Q Do you recall when it is she first came to talk
3 to you in person?

4 A I do not.

5 Q At any point in time when Heidi Scott was
6 investigating, did she ask to look at your business
7 file related to this transaction?

8 A I don't remember, I'll be honest with you.

9 Q Do you recall her talking to you on the
10 telephone?

11 A I really don't, I'll be honest with you.

12 Q Did you have really much dealing with Heidi
13 Scott at all in regard to the investigation of what
14 happened?

15 A I guess she wrote down some things that I said
16 and I signed it, but I really don't remember.

17 Q All right. Now, how about Mr. Baumgardner?
18 Did you have any dealings with him?

19 A I did.

20 Q How long did Mr. Baumgardner spend going over
21 with you the transaction and what had actually
22 transpired?

23 A The day he come into my office -- came into our
24 business, he came into my office, he sat down in my
25 office. I guess we spent more than 30 minutes

1 together.

2 Q And did you tell him the same things you're
3 telling the jury this morning?

4 A I did.

5 Q If you had believed that Kay Paschal didn't
6 have the authority to sign the check, would you have
7 taken it?

8 A No.

9 Q If you had believed that she didn't have David
10 Wallace's authority to negotiate the transaction to
11 conclusion, would you have negotiated it to
12 conclusion?

13 A Probably not, no.

14 Q From the totality of the circumstances, did you
15 understand that she had his permission to do what
16 she did?

17 A I did.

18 Q If you had any questions at all, what would you
19 have done?

20 A I probably would have -- I probably would have
21 not done the deal.

22 Q At some point in time, did Mr. Baumgardner come
23 back and talk to you some more to verify what you'd
24 previously told him?

25 A He did.

1 Q How long did he spend with you then?

2 A Probably spent about 30 minutes with me.

3 Q Was he professional?

4 A Yes.

5 Q Do you recall ever even actually meeting with
6 Heidi Scott before November 16th of 2011?

7 MR. FRAWLEY: The question's been asked and
8 answered already once, Your Honor. I object.

9 THE COURT: Overruled.

10 Do you remember the question?

11 THE WITNESS: Yeah, I remember meeting with
12 her, but I don't remember much about the meeting.

13 BY MR. MOORE:

14 Q And do you recall when it was?

15 A I don't.

16 MR. MOORE: All right. Thank you very much.
17 Would you answer any -- one minute, please.

18 Q Based upon the totality of the circumstances,
19 what was your understanding about David's desire to
20 have this van? Did he want it or not?

21 A They both wanted the van to help in his
22 transportation.

23 Q Did it appear as if they needed it?

24 A Oh, absolutely needed it.

25 Q One other question: How big a man was David?

1 **A** I guess he was about -- at the time, I remember
2 him being about five-foot-ten, I think, and thin.

3 **Q** How hard a job is it to get somebody in a
4 wheelchair into the van and all of this sort of
5 stuff?

6 **A** In this particular van?

7 **Q** Yes.

8 **A** Well, this is what makes it easy: They push
9 the button and the door opens and the ramp folds out
10 and you just roll the wheelchair straight into the
11 van. The person doesn't have to get out of the
12 wheelchair.

13 **Q** When you roll the wheelchair to the van,
14 though, how about getting it in position and locking
15 it and all that sort of stuff?

16 **A** Yeah, it's not very hard to do. You roll it
17 into the position where you're going to have it.
18 There's a couple of different locking mechanisms
19 types you can use, you know, to secure the chair and
20 to secure the person in the chair.

21 **Q** The van that David and Kay wanted, was it
22 better or worse than the first one you showed them?

23 **A** It was -- I think the first one I took out
24 there was a Chrysler product, Dodge/Chrysler
25 product, but they wound up with a Toyota.

1 Q Was that a better product?

2 A It's a better product. I mean, I consider it
3 to be a better product, you know, holds its value
4 better.

5 MR. MOORE: Thank you so much.

6 THE COURT: Any other questions of the witness?

7 MR. MOORE: None, Your Honor. Thank you.

8 MR. FRAWLEY: Yes, sir. May it please the
9 Court.

10 THE COURT: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. FRAWLEY:

13 Q Good morning, Mr. Peterson.

14 A Good morning.

15 Q Mr. Peterson, this power of attorney that was
16 just introduced and is in evidence, do you have it
17 in front of you?

18 A I do.

19 Q Okay. That power of attorney is a power of
20 attorney from David Wallace to your business,
21 correct, Carolina Mobility Sales?

22 A Well, myself and Carolina Mobility sales. My
23 name is on it.

24 Q Sure. I'm sorry. It says, Tim Peterson of
25 Carolina Mobility Sales, LLC, correct?

1 **A** Correct.

2 **Q** And the purpose of this power of attorney is
3 for you to transfer title with the DMV, correct?

4 **A** Correct.

5 **Q** All right. So this power of attorney isn't
6 Mr. Wallace giving a power of attorney to Kay
7 Paschal, is it?

8 **A** Not that -- no.

9 **Q** And this form, which is in evidence, is not
10 signed, is it?

11 **A** This particular one isn't signed.

12 **Q** No. I mean, it's not notarized. The signature
13 is not notarized, is it?

14 **A** In the State of South Carolina, you don't have
15 to have these notarized.

16 **Q** Okay. Well, it's not signed, it's not
17 recorded, is it?

18 **A** I'm sure the original was signed.

19 **Q** Okay. But we don't have the original here.

20 **A** No.

21 **Q** And we don't know who signed the original, do
22 we?

23 **A** No.

24 **MR. FRAWLEY:** Your Honor, may I publish Exhibit
25 22 to the jury?

1 **THE COURT:** Certainly.

2 BY MR. FRAWLEY:

3 **Q** In your business of selling vehicles, which
4 have to be registered with the State of South
5 Carolina, this type of power of attorney is not
6 unusual, is it?

7 **A** No.

8 **Q** In fact, pretty much every transaction you have
9 where there's a trade-in of a vehicle and a new
10 vehicle being purchased, you have a power of
11 attorney like this, correct?

12 **A** Correct.

13 **Q** And if I go buy a car this afternoon,
14 somebody's somewhere going to give me something like
15 this, correct?

16 **A** Correct.

17 **Q** All right. But the person who signs it and
18 conveys that power of attorney has to be either the
19 person named on it or someone who has legal
20 authority to convey that power of attorney --

21 **A** Correct.

22 **Q** -- would you agree with that statement?

23 **A** Correct.

24 **Q** Okay. And you understood in this transaction
25 that Kay Paschal had the authority to act on

1 Mr. Wallace's behalf?

2 A I did.

3 Q Okay. And your understanding was that they are
4 husband and wife, correct?

5 A It was, you know, yes.

6 Q Okay. And did you get that understanding
7 because Ms. Paschal told you that they were husband
8 and wife?

9 A I don't recall that, but she was the one that
10 was there taking care of him.

11 Q Okay. I think Mr. Moore asked you if you were
12 given any other power of attorney -- well, you
13 weren't given this one; you generated this one. But
14 as far as a power of attorney that would have
15 empowered Ms. Paschal to act on Mr. Wallace's
16 behalf, you don't remember if you were given one,
17 correct?

18 A I do not.

19 Q Okay. So if I hand you a copy of Plaintiff's
20 Exhibit Number 2, assuming I can find it, if you
21 could take a second or so and look that over -- or
22 maybe several seconds -- and tell me if you recall
23 having seen that in this transaction that occurred
24 almost four years ago.

25 A No, I don't recall. I looked at it earlier. I

1 might have, but I don't recall.

2 Q Sure. And how many vehicles have you sold in
3 the four years since June 18 of 2010?

4 A Hundreds.

5 Q Hundreds?

6 A Yeah.

7 Q And some of those are sold pursuant to powers
8 of attorney. Would that be an accurate statement?

9 A Yes.

10 Q Okay. So it's not unforgiveable for you to not
11 remember if you saw this power of attorney or not,
12 correct?

13 A Correct.

14 Q All right. So whatever your understanding of
15 Ms. Paschal's authority to sign or act on
16 Mr. Wallace's behalf you would have gotten from
17 Ms. Paschal, or the appearance of the transaction,
18 as you saw Ms. Paschal there caring for Mr. Wallace,
19 correct?

20 A Correct.

21 Q All right. You testified that Mr. Wallace's
22 speaking was impaired; do you remember that?

23 A Yes.

24 Q And that's your best recollection today.

25 Sitting here today, do you have an independent

1 recollection of Mr. Wallace and Ms. Paschal being
2 there given the hundreds of vehicles you've sold and
3 probably a hundred more of people that went in and
4 looked and never bought one?

5 A I do.

6 Q Okay. And I think you testified that your best
7 recollection was Mr. Wallace was about five-foot-ten
8 inches tall?

9 A I think so, yeah. I never really saw him
10 standing up.

11 Q Right. He's in a wheelchair.

12 A He was in a wheelchair or he was sitting in a
13 chair or laying on a bed.

14 Q Okay. You testified that Mr. Wallace, his
15 speaking was impaired. And then Mr. Moore asked
16 you, Did you have any problems communicating with
17 him? And you seemed to hesitate and said, I don't
18 think so, no. I mean, why didn't you give an
19 unqualified, No, I had no problems?

20 A Well, I mean, I was speaking to him. He, you
21 know, he was looking at me. I don't know if he was
22 understanding everything I was saying.

23 Q Sure. I mean, you were getting responses, but
24 you couldn't tell if he was understanding anything?

25 A I kind of thought he was in certain ways

1 because there was some things I mentioned about the
2 van, and he shook his head, you know.

3 Q Again, not an unqualified yes, but I think he
4 understood. That's your response, correct?

5 A Yeah.

6 Q All right. Now, you do recall having spoken
7 with Heidi Scott, but you can't remember when
8 because it's four years ago?

9 A Yeah. I remember her coming in. I don't
10 remember much about it.

11 Q Okay. And that's fine. I appreciate that.
12 And you do remember talking to Detective
13 Baumgardner, who's still here. Do you remember
14 speaking with him?

15 A I do.

16 Q At least two times, correct?

17 A At least two times, yes.

18 Q Okay. Approximately 30 minutes, maybe a little
19 bit longer the first time?

20 A Yes.

21 Q And then 30 minutes the second time, correct?

22 A Yes.

23 Q All right. And it was your testimony that, as
24 a businessman, if you knew that Kay Paschal did not
25 have legal authority to act on behalf of

1 Mr. Wallace, you would not have gone into this
2 transaction, correct?

3 A No, I would not have. I could see where the
4 van was going to benefit the both of them.

5 Q Sure. Sure. So long as Mr. Wallace continued
6 to live, he'd get some benefit out of that van,
7 correct?

8 A Yes.

9 MR. FRAWLEY: Thank you, sir. No further
10 questions.

11 THE COURT: Redirect?

12 REDIRECT EXAMINATION

13 BY MR. MOORE:

14 Q Sir, you testified on cross-examination that
15 Mr. Wallace seemed to understand what was going on.
16 Was that in all the dealings you had with him that
17 he seemed to understand what was going on?

18 A He was there, he was listening, you know, he
19 just didn't respond. He would shake his head, but,
20 you know.

21 Q When you say he didn't respond, do you mean he
22 didn't respond at all or didn't respond verbally?

23 A Didn't respond verbally.

24 Q Would he nod his head and shake his head?

25 A He would, you know, he would move his head.

1 Yeah, that's what I remember.

2 Q All right. When Kay told you that she had the
3 authority to deal on his behalf, would that have
4 been in his presence?

5 A Yes.

6 Q Would he have been -- so he would have been
7 there?

8 A Yeah, they would have been -- they would have
9 been in their house where I took them home that day.

10 Q Would he have nodded in the affirmative that
11 that was true?

12 A I don't remember, I'll be honest with you, but
13 he would on other occasions, yes.

14 Q Okay. So when her authority to deal was
15 questioned, he would acknowledge that by nodding his
16 head?

17 A Yes.

18 MR. MOORE: All right. Thank you very much.

19 THE COURT: Recross.

20 MR. FRAWLEY: May it please the Court.

21 RECROSS-EXAMINATION

22 BY MR. FRAWLEY:

23 Q Mr. Peterson, do you have Exhibit 14 up there?

24 A No.

25 Q Okay. Let me get it for you. While I'm

1 looking for it, you do recall a statement -- a
2 written statement that Lieutenant Scott had prepared
3 based on a conversation with you, do you?

4 A Yes.

5 Q Okay. I'm handing you Plaintiff's Exhibit
6 Number 14. Could you look that over for a second
7 and let me know if you recognize the question and
8 answer? That copy is not signed, but let me know if
9 you recognize the questions and the responses as
10 being your responses to questions that were posed to
11 you by Lieutenant Scott. Take a minute and look at
12 it.

13 A Okay.

14 Q Okay. Do you recognize that as a transcript or
15 a reconstruction of your conversation with Ms. -- or
16 with Lieutenant Scott?

17 A I do.

18 Q Okay. Could you look on the first page? And
19 would you agree with me that it's question/answer,
20 question/answer with Lieutenant Scott asking the
21 questions and you're providing the answers?

22 A Uh-huh.

23 Q All right. Could you go to the fifth exchange
24 down, just about the middle of the page? Do you see
25 it?

1 I'm going to go ahead and read it, where it
2 begins, Was David Wallace with Kay Paschal when she
3 made these transactions? Do you see that question?

4 A Yes.

5 Q Okay. That's the question, isn't it: Was
6 David Wallace with Kay Paschal when she made these
7 transactions? Correct?

8 A Right.

9 Q And your response to that was what?

10 A No.

11 Q Okay. And then three down from there, Did Kay
12 Paschal sign David Wallace's name on the paperwork?
13 That's the question, correct?

14 A Yes.

15 Q And your answer was?

16 A Yes.

17 Q Was anyone else present when the transactions
18 took place? That's the question?

19 A Uh-huh.

20 Q And the answer to that is, Yes? The answer to
21 my question --

22 A Yes, sir.

23 Q -- is that's the question that was asked. You
24 want to avoid uh-uh or huh-huh.

25 A Okay.

1 Q Try to say yes or no.

2 A Well, the answer was no.

3 Q Let me clean it up, so I'll go back. Was
4 anyone else present when the transactions took
5 place? Is that the question?

6 A Yes.

7 Q Okay. And the answer to that question was?

8 A No.

9 Q Okay. Thank you, sir.

10 MR. FRAWLEY: No further questions.

11 THE COURT: Anything else for this witness?

12 MR. MOORE: Nothing further. Might this
13 witness be excused, Your Honor?

14 MR. FRAWLEY: Yes, sir, we would consent to
15 that.

16 THE COURT: Thank you, sir. You may step down.
17 You're free to go.

18 Call your next -- well, how long is your next
19 witness?

20 MR. MOORE: Long. The next witness will take a
21 while. It might be a good -- it's 12:05. I think,
22 Your Honor, it might be a nice time for lunch, but I
23 can....

24 THE COURT: All right. Ladies and gentlemen,
25 we'll break for lunch now. It seems to be the best

1 thing to do, and I'm going to ask you to be back at
2 1:15. That's an hour and ten minutes from now.
3 We'll have to break around 2:00 because I scheduled
4 a short little hearing unrelated to this case at
5 2:00, but that'll be about the time we normally
6 would break anyway. If they get here and they don't
7 have all their papers signed, we may go an hour
8 before the break.

9 All right. Follow the bailiff. You're on your
10 own for lunch. Don't discuss the case.

11 (The jury was excused for lunch.)

12 **THE COURT:** All right. Be careful as you leave
13 that you don't have contact with the jurors. The
14 best thing to do is wait a few minutes and let them
15 clear out because they use the same common areas and
16 elevators, and you're going to run into them if you
17 walk out right now.

18 We're at ease until 1:15.

19 (Whereupon, there was a luncheon recess.)

20 **THE COURT:** Ready for the jury, Mr. Moore?

21 **MR. MOORE:** Yes, Your Honor. Thank you.

22 **THE COURT:** Mr. Frawley?

23 **MR. FRAWLEY:** Defendant's ready, Your Honor.

24 **THE COURT:** Bring in the jury.

25 (The jury returns to the courtroom.)

1 **THE COURT:** Call your next witness, please.

2 **MR. MOORE:** Thank you, Your Honor. May it
3 please the Court, we'd call Kay Paschal.

4 **THE COURT:** Come around, please.

5 KAY PASCHAL,
6 having been duly sworn, testified as follows:

7 **THE CLERK:** If you'll have a seat. State your
8 name for the record.

9 **THE WITNESS:** My name is Kay Paschal.

10 DIRECT EXAMINATION

11 BY MR. MOORE:

12 **Q** Kay, where do you live?

13 **A** I live in Springdale.

14 **Q** What's your address?

15 **A** 1103 Kitty Hawk Drive.

16 **Q** Slow down a little bit.

17 **A** Okay.

18 **Q** How old are you, Kay?

19 **A** I'm 71.

20 **Q** In your life, have you ever used the name
21 Wallace?

22 **A** Yes, I have.

23 **Q** How often did you do that?

24 **A** On many, many times.

25 **Q** Why did you do that?

1 **A** Well, when I was signing for nurses'
2 assistants, their pay schedules and things for
3 working with David, and I signed it on our contract
4 we did on a lake house for a security contract. I
5 signed it when I was paying some people who were
6 caring for David after he had his stroke and
7 numerous things like that.

8 **Q** Did you ever steal any money from David?

9 **A** No, absolutely not.

10 **Q** In the last year or so of his life after he had
11 had a stroke, did you write some pretty big checks?

12 **A** Yes, I did.

13 **Q** Would you tell the jury the kind of things that
14 you wrote checks for in large amounts after David
15 had his stroke?

16 **A** Well, he had -- after he had his stroke --

17 **Q** Slow down.

18 **A** -- and he was at HealthSouth -- I talk fast;
19 I'm sorry. He was at HealthSouth, and one of the
20 people who worked there, a representative, went with
21 me to our house, and we had carpet, and the
22 representative said it would be good if you had --

23 **MR. FRAWLEY:** I'm going to --

24 **THE COURT:** Hold on just a moment.

25 **MR. FRAWLEY:** I'll object to the hearsay, Your

1 Honor.

2 THE COURT: Do you wish to be heard?

3 THE WITNESS: Well, we --

4 THE COURT: Hold on a second.

5 THE WITNESS: Yes, sir.

6 THE COURT: Do you wish to be heard?

7 MR. MOORE: Not on that, Your Honor. I'll fix
8 that.

9 THE COURT: Sustained.

10 BY MR. MOORE:

11 Q Kay, don't say what the gentleman said. And I
12 don't want you to explain in great detail why you
13 did it. I just want to know what you did.

14 Did you modify the house?

15 A Yes, I did. I put in a linoleum floor, or I
16 paid for it to be put in, throughout the house. I
17 purchased a ramp, which was a metal ramp, which
18 would go from the den area up into the bedroom area
19 so his wheelchair could roll up and out of it.

20 I purchased -- later on, I purchased a
21 refrigerator to replace a freezer so that I could
22 put some protein-type things that would be cold so
23 he could drink it, trying to get as much protein in
24 him as possible to care for his wounds.

25 I bought a washer and dryer because we wore out

1 the old washer and dryer from changing bed clothes
2 and having to do all the laundry. Every day I did
3 laundry.

4 And I bought, of course, the van. This was to
5 carry him back and forth for doctors' appointments,
6 to rehab, out to eat, and anywhere else he wanted to
7 go.

8 Q Did you also use his money to pay for some
9 actual structural modifications to the house?

10 A I hired an architect to come in and see about
11 building a bathroom which would be wheelchair
12 accessible so that we could roll him into the
13 bathroom and he could have a shower and be cleaned
14 up, you know, in a proper manner rather than having
15 to be bathed in bed. Our bathrooms were not
16 accessible.

17 Q Besides the van that you paid the
18 60-something-thousand dollars for, did you have to
19 buy any other type of special equipment to handle
20 him?

21 A Yes. I had to buy a Hoyer. And I don't know
22 if you're familiar with a Hoyer, but a Hoyer is
23 something that one person can take and you actually
24 -- it's like a seatbelt-type arrangement, a seat
25 that you can lift someone off a bed and then put

1 them into the chair or it was portable so that if we
2 had gone to visit his family, we could carry it with
3 us. And you could also lift him off the bed and
4 then put him on a potty chair so he could use that.

5 **Q** What sort of -- what, if any, sort of special
6 bedding did you have to buy?

7 **A** I bought a queen-size hospital bed. Our
8 bedroom had a queen-size bed in it. It would be a
9 choice of bringing in a regular hospital bed, and he
10 was very particular about things being right,
11 looking right. So I bought this queen-size hospital
12 bed, and I slept with him every night.

13 **Q** Was there a reason why you slept with him in
14 the hospital bed every night?

15 **A** Because that way I could tell if he needed me,
16 I could care for him, and I think -- everything I
17 had read was it's very important to have touch and
18 care and to know that you're okay, and that's why I
19 did it.

20 **Q** Now, this -- when David came home from his
21 stroke that we've heard about, was he able to speak
22 to you?

23 **A** Yes, he could talk.

24 **Q** How impaired was his ability to speak?

25 **A** He had some impairment, but it was not to the

1 extent that you couldn't understand what he was
2 saying. He talked to various people that came to
3 visit.

4 Q Was he disabled in his body?

5 A Yes, he could not walk.

6 Q Was he disabled in his mind?

7 A No.

8 MR. FRAWLEY: Objection, Your Honor, whether
9 she -- there's no foundation on that. She's not an
10 expert in that. She'll have to get somebody besides
11 her ability --

12 THE COURT: Do you wish to be heard?

13 MR. MOORE: I'll withdraw, Your Honor.

14 THE COURT: Ladies and gentlemen, disregard the
15 response of the witness.

16 BY MR. MOORE:

17 Q Were you able to carry on intelligent
18 conversations with him?

19 A Yes. In fact, when I purchased the flooring
20 for the house, I carried samples up to the hospital
21 for him to give me his opinion and to -- so we could
22 choose the proper flooring for the house.

23 Q Was there any money that you ever spent of his
24 that you did not tell him what you were doing or why
25 you were doing it?

1 **A** No. I always spent money at his direction.

2 **Q** Kay, there was -- there's been some talk about
3 these powers of attorney that were recorded. Why
4 did you record that power of attorney after he had
5 the stroke?

6 **A** The only reason I recorded that power of
7 attorney at all was because the hospital said --
8 asked me if he had --

9 **MR. FRAWLEY:** Objection to what the hospital
10 said, Your Honor.

11 **MR. MOORE:** Your Honor, that's not for the
12 truth of the matter asserted, that's basically
13 showing why she actually did something.

14 **THE COURT:** That would be the truth of the
15 matter asserted.

16 **MR. FRAWLEY:** Yeah, I don't know what it is. I
17 just know she was starting to quote somebody other
18 than a witness.

19 BY MR. MOORE:

20 **Q** Kay, don't tell me what somebody said. Just
21 tell me why it is that you recorded the health care
22 -- or the power of attorney.

23 **A** The power of attorney had in it the ability to
24 care for his health. He was in the hospital, and I
25 carried it to them for their records to show that he

1 did have a health care power of attorney in the
2 overall power of attorney.

3 Q Did you ever actually have to use the power of
4 attorney for anything other than admitting him to
5 the hospital?

6 A Well, I really -- I used it -- just took it to
7 the hospital for their records. I didn't really use
8 it even at the hospital.

9 Q Did you ever actually use the power of attorney
10 for any other transactions?

11 A I knew I had the authority to act on his
12 behalf, but I signed when and where he told me to.

13 Q What, if anything, did you do with the power of
14 attorney and the bank?

15 A The bank, I gave them a copy of the power of
16 attorney.

17 Q For how many years before his stroke were you
18 signing his name to documents?

19 A For many years. I signed it in front of his
20 children. I've signed it before other people in
21 front of him.

22 Q Did you perceive that you had the authority to
23 sign his name?

24 A Yes, I did.

25 Q Had you gotten that authority from him?

1 **A** Yes, I did.

2 **Q** Did you ever write a check or spend any money
3 of David Wallace's without the authority to do so?

4 **A** No, I did not.

5 **Q** After his death, how were you left financially?

6 **A** After his death and after the children came in,
7 I was left penniless pretty much. I got a social
8 security check for \$1,000 a month.

9 **Q** Now, I believe that you're licensed to practice
10 law; is that correct?

11 **A** Yes.

12 **Q** What's the status of your law license?

13 **A** My law license was automatically suspended when
14 this arrest warrant was issued and I was put in
15 jail.

16 **Q** When you were arrested, do you know who
17 reported the fact of your arrest to the South
18 Carolina Bar?

19 **A** I think we called them, because it was a duty
20 of the court that if you're arrested, you have to
21 let them know.

22 **Q** So the person who notified the court was you?

23 **A** Yes.

24 **Q** Is this a copy of the order of Judge Chief
25 Justice Jean Toal suspending you from the practice

1 of law, Exhibit Number 13?

2 A I think Justice Toal, she recused herself, and
3 I believe it was signed by another judge.

4 Q Well, take a look if you would.

5 A She didn't participate. It was signed by
6 Pleicones.

7 Q Judge Pleicones?

8 A Yes.

9 Q Would you please just read for the jury the
10 reason why you were suspended from the practice of
11 law and when that suspension took place?

12 A Respondent was arrested and charged with
13 forgery, value of \$10,000 or more, and breach of
14 trust, value more than \$2,000 but less than \$10,000.
15 The Office of Disciplinary Counsel petitions the
16 Court to place respondent on interim suspension
17 pursuant to Rule 17(a) RLDE, Rule 413 SCACR. The
18 petition is granted. It is ordered that
19 respondent's license to practice law in this state
20 is suspended until further order of the Court.

21 It is further ordered that the respondent is
22 further enjoined from access to any trust accounts,
23 escrow accounts, operating accounts, and any other
24 law office accounts respondent may maintain.

25 Q When was that signed?

1 **A** January the 3rd, 2012.

2 **Q** Since January the 3rd, 2012, have you been able
3 to practice law?

4 **A** No.

5 **Q** Why not?

6 **A** Because of the suspension and because of the
7 actions of the Richland County Sheriff's Department.

8 **Q** Have you been suspended since that date?

9 **A** Yes, I have.

10 **Q** After the case was dismissed at the preliminary
11 hearing for the lack of probable cause what, if
12 anything, did the sheriff's department do to notify
13 the bar that the charges against you were dismissed
14 as baseless?

15 **A** Nothing that I know of.

16 **Q** Did you also have a real estate license?

17 **A** Yes, I did. I do.

18 **Q** And is that active or inactive?

19 **A** Right now it's inactive. It was placed -- I
20 had placed my real estate license as a broker with
21 David's company when he was alive, and so since, he
22 can no longer have his real estate license since
23 he's dead, then my license is placed on inactive.

24 **Q** Are you able to get it back right now?

25 **A** Right now it appears not. I applied to have it

1 transferred over to an LLC that I had set up.

2 Q Was that successful or unsuccessful?

3 A It's unsuccessful.

4 MR. FRAWLEY: Objection, unless they've got
5 somebody to testify to what that is, Your Honor.
6 That's hearsay.

7 THE WITNESS: No, sir --

8 MR. MOORE: Your Honor, she can testify --

9 THE COURT: You don't get to participate in
10 argument. Just hold on a second.

11 MR. MOORE: I'm sorry, I wasn't asking her,
12 Your Honor.

13 She knows that her license was suspended and
14 why.

15 THE COURT: Anything else?

16 MR. FRAWLEY: Your Honor, whether it was
17 suspended or not, whether she knows it was suspended
18 or not, that word comes from another person who is
19 not going to be here to testify. That's an
20 out-of-court declaration offered in court to prove
21 the fact of the matter asserted, and it's hearsay.

22 THE COURT: Overruled.

23 MR. FRAWLEY: Thank you, Your Honor.

24 BY MR. MOORE:

25 Q Kay, because of the charges, can you get a real

1 estate license?

2 A Not at this time. I can't activate it.

3 Q The warrant in this case was dated when?

4 A I don't recall.

5 Q (Mr. Moore hands document to witness.)

6 A 11/15/2011.

7 Q So you've been suspended from the ability to
8 practice your profession for how long?

9 A Since December the -- 2011, I believe --
10 January 3rd, 2012.

11 Q When did you graduate law school?

12 A 1968.

13 Q Where did you go?

14 A University of South Carolina.

15 Q Where did you go to college?

16 A University of South Carolina.

17 Q When did you graduate from law school, Kay?

18 A When?

19 Q Yes.

20 A 1968.

21 Q Where were you born and raised?

22 A Columbia, South Carolina.

23 Q Other than David Wallace, were you ever married
24 to anybody?

25 A No.

1 Q Throughout your life, did you ever really have
2 a whole lot of serious boyfriends?

3 A Not a whole lot, no.

4 Q What has your life basically consisted of, Kay?

5 A My life, since law school, of course -- when I
6 was in college, I was 20, and my father died from
7 cancer and my mother and my grandmother were living
8 with me. And my -- so after I graduated from law
9 school, I built a house in Lexington County, in Pine
10 Ridge, and moved my mother and my grandmother over
11 there with me and I took care of them.

12 I -- we -- when I opened the legal aid office
13 for Lexington County with Jimmy Price back in sixty
14 -- I guess we opened it up in '68, because that --

15 Q Now, that was a law office for indigent people?

16 A That's correct.

17 Q All right.

18 A And we operated that about three years until he
19 passed away from pneumonia. And then I ran it for
20 about a year by myself with one secretary. And back
21 in those days, women were not really appointed to be
22 heads of offices in legal services, sort of wanted
23 me to go out and do, like, circuit writing
24 throughout the county.

25 So I went to work with University of South

1 Carolina with the Bureau of Governmental Research
2 and Services, and we did ordinances for towns
3 throughout South Carolina and worked with building
4 codes, commissions, and things like that. And then
5 we worked with the legislature, and I supervised
6 interns for legislative committees, one of which was
7 a committee on mental health and mental retardation.

8 And then, of course, during this time, my
9 grandmother and my mother were still alive and
10 living with me. The bureau -- my boss was removed,
11 and my job was sort of wiped out. And I went to
12 work part time with the university in the Adult
13 Education Division, and I opened up my own law
14 office at that time, too. So I was working part
15 time for the university and part time practicing
16 law.

17 Q When was it that you opened your part-time law
18 office?

19 A About 1977.

20 Q Kay, at any time, did you have what would be
21 called a thriving law office?

22 A Not financially thriving. I had a lot of
23 clients and I worked seven days a week, as most
24 lawyers do, because my clients would say, I can't
25 get off work, can you see me after hours, and I

1 would see them on Saturdays and Sundays and things
2 like that, so.

3 Q What's the most you ever made practicing law?

4 A Probably around 40-something-thousand dollars
5 maybe.

6 Q What's the least you've ever made practicing
7 law?

8 A Maybe 20-something.

9 Q All right. If you had the ability to actually
10 open a law office, could you make a living doing
11 that right now?

12 A Yes, I could make a living.

13 Q What would you be capable of earning?

14 A Well, it could be --

15 MR. FRAWLEY: Objection. I'm not -- there's no
16 foundation. Lack of foundation, so I'll object to
17 that.

18 THE COURT: Do you wish to be heard?

19 MR. MOORE: I'll lay a foundation.

20 THE COURT: Go ahead.

21 BY MR.. MOORE:

22 Q Kay, are you familiar with what legal
23 associates are basically paid in and around the
24 Columbia area?

25 MR. FRAWLEY: I'll object to that as being

1 hearsay, that that's somebody else saying what they
2 make. I don't know how she can testify to that.

3 **THE WITNESS:** Well, attorneys --

4 **THE COURT:** Hold on, please.

5 **MR. MOORE:** Need to let the Judge rule, Kay.

6 **THE WITNESS:** I'm sorry.

7 **MR. MOORE:** That's okay. There's an objection.
8 Let him rule.

9 **THE COURT:** Do you wish to be heard?

10 **MR. MOORE:** Your Honor, I think that there's --
11 anyone with any knowledge of the legal community has
12 some semblance of an idea of what the market would
13 bare for his skill set.

14 My question simply is: What would you be
15 capable of earning if you were able to practice?
16 She ought to be able to say that she knows that. If
17 she knows it. If she doesn't know, she can say she
18 doesn't know..

19 **THE COURT:** Yes, sir?

20 **MR. FRAWLEY:** Your Honor, there's a lot of
21 factors: Number one is if she was even practicing
22 law at the time this thing happened. And as far as
23 what somebody's making out there, as far as their
24 skill set, I'm not sure I know that without someone
25 else telling me. So that's classic hearsay. I'm

1 going to object to it coming in unless they have a
2 witness.

3 Obviously, they're doing this for purposes of
4 establishing a damage claim, and there's no evidence
5 of it, other than Ms. Paschal trying to extrapolate
6 that from what she's been told.

7 (Pause.)

8 **THE COURT:** Y'all bear with me. I think it
9 should be admissible; I just can't find the rule to
10 support it.

11 **MR. MOORE:** Judge, could I change the question
12 another way and maybe make it where Mr. Frawley
13 would be happy with it?

14 **MR. FRAWLEY:** As long as it's not hearsay, then
15 I'm happy with it.

16 **THE COURT:** You may rephrase your question.

17 **MR. MOORE:** I'll try.

18 BY MR. MOORE:

19 **Q** Kay, if you would, in the legal market, to be a
20 lawyer, what salary would you demand?

21 **A** Two fifty an hour.

22 **Q** But net salary?

23 **A** You're talking annually or --

24 **Q** If you went looking for a job as a lawyer, how
25 much money would you expect to be paid annually?

1 **A** Fifty to 60,000 at least.

2 **Q** All right. Now, where are you presently
3 working?

4 **A** I work at Welvista, Inc.

5 **Q** What does Welvista, Inc. do?

6 **A** Welvista is a nonprofit organization. And we
7 provide free medications -- name brand medications,
8 not generic -- to people who are 200 percent below
9 the poverty level and who have no Medicaid,
10 Medicare, or any other type of private insurance or
11 governmental insurance to take care of their health.

12 **Q** Do you know what the pay scale would be for you
13 at Welvista if you had a law license? Don't tell me
14 the number, just do you know?

15 **A** Yes.

16 **Q** Do you know what the pay scale is for you
17 without a law license?

18 **A** Yes.

19 **Q** If you had a law license, what would the pay
20 scale at your present job pay?

21 **A** It would probably be \$75,000.

22 **Q** Per year?

23 **A** Per year, yes.

24 **Q** Presently, working without being able to use
25 your license, how much do you make?

1 **A** Twenty dollars an hour.

2 **Q** And that computes to approximately how much
3 annually?

4 **A** That's 30 hours a week approximately. It's not
5 a full-time job. I can't do it full-time.

6 **Q** All right. Have you ever considered yourself
7 married to David Wallace?

8 **A** Yes, I do. I do right now.

9 **Q** Why?

10 **A** Because we loved each other. We were married.
11 I mean, we were husband and wife in every way.

12 **Q** Now, you signed an affidavit in the probate
13 court saying you weren't married.

14 **A** Yes.

15 **Q** Would you explain to the jury how that came to
16 me?

17 **A** I had no choice but to sign that article. I
18 didn't want to, but I had no choice. I was really
19 -- I had no money, I had no place to live. My house
20 was about to be taken by the county. The warrant
21 had been served, and it was just -- I was being
22 pushed and pushed. And I had no money to pay my
23 legal counsel, and the bills were building up, and I
24 just really had no choice because the Wallaces
25 were --

1 **MR. FRAWLEY:** Your Honor, I'll object to this
2 testimony. In evidence already is her sworn
3 affidavit where she says she was never married,
4 she's not married now. There's an order approving
5 the settlement, which states in there that she
6 signed an affidavit. She's judicially estopped from
7 taking this position now, and I'll object to this
8 testimony that they were still married.

9 **THE COURT:** Do you wish to be heard?

10 **MR. MOORE:** Your Honor, I think that, legally,
11 based upon the agreements and the orders of the
12 court, legally, as of this point, we have -- she has
13 acknowledged a lack of marital relationship. But
14 the document is in evidence. It has been placed in
15 evidence by Sheriff Lott, and her -- document has
16 her signature on it. It would certainly seem to be
17 relevant that she could explain how and why her
18 signature came to be placed upon a document that
19 they have placed into evidence.

20 **MR. FRAWLEY:** In probate --

21 **THE COURT:** You're going behind a court order,
22 though, Mr. Moore. Let me see what you're talking
23 about.

24 **MR. MOORE:** Your Honor, I'm not going behind
25 it. I'm taking the --

1 **THE COURT:** You got a probate court order, as I
2 understand it, that says she and he were not
3 married.

4 **MR. MOORE:** Sure.

5 **THE COURT:** And now you want her to say that
6 they were --

7 **MR. MOORE:** Nope.

8 **THE COURT:** -- or why she signed it.

9 **MR. MOORE:** That's not what we're saying.

10 **THE COURT:** She said that.

11 **MR. MOORE:** No, sir. No, sir.

12 **THE COURT:** Ladies and gentlemen, step in the
13 jury room. Don't discuss the case.

14 (The jury retires to the jury room.)

15 **THE COURT:** You asked her, Have you ever
16 considered yourself married to David Wallace? Her
17 answer was, Yes, I do. I do right now.

18 She's saying she considers herself married to
19 David Wallace.

20 **MR. MOORE:** Fine. And she will also say that
21 she understands --

22 **THE COURT:** I didn't ask you for argument. I'm
23 still talking.

24 **MR. MOORE:** Your Honor, may I say this? I
25 apologize. I did not realize that. I wouldn't

1 interrupt you for anything in the world.

2 For some reason, I, obviously, have irritated
3 you through this trial, and I don't know why and
4 it's bugging me. I can't figure it out. I do not
5 know what I have done to --

6 **THE COURT:** You're lecturing me, Mr. Moore.
7 That -- that is what bothers me, if that's what you
8 want to know, but it's nothing personal.

9 **MR. MOORE:** Your Honor, I will say this: I
10 have -- as the Court well knows, I've been an
11 advocate for years and years, and I'm certainly not
12 attempting to lecture. When I make my arguments,
13 I'm not trying to lecture. I will try to be --

14 **THE COURT:** Mr. Moore, you and I were friends
15 before this lawsuit. We'll be friends, hopefully,
16 after this lawsuit. I try my best, and if -- I am
17 human and show some emotion from time to time, I
18 apologize to you.

19 I think all of what you're talking about has
20 occurred outside the presence of the jury. I just
21 feel like, at times, you're lecturing me, and I
22 don't think that's appropriate for an attorney to
23 do. If I'm wrong, take me up, get me reversed. But
24 it won't -- if I'm wrong, it won't be because I
25 intended to be wrong or because I was trying to do

1 something wrong; I'm trying to do what's right.

2 **MR. MOORE:** May I say I thank the Court very
3 much for that, because I -- I think I understand,
4 and I believe what the Court may have perceived as
5 lecturing is me simply attempting to make some
6 zealous argument. And I understand what the Court
7 is telling me and I will try to do better.

8 **THE COURT:** The only time that I got the least
9 bit on that was when you were telling me that I was
10 not the judge of the facts. I didn't need to be
11 told I was not the judge of the facts. I know that,
12 Mr. Moore. That is lecturing the Court in my
13 opinion.

14 **MR. MOORE:** And for that, I apologize. When it
15 came out of my mouth, I knew it didn't sound right,
16 and for that, I sincerely offer the apology for
17 that.

18 **THE COURT:** It's no problem. We're past it.
19 Honest to goodness, we're past it. I hope we're all
20 bigger than that.

21 **MR. MOORE:** Yes, sir.

22 **THE COURT:** The thing that's been handed to me
23 from the settlement states, Kay stipulates and
24 agrees that she was not the common-law wife of David
25 Wallace and hereby waives and relinquishes any and

1 all claims she has or may have had -- or may have to
2 have been the common-law wife of David Wallace,
3 including but not limited to, her claim for an
4 elective share of the estate of David Wallace.

5 All right. Now, what do you need to put on the
6 record?

7 MR. MOORE: Our position, Your Honor, is that,
8 by virtue of that stipulation, she clearly, legally
9 agreed that she was not the wife of David Wallace,
10 and she is not the wife of David Wallace as a matter
11 of law. But her position is that regardless what a
12 court order may say, she still spiritually believes
13 that she was married to the man.

14 THE COURT: And she's already said that in
15 front of the jury. Now, how much more do you want
16 to go into it?

17 MR. MOORE: What I want to do, Your Honor, is
18 this: I want to -- I'm not trying to dispute. I'm
19 not trying to go around the fact that she was
20 married or not married. What I'm trying to say is,
21 Would you explain to the jury why it is that you
22 signed a stipulation saying that you were not
23 married to him if, in fact, spiritually you believed
24 you were?

25 THE COURT: She's already said. She said all

1 about being destitute. She said all about the
2 county taking her house. She said she couldn't pay
3 her legal bills.

4 MR. MOORE: She was in the process of saying
5 that when Mr. Frawley objected.

6 THE COURT: I don't think so.

7 MR. MOORE: That was my understanding. But I
8 simply wanted to ask her why she signed it.

9 THE COURT: I think you have, and I think she's
10 answered it, and I think the jury's heard it without
11 objection. When the objection was raised, it called
12 upon me to rule on it. It states in here -- and I'm
13 assuming -- what I've got doesn't have a judge's
14 signature on it.

15 MR. FRAWLEY: Exhibit 20 is the order, Your
16 Honor.

17 THE COURT: I've got 17 and I've got 18.

18 MR. FRAWLEY: Defendant's Exhibit 20.

19 (Pause.)

20 THE COURT: The order reads, The affidavit and
21 stipulation of Kay F. Paschal that she was never
22 married to David Wallace and was not the common-law
23 wife of David Wallace is accepted by the court.
24 Based thereon, the court finds that Kay F. Paschal.
25 was not and has never been married to David Wallace

1 and was not and has never been the common-law wife
2 of David Wallace.

3 I note your objection. It's signed by Judge
4 Belton, the associate probate judge in Richland
5 County.

6 She is an attorney. She is judicially estopped
7 from claiming that she is the common-law wife or has
8 ever been the common-law wife of David Wallace.

9 MR. MOORE: Can I make the distinction?

10 THE COURT: Sure.

11 MR. MOORE: I'm not trying to prove in this
12 case that she was the common-law wife of David
13 Wallace. The question becomes, Why did you
14 stipulate that you weren't? Why did you sign that
15 document stipulating that you were not? And that's
16 the relevant issue.

17 THE COURT: Well, you and I just don't
18 understand judicial estoppel the same way,
19 Mr. Moore. I'm sorry. I don't agree with you.

20 MR. MOORE: Thank you, sir.

21 THE COURT: She has already done that, though.
22 She's already explained it, and anybody sitting in
23 the jury box would have heard what she said. She
24 feels she was compelled to sign it because she was
25 in financial distress and she didn't have any other

1 way to avoid that. It was pretty clear what she
2 said.

3 All right. I've got to take this other matter.

4 Ms. Paschal, during the break, you can step
5 down, but don't discuss your testimony, please.

6 **THE WITNESS:** Yes, sir.

7 (Brief recess.)

8 **THE COURT:** Are you ready for the jury,
9 Mr. Moore?

10 **MR. MOORE:** Yes, sir, Your Honor. Thank you.

11 **THE COURT:** Are you ready for the jury?

12 **MR. FRAWLEY:** I am, Your Honor.

13 **THE COURT:** Bring in the jury.

14 (The jury returns to the courtroom.)

15 **THE COURT:** The objection is sustained. You
16 may continue.

17 BY MR. MOORE:

18 **Q** Kay, during the period of time that you were
19 living with David, did y'all have cats?

20 **A** Yes.

21 **Q** How many cats did y'all have?

22 **A** Eleven.

23 **Q** How big was the house?

24 **A** Between 2,000, 2200 square feet.

25 **Q** Did the cats belong to you or did they belong

1 to him?

2 A Both of us.

3 Q Did y'all also raise fish?

4 A Yes.

5 Q Tell me about the fish.

6 A We built a -- first, we built a small koi pond,
7 and then the koi got too large for the small koi
8 pond, so we built a larger koi pond. And we had --
9 well, 50 of them had names, if you can imagine that.
10 And then -- there were more than 50 fish in that
11 pond.

12 Q When you got put out of the house by the
13 probate court, what happened to your fish?

14 A Most of all, if not all, of the fish are dead
15 now.

16 Q How about your cats, where did they wind up?

17 A I have the cats, the ones that are still
18 living.

19 Q We went back and we talked about your mother
20 and your grandmother. How long did you care for
21 them before they passed away?

22 A My grandmother died in '87, and she was in her
23 late '80s. My mother died in '95, 1995.

24 Q And you also have an uncle that you care for?

25 A Yes, I do.

1 Q What's his name?

2 A His name is Johnny Mims.

3 Q What do you call him?

4 A Bud most of the time.

5 Q Does Bud live with you?

6 A No. I got him into one of the Babcock homes
7 because I wanted to be sure he was cared for if
8 anything happened to me.

9 Q Do you have a home?

10 A I have the house at Kitty Hawk, yes.

11 Q Describe that house for me.

12 A It's a refurbished Army barrack really. It has
13 -- has creosote on the walls and it has some
14 asbestos underneath it, but it's -- and the roof
15 needs repairing. The cook top doesn't work, so I
16 have my microwave.

17 Q When did you move into that home?

18 A I moved into it because -- under court order,
19 back in 2000 --

20 MR. FRAWLEY: Your Honor, I hate popping up all
21 the time and objecting, but I just don't see what
22 relevance this has to the issues before this court,
23 abuse of process, malicious prosecution, negligence,
24 and false arrest. So I object on the grounds of
25 relevance.

1 **THE COURT:** Mr. Moore?

2 **MR. MOORE:** Your Honor, she just moved back in
3 the home when she was put out by the Wallace
4 children, which is what we talked about already many
5 times in this case.

6 **MR. FRAWLEY:** And they're not here. The
7 sheriff's department is here. And their claim is
8 against the sheriff's department.

9 **THE COURT:** Bear with me a minute.

10 (Pause.)

11 **THE COURT:** I think it's appropriate. You can
12 do that. Go ahead.

13 **MR. FRAWLEY:** Thank you, Your Honor.

14 **THE COURT:** Overruled.

15 **MR. MOORE:** Thank you, Your Honor.

16 BY MR. MOORE:

17 **Q** When did you move back into the house at Kitty
18 Hawk?

19 **A** Under court order, I moved back to Kitty Hawk,
20 I think it was -- it was before we settled the
21 probate court case, but I'm not sure exactly what
22 date it was.

23 **Q** Approximately what year?

24 **A** 2011 or '12. I'm not sure which.

25 **Q** All right. When did you first buy that house?

1 **A** I bought that house in 1996.

2 **Q** When you left the house in '96 -- after you
3 bought it in '96, where did you move after you left
4 that house?

5 **A** Moved to Spring Lake Road.

6 **Q** And who did you live with there?

7 **A** David Wallace.

8 **Q** Now, approximately, when did you move in full
9 time with David Wallace?

10 **A** I think it was 2003 because that's when we got
11 the cats from Germany.

12 **Q** The cats came from Germany?

13 **A** Well, the first four did, yes.

14 **Q** So you think you moved in with David somewhere
15 around 2003?

16 **A** Yes.

17 **Q** When did his wife die, approximately?

18 **A** She died in 2001.

19 **Q** Now, from 2003 until 2011 when he died, did
20 y'all ever have a time you didn't live together?

21 **A** No.

22 **Q** So the house in -- on Spring Lake, that was
23 David's house that you moved into?

24 **A** Correct, uh-huh.

25 **Q** What did y'all do with your house?

1 **A** We wound up -- initially, I had a dog and some
2 cats over there, and I would leave them there. And
3 then eventually, when we closed his office downtown,
4 we moved all of his office furniture into that
5 house, files, whatever.

6 **Q** And they stayed there until you moved back in?

7 **A** Correct, because -- well, there wasn't anywhere
8 to live then because the beds were broken down and
9 one bed was on top of the other. I have a room that
10 is my uncle's in that house, and -- so every bed was
11 put together. And it was totally a storage house at
12 that time.

13 **Q** Before you moved in with David, had you ever
14 done any legal work for him?

15 **A** I did some real estate work, I'd say, probably
16 up until 2001, 2002, as far as representing him as
17 an attorney.

18 **Q** At somewhere around 2001 and 2002, did you go
19 to work for him full time?

20 **A** Yes, I did go to work for him full time as his
21 secretary.

22 **Q** And what sorts of things did you do with him --
23 for him when you worked as his secretary?

24 **A** I just operated in the office. I paid his
25 bills. I kept books. I did correspondence, but it

1 was not a legal-type job.

2 Q Did you ever actually do any legal work for him
3 after you became his secretary?

4 A No. When legal matters came up where he would
5 need an attorney, we hired an outside attorney, law
6 firm.

7 Q When you moved with -- when you moved in with
8 him in 2003, did you share his bed?

9 A Yes, I did.

10 Q Did you have sex with him?

11 A Definitely.

12 Q Did y'all go on vacations together?

13 A Yes, we did.

14 Q Did you love him?

15 A Very much. I still love him.

16 Q Now, Kay, there have been two powers of
17 attorney that we talked about. They appear --
18 Plaintiff's Exhibit 1 has got two pages of a power
19 of attorney. Plaintiff's Exhibit Number 2 has got
20 the rest of the pages of the power of attorney; I
21 think it's 12. Did you print those off?

22 A Yes, I did.

23 Q Did you have anything to do with the execution
24 of them?

25 A No,, I did not.

1 Q Do you know which one you printed off first?

2 A The first one printed off named Elizabeth
3 Wallace as having her father's power of attorney.

4 Q All right. How soon after you printed the
5 first one did you print the second one?

6 A I think it was the same day. It was within
7 days of each other anyway.

8 Q When you printed them out -- when you printed
9 the first one, who did you give it to?

10 A I gave it to David.

11 Q When you printed the second one, who did you
12 give it to?

13 A I gave it to David.

14 Q Do you know where he went to get them executed?

15 A He left the office, and I don't know where he
16 went, but he left the office with the paperwork.

17 Q Do you recognize the names of the witnesses on
18 the powers?

19 A No, I do not know them.

20 Q When he -- don't tell me what he said; they're
21 going to object. Do you know why he changed the
22 power of attorney?

23 MR. FRAWLEY: Your Honor, unless she was told
24 by him, that would be the product of hearsay. She
25 can't know how he changed it or why he changed it.

1 **MR. MOORE:** She was told by him. That's why I
2 asked the question.

3 **MR. FRAWLEY:** Which still would be the product
4 of hearsay, so I'll object to it.

5 **MR. MOORE:** That's fine. Not a problem. I
6 don't -- it's okay.

7 BY MR. MOORE:

8 **Q** Kay, did you change the powers of attorney?

9 **A** I changed them under his direction. His
10 daughter was in England.

11 **MR. FRAWLEY:** Again, I'll object to the product
12 of the hearsay, Your Honor.

13 **THE COURT:** Do you wish to be heard?

14 **MR. MOORE:** Your Honor, I think that she can --
15 she's not saying what he said. She's just saying
16 why she changed them, which was at his direction.

17 **MR. FRAWLEY:** And the only reason she would
18 have done that is if she maintains he told him.
19 That's what she's trying to say. They're trying to
20 end run around the hearsay exception or objection.

21 **THE COURT:** Folks, I need to ask you to step
22 back in the jury room again, please.

23 (The jury retires to the jury room.)

24 **MR. FRAWLEY:** Your Honor, the problem I'm going
25 to have with this is I don't want Mr. Wallace, who's

1 not here subject to cross-examination, to be quoted
2 as to what his wishes were, and that's where I see
3 this going. That's why I'm objecting. And I'm not
4 trying to be difficult, any more difficult than
5 Mr. Moore warrants under this case, but I can't sit
6 here and let hearsay get in, then I'm not doing my
7 job, so I'll object.

8 **THE COURT:** The way I've typically had this
9 handled, and I'm not trying to involve myself in the
10 litigation outside my proper role, I've had people
11 say, did you have a conversation with somebody; as a
12 result of that conversation, what did you do, which
13 has been used to avoid the hearsay issue. If that's
14 what he's doing, then I think he can do that.
15 You're not raising the Dead Man Statute?

16 **MR. FRAWLEY:** No.

17 **THE COURT:** Mr. Moore, do you need to put
18 anything on the record?

19 **MR. MOORE:** That's exactly what I was trying to
20 do, Your Honor. That's where I was heading and I
21 think it's proper. That's the way you get around
22 that --

23 **MR. FRAWLEY:** Your Honor, I do that, too, but I
24 do that with the understanding, in my secret heart
25 of hearts, that I'm circumventing the hearsay rule.

1 **THE COURT:** I understand.

2 **MR. FRAWLEY:** Thank you, Your Honor.

3 **THE COURT:** The hearsay rule can be very harsh.

4 If they're ready, bring them back in.

5 (The jury returns to the courtroom.)

6 **THE COURT:** All right. Mr. Moore, rephrase
7 your question, please.

8 BY MR. MOORE:

9 **Q** Kay, in regard to the preparation of the actual
10 form that was unsigned, before you prepared that
11 form, did you have a conversation with David
12 Wallace?

13 **A** Yes, I did.

14 **Q** Now, you can't tell me what he said. As a
15 result of that conversation with David Wallace, did
16 you prepare the form?

17 **A** Yes, I did.

18 **Q** What did you do with the form?

19 **A** I handed it to David.

20 **Q** All right. Did he bring the form back to you
21 signed?

22 **A** Yes, he did.

23 **Q** What did you do with it?

24 **A** I put it in the file.

25 **Q** Now, did you have a second conversation with

1 David?

2 A Yes.

3 Q And as a result of that conversation, what did
4 you do?

5 A Are you talking about what I did when I gave
6 him the first form?

7 Q No. We know the first one, you had a
8 conversation --

9 A I never got that one back.

10 Q Never got that one back?

11 A No.

12 Q All right. After you gave him the first form,
13 that's the one with Elizabeth's name on it?

14 A Yes.

15 Q Did you have another conversation with him?

16 A Yes, I did.

17 Q Pursuant to that conversation, did you prepare
18 the second one?

19 A Yes, I did.

20 Q Did you give that to David?

21 A Yes, I did.

22 Q And what did he do with the second one?

23 A He left -- he took it, and I don't know what he
24 did with it.

25 Q All right. At any point in time after he took

1 it, did he give it back to you?

2 A Yes. He brought it back to me and it was
3 signed.

4 Q All right. And what did you do with what he
5 brought back?

6 A That's the one I put in the file.

7 Q Now, Kay, did you ever forge that document?

8 A No, definitely not.

9 Q Did you ever write on that document?

10 A No.

11 Q Did you ever do anything to have the document
12 executed?

13 A No, I did not.

14 Q Were you present when it was executed?

15 A I was not present.

16 Q Did you read it when it came back signed?

17 A Yes. I knew what it was -- what it said
18 because I had printed it out.

19 Q Did you record the document?

20 A I did not record it then because I had no idea
21 of ever using it, didn't intend to use it unless it
22 was absolutely necessary.

23 Q All right. When did you go get it and record
24 it?

25 A After David was in the hospital and after he

1 had had the stroke, I recorded the document at that
2 time.

3 Q After you recorded it, who did you give it to?

4 A I gave a copy to the hospital where he was at
5 the time.

6 Q And did you also give a copy to the bank?

7 A Yes, I did give a copy to the bank.

8 Q How long before his stroke had you been signing
9 checks on his behalf to pay his bills?

10 A Probably years -- a year or two, maybe more.

11 Q All right..

12 A I'd sign documents for him over the years, yes.

13 Q Did you prepare his will?

14 A No, I did not prepare his original will.

15 Q Do you know who prepared his will?

16 A It was David Ewing.

17 Q Did you prepare any codicils on his will?

18 A I typed some codicils because he did not want
19 to go -- well, I typed some codicils for him, yes.

20 Q Before you typed those codicils, did you have
21 conversations with him?

22 A Yes, I had conversations with him..

23 Q Following those conversations, did you type the
24 codicils?

25 A Yes, I did.

1 Q What did you do with the codicils?

2 A I gave the codicils to him.

3 Q Were you present when any of the codicils were
4 actually signed and executed?

5 A No, I was not.

6 Q Now, during the roughly eight-year period of
7 time that you lived with David, did you keep your
8 money together or did you separate it?

9 A We had separate bank accounts, but then he
10 opened up some CDs and some safety deposit boxes
11 that were in both our names.

12 Q And was there a point where he quit paying you
13 a salary?

14 A Yes.

15 Q About when did he quit paying you a salary?

16 A Actually, he stopped in the end of December of
17 2009.

18 Q Why was -- well, why did you want to quit
19 taking a salary?

20 A Well, it was sort of senseless to keep getting
21 paid a salary because we were living together, we
22 were paying the bills. I had spent all the money I
23 received as salary anyway on household things. So
24 it was sort of senseless to keep getting a salary.

25 Q Now, he had two children?

1 **A** Yes, he did.

2 **Q** What are their names?

3 **A** Jeffrey and Elizabeth.

4 **Q** What do you call Elizabeth?

5 **A** Most of the time, we called her Cissy. And
6 that's with a C.

7 **Q** During the eight years that you lived with him,
8 how often would Jeffrey or Cissy come to visit him?

9 **A** Jeffrey would come usually once a year. He
10 would come down and spend a week or two weeks at the
11 lake house. When he came down, he'd come by the
12 house and stop off for an hour or two, and then he'd
13 drive up -- he'd take his family up to the lake.
14 And then when he left, he would usually stop by on
15 the way back to Virginia.

16 **Q** He lived in Virginia?

17 **A** Right.

18 **Q** So during the week or so he would come down and
19 use the lake house --

20 **A** Right.

21 **Q** -- how many hours would he actually spend with
22 his dad?

23 **A** Possibly -- when he first came down, they might
24 be at the house an hour or two. Then perhaps we
25 might go up one day or maybe two at the lake and

1 maybe stay a few hours up there. It wasn't a total
2 visit. I mean, they didn't come and stay at the
3 house. In fact, in all the years that I was at the
4 house, Jeffrey only spent one night at the house,
5 and that was after his father had his stroke.

6 Q How about Cissy or Elizabeth? How often would
7 she come?

8 A She visited more often, but, initially, she was
9 working in England. And she had been in England --
10 she worked for EBRD, which is the European Bank for
11 Reconstruction and Development. And she was over
12 there from -- I know she was already -- she was in
13 school in '84, and then she went to work with that
14 bank. And so she was there until about 2003 when
15 she moved back to the States.

16 Q And after she moved back to the States in 2003,
17 how often would she visit her dad?

18 A She'd come down two or three times a year.

19 Q And how long would she stay?

20 A She might stay a weekend at the time. Rarely,
21 I don't think she ever stayed a week. I'm just
22 trying to think.

23 Now, she did stay at the house usually when she
24 was there.

25 Q Do you have a ring that David gave you?

1 **A** Yes, I do.

2 **Q** May I see that?

3 **A** (Witness complies.)

4 **Q** Do you wear it every day?

5 **A** All the time.

6 **Q** When you were working as his secretary, what
7 sorts of things did you do for him?

8 **A** I kept the books at the office and I paid bills
9 when he directed me to pay which bills. We bought a
10 manufacturing plant from one of his former partners
11 in Salley, South Carolina, and it was Ill {phonetic}
12 Salley Manufacturing Company. And David and I went
13 down there and we cleaned it up. We packed up three
14 16-ton -- 16-wheel trucks full of papers and stuff,
15 mopped the floors, and all that type things. So
16 that was part of what I did when I was with him.

17 **Q** Did you continue to function as his employee
18 for a period of time after you started living with
19 him?

20 **A** Well, I've continued to do that type work. I
21 mean, we did -- when we had correspondence or if we
22 had bills to pay or whatever he wanted me to do, I
23 did. But we also did things like working in the
24 yard, and we put down, like, seven tons of rocks in
25 the yard. Our yard was a showplace. People would

1 stop by and ask could they come in and see it. And
2 I did housework. I did the whole gamut that any
3 woman would do.

4 Q How much older was he than you?

5 A David was 21 years older than I, but you
6 wouldn't know it if you had seen him. If he was
7 here today, you would have thought he was in his
8 40s. He was phenomenal in his looks.

9 Q This is delicate, but had you really had much
10 serious relationships in your life like that?

11 A No.

12 Q Had you ever even had anything close to that?

13 A No, not close to that, no.

14 Q Was David a rich man or a poor man or something
15 in between?

16 A David was very wealthy.

17 Q Any idea of what his estate would have been
18 worth?

19 A From what I understood from the probate records
20 as they came in, it was about six million dollars.

21 Q Now, at some point in time, was David supposed
22 to go into the hospital for surgery?

23 A Yes.

24 Q What was wrong with him?

25 A He had a blockage in his right carotid artery,

1 and he was going in to have that opened and a stent
2 put in. He'd had that done previously in both of
3 his thighs. He had three stents in one thigh and
4 two stents, I think, in the other. And so the
5 doctor told him this was just like inpatient -- or
6 outpatient surgery, and we'd go in and have it done,
7 and they might keep him overnight.

8 Q Did you expect him to have serious
9 complications from it?

10 A No, we did not.

11 Q Now, there's been some discussion in the record
12 about a application for a marriage license. Did
13 y'all do that?

14 A Yes, we did.

15 Q Was that before the surgery?

16 A Yes. After conversation with David, we went to
17 Camden to get a marriage license on Friday before he
18 was to have the surgery on Tuesday. We got to
19 Camden, unfortunately, at 4:30. And when we walked
20 into the courthouse, the clerk there told us, We
21 don't do any marriage applications after 4:30;
22 you'll have to come back.

23 Q Did you come back?

24 A We went back on Monday. We applied for the
25 marriage license and he signed and paid for it and

1 we left. And then -- because we couldn't get the
2 marriage license right then; we could pick it up
3 later on, and so we left. And then I took him to
4 the hospital the next morning for the surgery.

5 Q And how long did you expect him to be in the
6 hospital?

7 A Overnight.

8 Q Who did his surgery?

9 A Dr. Butterfield {phonetic}.

10 Q Where was Cissy when the surgery was done?

11 A With the initial surgery, neither one of the
12 children were here.

13 Q All right. Who was with him in the waiting
14 room there at the hospital while he was having this
15 carotid artery surgery?

16 A I was there.

17 Q Anybody else?

18 A No.

19 Q Who drove him to the hospital for the carotid
20 artery --

21 A I did.

22 Q What hospital did you take him to for the
23 necessary surgery on his artery?

24 A Providence.

25 Q Do you recall the name of the doctor who did

1 the surgery?

2 A Dr. Butterfield.

3 Q Now, did the procedure turn out to be
4 successful?

5 A No. When he first -- when the surgery was
6 initially over, I thought -- with the conversation
7 with the doctor, I believed it was successful;
8 however, within, I'd say, an hour or two, he started
9 showing the signs and he wound up being paralyzed.

10 Q And what did he actually have there? Was it a
11 stroke?

12 A Yes.

13 Q And did they treat him at Providence Hospital
14 for the stroke?

15 A Yes, he was there.

16 Q How long did he actually remain at Providence
17 Hospital being treated for the stroke which had
18 followed the surgery?

19 A He was in Providence probably about six --
20 maybe six to ten days. I'm not sure exactly. But
21 then he left there and went straight to HealthSouth.

22 Q And how long did he stay at HealthSouth?

23 A We were at HealthSouth maybe a week or a week
24 and a half. And he had to go back to Providence
25 because of some complications. And, in fact, the

1 doctor asked me if, you know, if I would agree for
2 him to go back to Providence. And we went back to
3 Providence. And he was at Providence again another
4 couple of weeks probably before we went back to
5 HealthSouth.

6 Q Now, was he able to talk?

7 A He could talk, yes.

8 Q Did you have any problem understanding his
9 speech?

10 A No.

11 Q Did he appear to have good receptive speech?

12 A Yes.

13 Q How long did you have the ability to
14 communicate with him in a fairly normal fashion
15 until he died?

16 A Up until probably -- well, I talked with him up
17 until they took him to the hospital, but he was
18 having some more difficulty right there at the end,
19 the last month, I would say.

20 Q At the time this van was purchased, were you
21 able to communicate with him?

22 A Yes.

23 Q Any difficulty at all with your communications?

24 A No.

25 Q Now, you say he was paralyzed physically,

1 explain that to me. What couldn't he do?

2 A He couldn't walk. He could feed himself. He
3 could sit up of course, but he couldn't get up and
4 walk around.

5 Q Was he able to control his bowels?

6 A Eventually, he had more difficulty with that.

7 Q And how would you handle that?

8 A Initially, if he had to go somewhere, he wore
9 the panty-type things that you can wear. And I
10 would change those, if necessary, unless one of the
11 caretakers was there, then the caretaker would do
12 it.

13 Q Did you spend money on caretakers?

14 A Yes, I did.

15 Q Was that his money used for his care?

16 A Yes.

17 Q What were the names of the caretakers you used?

18 A Jamar and Joseph.

19 Q Were they good?

20 A Very good.

21 Q How long did they work for you?

22 A They worked up until he went back to the
23 hospital the last time.

24 Q When did he go back to the hospital the last
25 time?

1 A That was in February.

2 Q Of what year?

3 A 2011.

4 Q All right. So those two caretakers worked for
5 you for how many months, roughly, Kay?

6 A From June of 2011 until -- from 2010 to 2011.

7 Q Did they work primarily in the daytime?

8 A Yes.

9 Q Who took care of him at night?

10 A I did.

11 Q Now, would you take him out to dinner?

12 A Yes, I did.

13 Q Would you take him other places?

14 A Yes. He -- one time he wanted to ride to -- we
15 got on the road and we just rode to Camden, and we
16 had dinner and -- after he had the stroke and
17 everything. Took him out to the zoo with his son
18 and the son's family was there, and we met them at
19 the zoo, and so I took him there. He wanted to go.
20 He and I went one time to the zoo, just the two of
21 us, to one of the galas they had there.

22 Q Who would get him in and out of the van?

23 A I did.

24 Q How hard was that?

25 A Well, he weighed probably anywhere from about

1 150 to 160 pounds at that time. I'd roll his
2 wheelchair.

3 Q Were there times after he had the stroke that
4 his children would be in the house and watch you do
5 some of this manual work with him?

6 A Yes.

7 Q Explain that to me.

8 A If they came to visit or even at the hospital,
9 I assisted the nurses to turn him or wait on him and
10 this sort of thing. And at the house, I did that.
11 I prepared the food. And they didn't help with
12 that.

13 Q Would they ever help even push the wheelchair?

14 A At the zoo, his grandson pushed his chair
15 around. One time we went out to eat at night with
16 his son and grandson and other -- his two grandsons
17 and his step -- his daughter-in-law, and he had to
18 go to the restroom. And that happened to be one
19 night I had not brought a special, you know, panty
20 to change into, and so I went -- it was close to the
21 house, so I went back to the house to get --

22 MR. FRAWLEY: Your Honor, I'll object to the
23 relevance. This has nothing to do with abuse of
24 process, malicious prosecution, negligence, or false
25 arrest, so I'll object based on the relevance.

1 **THE COURT:** Overruled.

2 **THE WITNESS:** And I asked the son and grandson
3 to take him to the restroom. They didn't know how
4 to handle him, and it was not done properly, so.

5 BY MR. MOORE:

6 **Q** Was there a Cadillac?

7 **A** Yes.

8 **Q** Whose Cadillac was that supposed to be?

9 **A** We had -- before I moved in with him, we
10 entered into an agreement where I would buy the
11 Cadillac from him supposedly.

12 **Q** Did you make any payments towards it at all?

13 **A** Yes. I probably put about \$10,000 in it.

14 **Q** And how old was the Cadillac when y'all traded
15 it in for the van?

16 **A** It was -- let's see, we had bought it in 2002.

17 **Q** How had you gotten the money for the Cadillac?

18 **A** How did we get the --

19 **Q** How did you get the money to pay -- the money
20 you paid for the Cadillac, how did you --

21 **A** He gifted me the money.

22 **Q** The Cadillac was titled in whose name?

23 **A** David's name. All of his cars always were
24 titled in his name.

25 **Q** Who drove the Cadillac primarily?

1 **A** I did.

2 **Q** And what did he drive?

3 **A** At that time, he was driving a Lexus.

4 **Q** Approximately, when, Kay, did he come home from
5 HealthSouth?

6 **A** June of 2010.

7 **Q** What I'd like to do is to be quiet and just let
8 you explain to the ladies and gentlemen of the jury
9 how and why -- don't say what David said, don't say
10 what anybody else said, but with that limitation,
11 just explain how and why you came to buy this
12 handicapped van.

13 **A** Well, at the time, I knew he was going to be
14 using the wheelchair, and he was going to be going
15 to rehab as an outpatient. And I also knew that a
16 lot of times when you had these vans to come pick
17 you up, you had to meet them at the street and they
18 didn't come to your door.

19 So I thought -- and to make him mobile and to
20 be able to go and live as normal a life as he
21 possibly could, I investigated about vans that were
22 available. And I went over to Carolina Mobility and
23 was shown some vans that they had there.

24 And in talking to Mr. Peterson, I requested
25 Mr. Peterson to show David the van or show him one

1 of the vans, what it would be like.

2 Q Did he do that?

3 A He did. I told him that David's going to be
4 leaving rehab that -- I think it was in the next few
5 days or something. I'm not sure what the distance
6 of time was between when I first met him and when he
7 actually brought the van over.

8 So he brought the van to HealthSouth to carry
9 -- and helped me carry David home. And so we went
10 to the house, and he was very kind and actually
11 helped me take David in the house and helped me get
12 him into bed. I don't think I had the Hoyer at that
13 time, so Mr. Peterson helped me lift David onto the
14 bed and get him settled.

15 Then he left with that van which he brought --
16 brought him home in. And then later he brought the
17 new van that we wanted. He brought it to the house.
18 And he took the Cadillac back.

19 Q All right. Did David -- did you explain to
20 David the nature of the transaction regarding the
21 van?

22 A Yes.

23 Q Did Mr. Peterson explain to David the
24 transaction regarding the van?

25 A Yes. Mr. Peterson not only -- he demonstrated

1 or told -- showed him how the van would work and how
2 it would benefit him.

3 Q If David had not wanted the transaction to go
4 down, would you have consummated it?

5 A No, I would not have.

6 Q Did you consummate the transaction to give the
7 Cadillac to Mr. Peterson and the money?

8 A Yes.

9 Q Did you use David's money to pay for the van?

10 A Yes, I did.

11 Q Did you let David know that you were using his
12 money to pay for the van?

13 A Yes. He knew I was using his money.

14 Q Now, at some point in time, did you have to
15 execute a bill of sale power of attorney for the
16 Cadillac?

17 A Yes.

18 Q At any point in time, was the power of
19 attorney, for which you have been arrested, ever
20 shown or given to Mr. Peterson as the basis for what
21 you were doing?

22 A I don't recall it being so.

23 Q The van was titled in whose name?

24 A It was titled in David's name or my name.

25 Q Now, is there a difference legally between

1 David or Kay and David and Kay?

2 A Yes, there is a difference.

3 Q What's the difference?

4 A All right. If it's David and Kay --

5 MR. FRAWLEY: Your Honor, I'll object to her
6 interpreting what the law is.

7 THE COURT: Do you wish to be heard?

8 MR. MOORE: She's an attorney, Your Honor, and
9 she can certainly explain her understanding.

10 THE COURT: She can explain her understanding.
11 She can't give an opinion on the law. She can
12 answer the question based on her understanding of
13 the consequence of how the car was titled.

14 MR. FRAWLEY: Thank you, Your Honor.

15 BY MR. MOORE:

16 Q Kay, if you would give us your understanding of
17 the consequences as to how the car was titled.

18 A If it was "or", then it would mean that if he
19 died, then I would get the van. If I died, he would
20 have the van.

21 Q Now, was that your idea to title it that way or
22 someone else's?

23 A It was not my idea initially, no.

24 Q Did you know eventually it was going to be
25 titled that way?

1 A Yes.

2 Q Did you have any other means of transportation
3 other than the van?

4 A Yes, we had another car.

5 Q What was that?

6 A It was a Toyota Sienna.

7 Q Did you ever really use that van for your
8 primary motivation, for your personal needs?

9 A Well, the only time I used it was to carry
10 David somewhere or to go to the grocery store
11 sometimes because it was easier to put groceries in
12 the back of it.

13 Q During David's stay in the hospital and at
14 HealthSouth, did you ever let his children know that
15 you had given HealthSouth this health care power of
16 attorney?

17 A Yes.

18 Q While he was at HealthSouth, how much time did
19 you spend there?

20 A I was there every day and every night. The
21 only time I left him was to go home and change
22 clothes and feed the cats.

23 Q Did you participate in the purchase of the van?

24 A Yes.

25 Q Did David participate in the purchase of the

1 van?

2 A Yes, he did.

3 Q Did Mr. Peterson participate in the sale of the
4 van?

5 A Yes, he did.

6 Q When you gave Mr. Peterson the power of
7 attorney on the Cadillac and the check, did he then
8 give you the van that you used for David?

9 A That's correct.

10 THE COURT: Tell me when you get to a stopping
11 point.

12 MR. MOORE: I'd be at a stopping point now,
13 Your Honor. A break would be nice.

14 THE COURT: Folks, I know y'all have been in
15 and out some, but we haven't. So I need you to step
16 in the jury room. Don't discuss the case. We'll
17 take a ten-minute break.

18 (The jury retires to the jury room.)

19 THE COURT: Ms. Paschal, same restriction on
20 your testimony, don't discuss it.

21 We're at ease for ten minutes.

22 (Brief recess.)

23 THE COURT: You ready, Mr. Moore?

24 MR. MOORE: Yes, Your Honor. Thank you.

25 THE COURT: Mr. Frawley, are you ready?

1 **MR. FRAWLEY:** I'm ready, Your Honor. Thank
2 you.

3 **THE COURT:** All right. Bring them in.

4 (The jury returns to the courtroom.)

5 **THE COURT:** All right. You may continue,
6 Mr. Moore.

7 **MR. MOORE:** May it please, thank you, Your
8 Honor.

9 **THE COURT:** Yes, sir.

10 BY MR. MOORE:

11 **Q** Kay, when you were asked to print off these --
12 Exhibit Number 1 and Number 2, where was Elizabeth
13 working and living?

14 **A** She was living in England, in London.

15 **Q** And where were you living and working?

16 **A** I was living in Columbia. Well, I -- at that
17 time, I was living on Kitty Hawk.

18 **Q** I'm going to try to move on from this rapidly,
19 but he had his stroke and suffered with the stroke
20 about, what, eight months before he died?

21 **A** From April until February the 20th. April the
22 previous year.

23 **Q** So that would be eight or ten months he
24 actually lived. During those eight or ten months,
25 how strenuous was your life?

1 **A** I was with him day and night. At night, I had
2 to -- when he was home -- he didn't come back home
3 until June, but even when he was in the hospital, I
4 was with him. And I assisted in his care in the
5 hospital and at home.

6 **Q** Did he get bed sores?

7 **A** Yes. He got those in the hospital.

8 **Q** Could you do anything about that?

9 **A** I did what I was supposed to do, change the
10 dressings and put the medication on them. And then
11 if I didn't do it, when the day -- the care workers
12 were there during the day, sometimes they would do
13 it.

14 **Q** What ultimately killed him?

15 **A** Eventually, it was the results of the stroke,
16 really, because of his bad circulation -- he had
17 circulation problems for years.

18 **Q** He would have been how old when he passed away?

19 **A** He would have been 88, I think.

20 **Q** After he died, were you treated differently?

21 **A** I was treated differently even right before he
22 died.

23 **Q** And I believe there were some probate court
24 litigation; is that correct?

25 **A** That's correct.

1 **Q** Now, in addition to the probate court
2 litigation, I believe that you became almost
3 immediately investigated by Lieutenant Heidi Scott
4 and the sheriff's department?

5 **MR. FRAWLEY:** Object to the leading, Your
6 Honor.

7 **THE COURT:** Rephrase.

8 BY MR. MOORE:

9 **Q** How long after he died did you become the
10 subject of attention of the Richland County
11 Sheriff's Department?

12 **A** It was shortly after he died. I'm not sure
13 whether it was within a week or whatever, but it was
14 very soon after he passed away. I was in what we
15 called our computer room where we kept all of the
16 records and office things and deeds, whatever we had
17 business-wise that -- we had two computers in there.
18 And I was in there showing the children about
19 passwords, what David owned, and trying to help them
20 to understand about the properties and all that.
21 And I was told the doorbell rung and I should answer
22 the door, and I went.

23 And when I opened the door, there was police
24 car -- well, black vans all over the driveway. We
25 had a circular driveway, and they were around the

1 driveway and up the driveway and right at the back
2 of the carport. And they were there, and I was
3 totally shocked that they would be there. I didn't
4 know why. And they came in.

5 And Ms. Scott -- Ms. Jackson, as she's known
6 now -- came up to me, and she said they had a search
7 warrant and that they would read it to me. And she
8 asked to look into my wallet and my pocketbook and
9 -- right there on the carport. And she took my
10 cameras.

11 She took -- I had some of those little -- I
12 can't think of what you call them now, that go into
13 your cameras so you have your film on different, the
14 little -- like microchip or whatever you call them.
15 Anyway, so I had about six or ten of those, pictures
16 of animals and David and my family and -- that I've
17 had over the years and I just had them in my purse.
18 She took those.

19 And so then they had -- according to the
20 warrant that they read to me, they were to take all
21 computer equipment, anything electronic that they
22 wanted to take from the house, and they were to
23 search the house. And they came into the house to
24 search it.

25 And I had nothing to hide, and so I told them

1 about two computers that were in the dining room.
2 Well, lo and behold, we went into the dining room
3 and the computers were missing. We had brought
4 those from the office downtown. And she was
5 informed that the two computers were at -- the son
6 had taken them to the lake house, and I didn't know
7 he had taken them, but he had.

8 Q Did -- let me ask you this: Did the Wallace
9 children -- don't tell me what they say, but did
10 they appear to participate in the search in any
11 fashion?

12 A Yes, they certainly did. They were showing --
13 taking the deputies around and showing them this,
14 that, and the other. They took them into the
15 computer room; however, they did not go into the
16 room where Elizabeth Wallace was sleeping.

17 Q Well, now the warrant said they were supposed
18 to search the entire house. Do you know why they
19 didn't go and search Elizabeth Wallace's room when
20 they searched everything else?

21 A No. I have -- you know, they just didn't go
22 into her room. And she had a computer and they
23 didn't take it, but they took all of our computers
24 and cameras and anything like that, and printers.

25 Q When it appeared to you that the Wallace

1 children were directing the police on where to
2 search, did that bother you?

3 A Yes, it did.

4 Q Why?

5 A Well, I felt like -- it was almost like I was
6 hunted, you know. It was terrifying. It really
7 was.

8 Q Who was -- who was dictating what the police
9 were to take and not take?

10 A Well, I saw them on occasion, they would show,
11 like, here's a piece, here's a piece. They didn't
12 take everything. They just took certain things.

13 Q But who was making the decisions about what was
14 to be searched and taken?

15 A It appeared to me the Wallace children were
16 very much involved.

17 Q Now, when you saw that the Wallace children
18 were actually involved in the search of your
19 personal property and your home, did that concern
20 you at all?

21 A It concerned me because I had been told -- I
22 don't know how to say this.

23 Q Don't say what you were told, but did that
24 bother you?

25 A I knew of a direct relationship between --

1 **MR. FRAWLEY:** Objection. Unless she's got some
2 foundation as to how she got this knowledge, it's a
3 product of hearsay, and I'll object to the hearsay.

4 **MR. MOORE:** I'll change it.

5 **THE COURT:** Well --

6 **MR. MOORE:** I'll change the question.

7 **THE COURT:** I mean, I'd be happy to rule, but
8 I'm going to have to send the jury out because I
9 don't know what she's going to say.

10 **MR. MOORE:** And, Your Honor, we've had the jury
11 up and down, and I just don't -- with all due
12 respect, I certainly will --

13 **THE COURT:** If you want to rephrase it, that's
14 fine with me.

15 **MR. MOORE:** I just -- I don't want the jury to
16 have to -- I'll just rephrase it.

17 **THE COURT:** All right.

18 **MR. FRAWLEY:** And I don't want them to have to
19 go out either, but a lot of these --

20 **THE COURT:** Everybody's got to do their job.
21 Everybody's got to do their job, including the jury.
22 They're fine. Just chalk it up to good excise. I
23 need to get up and go walk around myself.

24 Go ahead, Mr. Moore.

25 BY MR. MOORE:

1 **Q** Kay, did your belief about a particular
2 relationship cause you any concern?

3 **A** Yes, it did, definitely.

4 **Q** What did you believe the relationship to be?

5 **A** That Sheriff Lott, who was close friends to
6 Johnny Finns, who is the very best friend of Jeff
7 Wallace --

8 **MR. FRAWLEY:** Objection.

9 **THE COURT:** Hold on a second.

10 Yes, sir.

11 **MR. FRAWLEY:** This is the product of hearsay
12 unless they lay a foundation as to how she got this,
13 if she saw the two of them at the beach together,
14 out watching movies, whatever it is. Unless she --
15 if what she believes is the product of someone
16 having told her or her having overheard something,
17 it's the product of hearsay. It's not reliable and
18 should be excluded.

19 **THE COURT:** Okay.

20 **MR. MOORE:** Can I just have --

21 BY MR. MOORE:

22 **Q** Kay, have you seen this relationship yourself?

23 **A** Yes, I have.

24 **MR. FRAWLEY:** Well, then they just need to lay
25 a foundation.

1 **THE COURT:** Can you lay a foundation,
2 Mr. Moore, without involving hearsay?

3 BY MR. MOORE:

4 **Q** Kay, in the time that you spent with David and
5 the time you spent with Jeffrey and the time you
6 spent with Elizabeth, have you seen the relationship
7 existing between the Wallace children and these
8 folks with the sheriff's department?

9 **A** Yes.

10 **Q** What sorts of things have you seen? Don't tell
11 me who or what, just what sort of things have you
12 seen.

13 **A** I've seen them on press conferences together.

14 **THE COURT:** Who is they? I need to know who
15 she's talking about.

16 **THE WITNESS:** Sheriff Lott and Johnny Finns.

17 **THE COURT:** F-i-n-n-s.--

18 **THE WITNESS:** I've seen Johnny Finns with
19 Jeffrey because Johnny Finns has been to our home.

20 BY MR. MOORE:

21 **Q** And Johnny Finns is who?

22 **A** Johnny Finns is a friend of Sheriff Lott's.

23 **MR. FRAWLEY:** Your Honor, I hate to have the
24 jury move, but this is basically a proffer of
25 something I've objected to with the jury sitting

1 there. I would ask that the jury be excused while
2 this is happening.

3 **THE COURT:** All right. Ladies and gentlemen,
4 please step in the jury room. Don't discuss the
5 case.

6 (The jury retires to the jury room.)

7 **THE COURT:** Go ahead. What other foundation do
8 you want to establish?

9 IN CAMERA EXAMINATION

10 BY MR. MOORE:

11 **Q** Kay, have you ever seen -- besides press
12 conferences and so forth, have you ever seen Jeffrey
13 Wallace and Mr. Finns together?

14 **A** Yes.

15 **Q** Has Mr. Finns been to the house?

16 **A** Yes.

17 **Q** Has Mr. Finns basically been on TV with Sheriff
18 Lott?

19 **A** Yes, he has.

20 **Q** Do you believe that Mr. Finns has a close
21 relationship with Sheriff Lott?

22 **A** Yes, I do.

23 **Q** And that's because of things that you've seen
24 with your own eyes?

25 **A** Yes.

1 Q And you believe that Mr. Finns has a close
2 relationship with David?

3 A Yes.

4 Q And when you saw the Wallace children basically
5 directing the search of your home, you put two and
6 two together and it concerned you?

7 A Yes.

8 MR. FRAWLEY: I played baseball against Sheriff
9 Lott probably 15 years ago, but we're not friends.
10 I don't think I've even met him within the context
11 of this case. I've seen him on TV in press
12 conferences, but that doesn't mean we have a close
13 relationship.

14 She has a belief that these people had a close
15 relationship with the sheriff's department and that
16 has, therefore, tainted this entire investigation,
17 and that's what they're saying the case is about.
18 And I think if that gets to the jury, it's more
19 prejudicial than probative, and I don't think it
20 belongs there, plus it's a product of hearsay.

21 So I'll object to it as being a product of
22 hearsay, and that under Rule 403, even if there is
23 any probative value to it, it's more prejudicial
24 than probative if I have a juror over there that's
25 thinking that if they are a friend of Sheriff Lott,

1 that maybe Sheriff Lott would send a directive that
2 this thing be done differently. That's not what
3 happened.

4 **THE COURT:** Was any of this dealt with in the
5 discovery?

6 **MR. FRAWLEY:** No. No, sir.

7 **THE COURT:** There weren't any depositions
8 taken?

9 **MR. FRAWLEY:** I took her deposition. There
10 wasn't any -- when I asked her if --

11 **THE COURT:** No, I don't -- go ahead. I mean, I
12 wasn't really thinking about her deposition. I was
13 thinking about depositions of people with the
14 sheriff's department.

15 **MR. FRAWLEY:** No, they never -- they didn't
16 list, you know, when they listed their witnesses,
17 they didn't list any Johnny Finns or anyone like
18 that.

19 I took her deposition, and one of the questions
20 that was asked is, What makes you think that there's
21 a close relationship? And I'll find the cite, but
22 it was that after one of the search warrants, she
23 turned around and looked back and the officer who's
24 conducting the search warrant and the complainant
25 kind of had their heads together in a conspiratorial

1 scene, when the person who's made the complaint is
2 consulting with the lead investigator of the case.
3 That's not an improper situation. And I asked her,
4 Was there anything other than that? She said, No.

5 Johnny Finns wasn't mentioned.

6 **THE COURT:** Do you need to talk to...

7 (Pause.)

8 **MR. FRAWLEY:** Thank you, Your Honor.

9 **THE COURT:** I don't -- I haven't heard anything
10 that would be hearsay. She's testified that she saw
11 Mr. Finns. And I apologize, I didn't pick up on who
12 she said that was except, at the time, she said it
13 was a friend. And she said that Mr. Finns had been
14 at their house with David.

15 **MR. FRAWLEY:** Your Honor, if that's the basis
16 for her foundation, then there isn't hearsay, and he
17 did lay that, but -- and I'll go into it on cross.

18 **THE COURT:** That was what I was going to say.
19 I think your remedy is cross-examination. I don't
20 know that any of that's objectionable. Whether
21 it's -- whether the jury believes that this
22 plaintiff has established something or not is a jury
23 issue.

24 **MR. FRAWLEY:** And I understand. I just want to
25 make sure -- I know we had a talk about 30 minutes

1 ago about how, procedurally, to do the end run
2 around hearsay. And I'm getting thumped on that
3 over and over and over that, you know, After you had
4 this conversation, what did you next do? And all of
5 which is the product of hearsay. And I understand,
6 occasionally, that needs to get in, but that's the
7 tail wagging the dog now.

8 And my option is to sit here quietly and let it
9 go or keep popping up and objecting, and it's just
10 not working, which has nothing to do with the
11 objection before Your Honor, and I'm fine on that.

12 **THE COURT:** I mean, I try --

13 **MR. FRAWLEY:** They put up their proffer and
14 it's not a hearsay proffer, so I'm good.

15 **THE COURT:** I try to rule as best I can based
16 on what's presented to me.

17 **MR. FRAWLEY:** I have no complaints with any of
18 that, Your Honor. Thank you.

19 **THE COURT:** Well, I'm -- listen, I've been
20 around long enough to know that people disagree with
21 me, and sometimes for very good reason because I'm
22 wrong. But, again, without going down that road,
23 what's before me is this testimony about what she's
24 observed, which is not hearsay and it's admissible.

25 Now, the reason I asked you about the Dead Man

1 Statute -- and maybe it's not applicable, maybe it
2 is. If it is applicable and if it's still good law,
3 then she can't -- she might not be able to testify
4 at all about certain transactions involving a
5 deceased person. But that hasn't been raised to me,
6 and I'm not wanting it raised to me because that
7 thing will twist your mind into a pretzel trying to
8 figure it out.

9 MR. FRAWLEY: Yes, sir. Thank you for hearing
10 me, Your Honor.

11 THE COURT: I'm happy to hear y'all any time.

12 MR. MOORE: Thank you, Your Honor.

13 THE COURT: Bring the jury in.

14 (The jury returns to the courtroom.)

15 THE COURT: If there is a hearsay objection, it
16 may have been withdrawn after the proffer, but it's
17 overruled. The witness did not testify as to
18 anything she heard. She testified to what she has
19 indicated that she saw.

20 All right, Mr. Moore.

21 MR. MOORE: Thank you, Your Honor.

22 DIRECT EXAMINATION cont.

23 BY MR. MOORE:

24 Q We left off, basically, you were concerned and
25 upset by the fact that the sheriff's department

1 showed up?

2 **A** Yes.

3 **Q** And based upon what you had seen in the past,
4 one of the reasons you were concerned is because you
5 believed there was a special relationship between
6 the Wallace children and Leon Lott?

7 **A** Yes.

8 **Q** Now, when the sheriffs came to search and the
9 search was directed by the Wallace children, did the
10 Wallace children seem at all surprised to see the
11 sheriff's department?

12 **A** Not at all.

13 **Q** Did the Wallace children appear to seem upset
14 at the sheriff's department?

15 **A** No.

16 **Q** Did the Wallace children appear to know Heidi
17 Scott?

18 **A** Yes.

19 **Q** Now, tell me the sorts of things that went on
20 in the house that day to lead you to believe that
21 the Wallace children were working with Heidi Scott
22 in regard to this search of your home.

23 **A** Well, like I said, they went around to the
24 different rooms and wherever the sheriff's people
25 were, except they did not search the room where

1 Elizabeth Wallace was sleeping. And there was an
2 older computer in that room which was not taken,
3 which was David's.

4 Q Well, when you say, Where she was sleeping, you
5 mean she wasn't asleep when they came, was she?

6 A No, no. Where she usually slept when she came
7 to visit.

8 Q What sorts of things did Elizabeth tell them to
9 take?

10 A Well, apparently --

11 MR. FRAWLEY: Object to the hearsay.

12 THE COURT: Say that again.

13 MR. MOORE: I'll change the question, Your
14 Honor.

15 THE COURT: All right.

16 BY MR. MOORE:

17 Q You indicate that they -- the sheriff's
18 deputies were there in close proximity to
19 Ms. Wallace, right?

20 A Right. As far as I know, yes. I wasn't with
21 them all the time. I was just sort of standing
22 around.

23 Q When Ms. Wallace would point to certain items,
24 what would the sheriff's department do?

25 MR. FRAWLEY: Objection. That's -- the

1 pointing is an indication of pick that up or take
2 it, and she already said that she wasn't there all
3 the time. Objection to hearsay.

4 **THE COURT:** She can testify as to what she
5 observed. If she personally observed something take
6 place -- pointing is not as clear as like shaking a
7 head or yes or no, that sort of universal thing that
8 people understand that's a yes or a no. It doesn't
9 appear to be hearsay if she testifies that someone
10 pointed at something and then some action took
11 place.

12 **MR. FRAWLEY:** It's an indication, an
13 out-of-court declaration, take that {indicating},
14 that's now offered in court to prove the fact of the
15 matter asserted. If someone nods their head, it's
16 an out-of-court declaration of agreement or assent.

17 **THE COURT:** Nodding heads is why I brought it
18 up.

19 Hold on a second. Folks, I'm sorry, bear with
20 me. I have to pull these things up on a computer.

21 (Pause.)

22 **THE COURT:** The ruling of the Court is it's not
23 hearsay. You may continue.

24 **MR. MOORE:** Thank you, Your Honor.

25 BY MR. MOORE:

1 Q When the Wallace children would point something
2 out, what would the sheriff's department do?

3 A I believe they -- on one occasion at least, I
4 saw them hand something to them.

5 Q But when they would point it out, what would
6 the sheriff's department do?

7 A They would go to that area.

8 Q All right. Now, what all was taken from your
9 home that day, Kay?

10 A My personal files, some -- and I don't know if
11 it was taken that day or not, but the marriage
12 license I had picked up from Camden, it's gone; the
13 computers, there were -- we had two computers in the
14 computer room; we had two printers, if I remember
15 correctly; the cameras; a lot of pictures; and just
16 -- I don't know what all was taken. It was so much
17 stuff taken.

18 Q Did you ever get any of it back?

19 A No.

20 Q How much of it belonged to you?

21 A All the cameras and pictures belonged to me
22 because I had taken them, and I didn't get them
23 back.

24 Q Now, at some point in time during the civil
25 litigation with the children, did their attorney

1 wind up with some of that information in their
2 possession?

3 A I believe so.

4 Q Do you have any idea how the Wallace private
5 attorney got possession of the items which had been
6 taken?

7 A No.

8 MR. FRAWLEY: I'll -- objection.

9 THE COURT: Hold on.

10 MR. FRAWLEY: Lack of foundation, how she knows
11 the Wallace private attorney got that.

12 THE COURT: She said she did not know. Do you
13 still want to object?

14 MR. FRAWLEY: No, Your Honor.

15 THE COURT: All right.

16 MR. FRAWLEY: Withdraw the objection.

17 THE COURT: Okay.

18 BY MR. MOORE:

19 Q Kay, I believe the next thing that happened is
20 that there was another search warrant issued in
21 Lexington County; is that correct?

22 A That's correct.

23 Q Now, did that search warrant correspond in time
24 with any court order dealing with the civil
25 litigation in probate court with the Wallace

1 children?

2 A Yes, it did.

3 MR. FRAWLEY: Objection, unless we've got that
4 court order here that we can look at. That's
5 hearsay.

6 MR. MOORE: Just in time.

7 THE COURT: I'm sorry. What?

8 MR. FRAWLEY: He's asked her, Did the search
9 warrant, May 3rd of 2011, of the Lexington County
10 residence, comport with a probate court order? So
11 she's going to say what the order said, what she
12 maintains it said, without us having the order.

13 THE COURT: I think his question was, How did
14 it correspond in time?

15 MR. FRAWLEY: With the date of the order. We
16 have nothing. Is the order one of the exhibits that
17 are in? I don't believe it is.

18 THE COURT: You'd have to tell me, Mr. Frawley.
19 I don't know.

20 MR. FRAWLEY: It isn't.

21 MR. MOORE: I just asked --

22 THE COURT: Is -- I don't -- I don't know that
23 that's objectionable. The objection's overruled.
24 You may continue.

25 MR. MOORE: Thank you, Your Honor.

1 BY MR. MOORE:

2 Q I believe, at some point in time, you were
3 trying to move back into your house in West
4 Columbia?

5 A Yes. They came and moved the office furniture
6 out of the house, because I couldn't move back in.
7 There was no way to sleep or eat or anything else
8 with all of the office furniture in my house. So
9 they came and moved the office furniture out --

10 Q Who is they?

11 A Some moving company. I don't know who --
12 remember who it was.

13 Q Who had hired the moving company?

14 A The estate.

15 Q All right. And what were you trying to do?

16 A So when they moved the office furniture out of
17 the house, and they were kind enough to set my bed
18 up so I'd have a place to sleep that night and try
19 to get the house -- and moved my stuff from Spring
20 Lake Road into the house where I had left, which is
21 primarily all I carried back with me was my clothing
22 and a few odds and ends, but --

23 Q Had there been a probate court hearing?

24 A Yes.

25 Q Following that probate court hearing, were you

1 trying to move from Spring Lake to West Columbia?

2 **A** Yes.

3 **Q** In time -- from the time of that probate court
4 hearing till the time you were moving back into West
5 Columbia would have been how much time?

6 **A** It had to be within ten days of the hearing.

7 **Q** All right. Now, were the Wallace children at
8 your home in West Columbia as you were trying to
9 move back in following the probate court hearing?

10 **A** Yes, they were, both of them.

11 **Q** Do you know why they were there?

12 **A** They were there because the furniture -- the
13 office furniture was being moved out.

14 **Q** All right. Now, as you were trying to get your
15 bed set up and move back into your home, what
16 happened?

17 **A** Well, they were still there, and then I was --
18 answered the door and there were deputies there to
19 search that house.

20 **Q** Richland County deputies?

21 **A** Correct.

22 **Q** And did they have the search warrant, which is
23 marked as Plaintiff's Exhibit Number 6?

24 **A** Yes.

25 **Q** Now, would you -- did they search your home in

1 West Columbia?

2 A Yes.

3 Q And did they take the items listed on that
4 return?

5 A Yes.

6 Q Who was listed as the person taking possession
7 of the items?

8 A Lieutenant Scott.

9 Q That's Heidi Scott, now Jackson?

10 A Yes.

11 Q Now, when the sheriff's department showed up in
12 West Columbia for another search of your second
13 house, were you surprised to see them?

14 A Very much so.

15 Q Did the Wallace children appear to be surprised
16 to see them?

17 A No, they weren't surprised at all.

18 Q Who told the sheriff's deputies what to search
19 and what to take in West Columbia?

20 A They were there waiting on them, apparently.

21 Q Did the Wallace children appear to work with
22 the -- Deputy Scott in searching that home?

23 A Elizabeth was doing some search of her own
24 during that time. Jeffrey pretty much sat in the
25 chair and watched what was going on.

1 Q What all was Elizabeth searching?

2 A My closets, everything in the house.

3 Q Did Elizabeth direct anything to be taken?

4 A I didn't see her direct anything to be taken,
5 but she did come to me and she said, I found the
6 dress that Mama gave you --

7 Q No, you can't say what she said.

8 A When she --

9 Q You can't say what she said.

10 A She -- I gave her back a dress that her mother
11 had given me.

12 Q How long did the Wallace children stay while
13 the Richland Sheriff's Department was searching your
14 house in West Columbia?

15 A My best recollection, they stayed the entire
16 time and left when the sheriff's department did.

17 Q How integrally involved did they appear to be
18 in working with the sheriff's department in regard
19 to the search of your home?

20 A I felt that they stayed there just to wait to
21 see -- make sure they got it searched and to watch
22 my reaction to it being searched.

23 Q Did Deputy Scott appear to have an objective
24 relationship with them or something else?

25 A I have seen her not have an objective

1 relationship mostly with Elizabeth.

2 Q Would you describe what there is about the
3 relationship that you have seen Heidi Scott have
4 with Ms. Wallace that you deem less than objective
5 or professional?

6 A I've seen them -- particularly, at the time
7 when we went to look at the property over in
8 Richland County and we were going through the legal
9 documents -- they had not looked at the computers at
10 that time -- they were laughing and carrying on and
11 seemed to be enjoying themselves. And I got looks
12 and things like that, like, you've had it.

13 Q Did it appear to you as if they were mocking
14 you?

15 MR. FRAWLEY: Object to the leading.

16 THE COURT: Sustained.

17 BY MR. MOORE:

18 Q What, if anything, did it appear to you from
19 the way they were treating you at the sheriff's
20 department?

21 A I just felt like they thought they were really
22 hanging me out to dry, so to speak.

23 Q Now, you say they would do what?

24 A They were laughing and they were -- they were
25 having a good time together. It wasn't

1 professional.

2 Q The laughter that they had, in whose direction
3 was it?

4 A Towards me.

5 Q Were they sitting together or sitting away from
6 each other?

7 A To my best recollection, they were sitting
8 either in close proximity or right next to each
9 other.

10 Q Was there any conversation or whispering or
11 anything like that back and forth between the two of
12 them?

13 A They were conversing, yes. And after the
14 meeting was over and everybody was supposed to be
15 leaving -- what we did was look at things that were
16 -- might be my private attorney things that I had
17 had at the house, which would be protective as far
18 as any clients that I might have had in the past.
19 And we were trying to separate those from anything
20 that might be used in court.

21 And then we had any documents that would be
22 then provided to both sides of the probate case.
23 And Allan Fulmer had introduced himself as being the
24 special representative for the probate court at that
25 meeting, and he was the one directed to take

1 anything that was to be shared by both sides. So
2 after it was over with and they told us that --

3 **MR. FRAWLEY:** Object to what they said. It's
4 hearsay.

5 **THE WITNESS:** Sorry. I'm sorry.

6 **MR. FRAWLEY:** Object to what they told her.
7 It's hearsay.

8 **THE COURT:** Sustained.

9 Y'all calm down.

10 **THE WITNESS:** The computer information was not
11 provided, and -- so we left the meeting. Everybody
12 was leaving at the same time. On the way out --
13 Elizabeth Wallace stayed behind. She went into the
14 women's restroom. We left the building. I went
15 out, got in my car, drove around to a parking lot
16 above the building. I sat in my car for 45 minutes.
17 Elizabeth Wallace had not come out by the time I
18 left.

19 BY MR. MOORE:

20 **Q** Let's get back then to the home in West
21 Columbia that was being searched by the sheriff's
22 department and apparently by the Wallace children.
23 How long did they stay at your home basically going
24 through your personal things?

25 **A** They weren't there a real long time.

1 Q Give me an idea.

2 A I can't tell you exactly.

3 Q To your knowledge, was there any Lexington
4 County sheriff's deputy there?

5 A Not to my knowledge.

6 Q To your knowledge, was there any type of state
7 police or SLED agent there?

8 A Not to my knowledge.

9 Q Was there a Springdale police officer there?

10 A There was one Springdale police officer.

11 Q Do you have any idea what he did?

12 A He just came in and said he was there to
13 accompany the Richland County people.

14 Q All right. Did he do any of the actual
15 searching?

16 A I did not see him do any searching.

17 Q Did you ever get any of the stuff back from
18 either house?

19 A No.

20 Q Has it ever been accounted to as far as where
21 it is?

22 A No.

23 Q Your personal material that was either on your
24 camera or your computer, give me some idea of some
25 of the sentimental types of things that you had.

1 **A** Well, there, of course, were pictures of my
2 family, me, and David; pictures of our animals that
3 we had over the years; and places we had been;
4 things we'd done; pictures of my uncle who's at the
5 Babcock.

6 **Q** Were those things valuable to you?

7 **A** They're priceless.

8 **Q** If you had to put a value on them, to you, what
9 would they be worth?

10 **A** I can't put a value. I mean, you can't replace
11 something like that. When it's gone, it's gone.

12 **Q** How many photographs of your family or you with
13 David or your pets or that sort of stuff, how many
14 did you lose, Kay?

15 **A** Well, as I told you, I had those little disks
16 that go into the camera, and I must have had -- in
17 that one camera, it was loaded, plus it had all
18 those little disks. And, of course, back then, they
19 didn't hold as much as they hold now, but they hold,
20 you know, a lifetime of pictures.

21 **Q** Did you also have pictures and so forth on your
22 computers that were taken?

23 **A** Yes.

24 **Q** Did those things have anything at all to do
25 with any of the litigation, either criminal or

1 civil?

2 A I can't -- I don't see any.

3 Q Are you tired of the litigation, Kay?

4 A Extremely.

5 Q When they came to your home in Richland County
6 with a search warrant, did anyone ever explain to
7 you why your home was being searched?

8 A They just read the warrant.

9 Q When they came and searched your home in West
10 Columbia, did anyone ever explain to you why your
11 home was being searched?

12 A Again, they read the warrant out.

13 Q Other than that, did anybody, either the
14 Wallace children or Lieutenant Jackson-Scott, ever
15 tell you what you were suspected of having done?

16 A Well, they did just like, I think they said
17 something about -- the Wallace children was like,
18 You tried to kill my father, which I'd cared for him
19 and looked after him and loved him for the last 20
20 years really.

21 Q Until you got arrested, did you ever have any
22 idea, specifically, how it was you were being
23 accused of having killed him?

24 A No.

25 Q When was the first time you learned that they

1 were accusing you of some sort of forgery regarding
2 the van?

3 **A** Oh, that was when the warrant was served.

4 **Q** All right. Were you named in David's will as
5 any official capacity?

6 **A** In his original will, the first one, even
7 before the codicils, he had named me as trustee --

8 **MR. FRAWLEY:** Objection to the hearsay. The
9 will's not in evidence.

10 **MR. MOORE:** Your Honor, she knows if she was
11 named as anything in the will.

12 **MR. FRAWLEY:** If she's named, she's named in an
13 out-of-court statement of the document, which is
14 offered in court to prove the fact of the matter
15 asserted. She's reporting something that's not in
16 evidence. It's hearsay.

17 **THE COURT:** Bear with me.

18 (Pause.)

19 **MR. MOORE:** Your Honor, could I withdraw that
20 question?

21 **THE COURT:** Well, I'm sure there's an
22 exception, if y'all let me look it up. I mean,
23 there's exceptions for records and public records
24 and -- if you want to withdraw your question, then I
25 don't have to read this stuff again.

1 **MR. MOORE:** I can do -- I can do this another
2 way, Your Honor.

3 **THE COURT:** Go ahead.

4 BY MR. MOORE:

5 **Q** I'm going to call your attention to Exhibit
6 Number 7. Do you recognize what this is?

7 **A** Notice of hearing.

8 **Q** All right. A notice of hearing of what case?

9 **A** The case of the matter of David Wallace.

10 **Q** And it indicates it's a notice of what kind of
11 case?

12 **A** Motion for removal only.

13 **Q** A removal of what?

14 **A** Removal of me as administrator of his estate
15 and as the trustee.

16 **Q** And was that a pretty important hearing?

17 **A** Yes.

18 **Q** Who had petitioned to remove you as the
19 personal representative?

20 **A** Elizabeth Wallace.

21 **Q** Now, the hearing was set for November 16,
22 2011 --

23 **A** Right.

24 **Q** -- correct?

25 **A** Right.

1 Q On November the 15th, 2011, what happened?

2 A I received a phone call from Heidi Scott.

3 Q About what time did you receive the phone call
4 from Heidi Scott?

5 A It was in the late afternoon or evening.

6 Q And what did Heidi Scott tell you in that
7 conversation?

8 A Heidi Scott told me, she said, We -- You have
9 two warrants waiting on you in Lexington County, and
10 you are to -- you can go to jail in the morning at
11 5:30 if you want to be heard by the judge for a bail
12 hearing by ten o'clock or you can go after that and
13 you'll probably have to be heard at three o'clock.
14 But if you don't go up there tomorrow, you will be
15 arrested.

16 Q Did that scare you?

17 A Certainly. I asked her if she'd call my
18 attorney.

19 Q What did she say?

20 A She said no.

21 Q Why did it scare you when the Richland County
22 deputies called you and told you there were warrants
23 for your arrest at Lexington County?

24 A I was totally, you know, confused, you know,
25 here's a Richland County deputy calling me about it,

1 plus the fact I knew I had the hearing the next day,
2 which I needed to attend.

3 Q Had you ever been arrested in your life for
4 anything?

5 A No.

6 Q When she told you that you could report and be
7 out by 10:00, did you report?

8 A Yes.

9 Q And was that something you felt obligated to
10 do?

11 A Definitely.

12 Q Did you call an attorney?

13 A Yes, I did.

14 Q And who did you call?

15 A I called you, and I talked to Brooks.

16 Q That's Mr. Brooks Biediger right here?

17 A Right.

18 Q Did you turn yourself in?

19 A Yes, I did.

20 Q What time did you turn yourself in?

21 A 5:30 in the morning.

22 Q Was that pursuant to the instructions of Deputy
23 Scott?

24 A Yes, it was.

25 Q Now, when they turned you in, tell the jury

1 what happened to you.

2 **A** We went to the jail and turned myself -- I
3 turned myself in, and then I was taken around to
4 the, I guess, docking clerk or whatever you call
5 them. I'm not a criminal lawyer, so I don't know
6 all these terminologies.

7 So I went around there, and I said, I need to
8 go to the bond hearing at ten o'clock because I'm
9 supposed to be in court this morning, and learned
10 that I would not go to court at ten o'clock, it
11 would be three o'clock because there was a victim
12 that would -- wanted to appear.

13 **Q** Now, let's take a look at who was listed as the
14 victim. Exhibit Number 10, the very bottom, who was
15 supposed to be notified as the victim?

16 **A** Heidi Scott, it says here.

17 **Q** All right. Now --

18 **A** That's not what I was told.

19 **Q** All right. On the sheet, though, it indicates
20 Heidi Scott is the victim, right?

21 **A** Right.

22 **Q** Okay. Now -- so Heidi Scott had told you you
23 would have the bond hearing at what time?

24 **A** Ten o'clock.

25 **Q** All right. Were you booked?

- 1 A Yes, I was.
- 2 Q Photographed?
- 3 A Right.
- 4 Q Fingerprinted?
- 5 A Fingerprinted.
- 6 Q How about your dress?
- 7 A Had to change into one of the orange jumpsuits.
- 8 Q Did it fit?
- 9 A Well, about -- that first one fit pretty good.
- 10 It was regular size, and it fit pretty good.
- 11 Q How long were you allowed to keep that one?
- 12 A Until I got put back into the jail. After the
- 13 judge said I had to pay -- post a bond, which I had
- 14 no money to post, and I was put back into the jail
- 15 for the night, they came around and said they needed
- 16 the jumpsuit because they were washing clothes that
- 17 night..
- 18 Q So what did they give you to put on?
- 19 A I had a sheet.
- 20 Q What bond was placed upon you?
- 21 A I think it was \$50,000.
- 22 Q Did either Elizabeth Wallace or Heidi Scott
- 23 appear at your bond hearing?
- 24 A Elizabeth Wallace was there.
- 25 Q Do you have any idea how Elizabeth Wallace even

1 knew you had been arrested and to go to a bond
2 hearing?

3 A No.

4 Q Did Elizabeth Wallace speak at the bond
5 hearing?

6 A Yes, she did.

7 Q After Elizabeth Wallace spoke at the bond
8 hearing, how much bond was placed upon you, surety?

9 A \$50,000.

10 Q That meant it would cost you how much money
11 just to get out of jail?

12 A At least 5,000.

13 Q Did you have \$5,000?

14 A Absolutely not.

15 Q Now, the hearing was set for the 16th. Were
16 you able to go to the hearing on the 16th?

17 A No.

18 Q Why not?

19 A I was in jail for 40 hours.

20 Q And did the judge go ahead and have the hearing
21 knowing you were in jail?

22 A Apparently so. I don't know.

23 Q Did you lose the hearing?

24 A Yes.

25 Q Now, after the -- after the bond hearing where

1 there was a 50,000 dollar surety bond placed on you,
2 were you put back in the jail?

3 **A** Yes.

4 **Q** Now, you say you were given a sheet.

5 **A** Yeah. When I was put in jail, they gave me two
6 sheets and a mat to sleep on. And when they took
7 the clothes, then I had to wrap one sheet around me
8 as my clothing.

9 **Q** Did they let you keep your bra and panties?

10 **A** No. Nothing.

11 **Q** Ma'am, when you were sitting in that jail
12 totally naked except for a sheet and you knew you
13 were supposed to be in the probate court over a
14 hearing with the Wallace children, how did you feel?

15 **A** I felt like a trapped animal really.

16 **Q** Talk to me. Tell me about it, Kay. This is --
17 I want to know -- tell these folks how this impacted
18 you.

19 **A** I was fearful. I was very much afraid as what
20 was going to happen to me. I didn't know. I knew I
21 was losing everything. And to be there, you know,
22 to have no clothing on is so humiliating. And then
23 on top of that, I had to sleep on the floor. I had
24 no bed to sleep on. Everything was in the open. It
25 was devastating.

1 Q Were you in a cell by yourself or were you
2 naked in this cell with a sheet with some other
3 people?

4 A Oh, yes. They didn't have cells as you see on
5 movies and things like that. They had, like, a pod.
6 It was an open room, but yet they had assigned
7 areas, and you couldn't leave that particular area.
8 You had to stay in that area.

9 In the area where I was assigned, there were,
10 like, four beds and then there were, like, four mats
11 for -- so eight people, I guess, in that area.

12 Q So there were eight women with you?

13 A Right.

14 Q Were any of the rest of them stripped naked?

15 A Some of them, yes.

16 Q How did you arrange your sheet to cover
17 yourself?

18 A Sort of like --

19 Q Do you do like a toga or just wrap it around?

20 A Yeah, like a sarong. Yeah, I sort of tried to
21 wrap it.

22 Q Did you sleep naked that night?

23 A Yes.

24 Q Did you have one of the beds?

25 A No. I had a mat on the floor.

1 Q Did you cry?

2 A No. I think I was too shocked to cry at that
3 time.

4 Q Explain that.

5 A It's -- well, you -- you just don't know what's
6 going to happen. And I was just, you know, I didn't
7 know how long I'd be there. And I was hearing these
8 tales of maybe being there for days without being
9 able to get out.

10 Q How long had David been dead when you found
11 yourself naked on the floor of the Lexington County
12 jail pursuant to a warrant issued by a Richland
13 County deputy?

14 A It was from February to what the date was on
15 that warrant.

16 Q Hadn't been long?

17 A A few months, yeah.

18 Q At the time they arrested you and put you in
19 jail naked, were you still in a grieving process?

20 A Yes.

21 Q Tell me how the fact that you were still in a
22 grieving process for your lover impacted your
23 feeling as you sat there on the floor of the
24 Lexington County jail with a sheet around you with
25 eight women.

1 **A** I was glad that David didn't know what was
2 going on. I really was, because -- to think that he
3 might know something like that would be just too
4 much to bear.

5 **Q** And you were there on a warrant signed by Heidi
6 Scott on a case that appeared to be investigated by
7 the Wallace children?

8 **A** A lot of it, yes, or instigated by it.

9 **Q** Did they also appear to be participating in the
10 investigation?

11 **A** It appeared so.

12 **Q** This handwriting analysis, who was the actual
13 handwriting investigator who issued this opinion?
14 Who was he -- who was he writing the opinion to?

15 **A** I don't know.

16 **Q** Did you know that the handwriting investigator
17 had been hired by the Wallace children?

18 **MR. FRAWLEY:** Objection as to leading.

19 **THE COURT:** Hold on.

20 **MR. MOORE:** That's fine. I'll withdraw it.

21 BY MR. MOORE:

22 **Q** Kay, we know that you spent from 5:30 that
23 morning -- you went to the bond hearing at what
24 time?

25 **A** Be around three o'clock.

1 Q And you spent the night on the floor?

2 A Right.

3 Q What's the next court appearance you went to?

4 A The following day. It was over here at this
5 courthouse.

6 Q And by that time, the probate hearing was over?

7 A Yeah.

8 Q And did you have a hearing before Judge
9 McMahon?

10 A Yes, I did.

11 Q And did he issue an order letting you out of
12 jail?

13 A Yes, he did.

14 Q Would you just read to the jury what Judge
15 McMahon had to say about your circumstance?

16 A A bond modification hearing was held at 2:30
17 p.m. on November 17, 2011, at the Lexington County
18 Judicial Center. The alleged victim, Elizabeth
19 Wallace, was notified and did not appear. This
20 matter is before me pursuant to two criminal charges
21 against Kay F. Paschal, the first being forgery in
22 the value of 10,000 or more and the second being
23 breach of trust. These charges arise by two
24 Lexington County arrest warrants.

25 The warrants appear to be signed by a Richland

1 County Sheriff's Department lieutenant, who is
2 apparently functioning in Lexington County. There
3 is no indication on either warrant that anyone from
4 Lexington County law enforcement approved of these
5 arrest warrants. The Court has reviewed the
6 affidavits in the arrest warrants which have
7 significant questions upon their face, both legal
8 and procedural.

9 The Court does note the alleged victim claims
10 to be Elizabeth Wallace, which was placed on the
11 record.

12 I find and conclude that the defendant, Kay F.
13 Paschal, is a member in good standing in both the
14 South Carolina and Lexington County Bar
15 Associations. I find that Ms. Paschal has no
16 criminal background. I find that Ms. Paschal
17 presents no risk of flight and presents no danger to
18 the community. Ms. Paschal turned herself in when
19 she learned of the allegation. And there's simply
20 no danger to the community and no risk of flight to
21 be found anywhere under these circumstances.

22 Based on the foregoing, I find and conclude
23 that the personal recognizance bond is required, and
24 I now set a 10,000 dollar personal recognizance bond
25 on each count. The only condition, other than the

1 standard conditions, on her bond shall be she shall
2 have no contact with alleged victim, Elizabeth
3 Wallace.

4 A copy of this order shall be delivered to the
5 Lexington County Bond Court, which shall prepare
6 bond papers in the standard form immediately and
7 immediately discharge the defendant from custody.
8 It is so ordered, the Honorable Knox McMahon.

9 Q From the time that Judge McMahon said what he
10 said and ordered your release, how long did it take
11 before you could even be processed out of jail?

12 A Well, we stayed at the courthouse until the
13 order was actually signed. And then the deputy took
14 me back over to the jail where they, again, put me
15 back into the holding area where I'd been before.
16 And I stayed there until -- it was almost five
17 o'clock and the deputy came running in and saying,
18 We've got to run over to the bond court if you're to
19 get out today.

20 And so we ran over to the bond court, and the
21 judge signed the order to release me. And then I
22 had to go back to the jail. And I was in there.
23 And it was like six o'clock or so, and they were
24 changing shifts and because they were changing
25 shifts, I didn't get out right then. So I got out

1 about nine o'clock that night.

2 Q Were you tired?

3 A I was tired, yes.

4 Q Kay, when they brought you to this courthouse
5 for the bond reduction hearing in front of Circuit
6 Judge McMahon, how were you dressed?

7 A Well, I still had the sheet on me when the
8 first deputy came to take me to court, and so they
9 threw me some clothes which were like ten times too
10 large for me, so I looked sort of very pitiful. So
11 on the way to the court, the deputy did manage to
12 grab some clothes that were closer to my size and
13 gave me a few minutes to get in there and get
14 changed before I went to court. But I had to wear
15 shackles, and I had handcuffs. And the shackles
16 were cutting into my ankles, and it was very painful
17 walking into the court.

18 Q When you walked in, were you in one of those
19 jumpsuits?

20 A Yes.

21 Q Did they let you wear underwear to the
22 courthouse?

23 A No.

24 Q Not even a bra?

25 A No.

1 Q Now, Kay, you are an attorney and had been in
2 this county for a number of years. Had you ever
3 walked into the Lexington County Courthouse in
4 shackles before?

5 A No.

6 Q Did you know a lot of the people who work here
7 in the courthouse?

8 A I recognized a lot of faces of people I'd seen
9 before. I don't know their names because I haven't
10 practiced law in so many years.

11 Q But you recognized a lot of them?

12 A A lot of faces, yes.

13 Q Ma'am, when you have a reputation as an
14 attorney, hold a license as an attorney, and you
15 walked into this courthouse in chains and a red
16 jumpsuit with no underwear, how did that make you
17 feel?

18 A It was humiliating to say the least.

19 Q Well, what was humiliating about that?

20 A Pardon?

21 Q What was humiliating about that?

22 A Well, your reputation and your pride and
23 everything is gone. I mean, you're just being
24 looked upon.

25 Q How long did it take before they gave you your

1 clothes back?

2 A I got them right back right before I left,
3 which would have been around eight o'clock, eight
4 o'clock or nine o'clock.

5 Q When you left the courthouse, did you have
6 transportation home?

7 A I did.

8 Q How did you get home?

9 A I had the van, which I was surprised to see
10 still parked out there.

11 Q Did they ultimately take that from you?

12 A Yes, they did.

13 Q Where did it go?

14 A Spring Lake Road.

15 Q After they took the van from you, were you able
16 -- was it ever used again that you could tell?

17 A Last time I saw it all the tires were flat and
18 the battery was dead.

19 Q All right. So you got home and you -- did you
20 sleep well that night?

21 A No.

22 Q Why not?

23 A Well, you still -- your nerves are still tense
24 and everything from not knowing what would happen
25 next.

1 Q Can you tell me if you've actually seen a
2 medical doctor as a result of some of the stress?

3 A Yes.

4 Q Who have you seen?

5 A Dr. Hook, Jeffrey Hook.

6 Q How has the stress of all of these charges and
7 so forth impacted you?

8 A Well, he's had to increase my blood pressure
9 medicine because I have high blood pressure. So
10 he's had to go up on that. He meets -- he sees me
11 about every three months to see how I'm doing.

12 Q Was Judge McMahon, the judge who set the bond,
13 was he a close friend of yours?

14 A No.

15 Q Did you know him?

16 A I know him, but I don't -- he's not a friend of
17 mine.

18 Q Now, when the van got taken from you, what
19 transportation did you have?

20 A Initially, I had none. I had my bicycle, which
21 I rode down from my house to Five Points to get some
22 stuff I needed for it. Well, I rode it and walked
23 it. I couldn't ride up the hills because it was too
24 much, but I rode it to Five Points. And then after
25 that, some friends of mine let me borrow their

1 truck, and I drove that.

2 Q Now, eventually, the probate court case was
3 settled. Did you pay our law firm a fee for having
4 the civil case?

5 A Yes, I did.

6 Q Were you able to pay us for the work that we
7 did on the criminal case?

8 A Not as of this date, no.

9 Q As I understand it, we went to a bond hearing,
10 a bond reduction hearing, and a preliminary hearing
11 in that case?

12 A Yes.

13 Q And at the preliminary hearing, was the case
14 examined by the magistrate judge?

15 A Yes.

16 Q What did the magistrate judge do with the two
17 charges against you in Lexington County at the
18 probate court hearing?

19 A You mean at the preliminary hearing?

20 Q I mean, the preliminary hearing.

21 A He dismissed the charges.

22 Q Now, after the charges were dismissed against
23 you, were you happy?

24 A Well, I was relieved for those charges, but I
25 didn't feel safe at that point.

1 Q Since the time you were first put in jail,
2 naked on the floor, have you ever felt safe again?

3 A No.

4 Q Why not?

5 A Because I got -- my doorbell rang at 6:00 a.m.
6 one morning before another hearing.

7 Q I want to ask you this question: According to
8 you, who was present at the bond setting hearing?

9 A Elizabeth Wallace.

10 Q According to the order from Judge McMahon, did
11 she bother to come back to the reduction hearing?

12 A No, sir.

13 Q Of course, by that time, the probate court
14 hearing had already taken place?

15 A That's correct.

16 Q Who was present before Judge McMahon at the
17 bond reduction hearing? Was Heidi Scott there?

18 A No.

19 Q Did anybody bother to show up at that?

20 A No.

21 Q Now, after the probate court hearing -- I'm
22 sorry. After the preliminary hearing when the
23 charges were dismissed for lack of probable cause,
24 were there any criminal charges pending at all?

25 A No.

1 Q Were you able to get your stuff back from the
2 Richland County Sheriff's Department after the
3 charges against you were dismissed?

4 A No.

5 Q Did anyone ever bring an action in Lexington
6 County before the grand jury trying to have you
7 prosecuted?

8 A No.

9 Q And you've heard Ms. Scott, or Jackson, testify
10 that that's not going to be done, right?

11 A Right.

12 Q So the case against you in Lexington County is
13 over, correct?

14 A Yes.

15 Q Has anyone ever explained to you why they won't
16 give you back the items they have taken from you?

17 A No.

18 Q Have you made an effort to get them back?

19 A Yes, I've tried to.

20 Q Do you even know where your property is today?

21 A No.

22 Q Now, at some point in time, you filed a lawsuit
23 against -- you filed a lawsuit against Mr. Lott for
24 what was done to you, correct?

25 A Yes.

1 Q Was that after the preliminary hearing?

2 A Yes.

3 Q At the time you filed the lawsuit, was there
4 any charge pending against you at all that you knew
5 of?

6 A Not to my knowledge, no.

7 Q Kay, can you give me the date that the charges
8 against you for forgery and breach of trust dealing
9 with this power of attorney were permanently
10 dismissed in Lexington County?

11 A It looks like January the 20th, 2012.

12 Q All right. Now, did you believe your criminal
13 problems -- or hope they were over?

14 A I was hoping they were over.

15 Q And thereafter, in or about December of 2013,
16 years later, did it happen again?

17 A Yes, it did.

18 Q Can I show you these two warrants and ask you
19 if they served these on you?

20 A Yes, they did serve these on me.

21 MR. MOORE: We'd like to offer these into
22 evidence, please, Your Honor.

23 MR. FRAWLEY: Without objection.

24 THE COURT: Mark it in evidence, please.

25 (Plaintiff's Exhibit Numbers 23 and 24,

1 arrest warrants, were marked and admitted into
2 evidence.)

3 BY MR. MOORE:

4 Q Now, Kay, these charges charge you with the
5 same crime but for doing something different, right?

6 A Right.

7 Q The charges are issued by Howard Hughes of the
8 Richland County Sheriff's Department in Richland
9 County, right?

10 A Right.

11 Q What's the charge?

12 A That on or about April --

13 Q No, the name of the charge that's here.

14 A Forgery, forgery, no dollar amount.

15 Q Forgery, no dollar amount. What is then 24,
16 what's the charge?

17 A Forgery, forgery, no dollar amount.

18 Q Is it your understanding that you've been
19 accused of forgery but not taking any money?

20 A Right.

21 Q All right. Now, after you got charged in
22 Richland County, did you try to get a preliminary
23 hearing or a court case?

24 A I understand we did.

25 Q Did they give you a preliminary hearing?

1 **A** No.

2 **MR. FRAWLEY:** Objection.

3 **THE COURT:** Yes, sir.

4 **MR. FRAWLEY:** I mean, that -- she hasn't gotten
5 a hearing, but will they give you a preliminary
6 hearing. There's no foundation laid for that.

7 BY MR. MOORE:

8 **Q** Have you tried to get a hearing?

9 **A** Yes, sir.

10 **Q** Have you ever been successful in having anybody
11 in Richland County give you the preliminary hearing?

12 **A** No, not to this day.

13 **Q** Have you filed discovery information asking the
14 sheriff's department, What do you have against me?

15 **A** It's my understanding we have.

16 **Q** Has the sheriff's department bothered to give
17 you one shred of evidence in what you're supposed to
18 have done wrong in those cases?

19 **A** No.

20 **Q** At the time they filed these second charges
21 against you, was your lawsuit already pending?

22 **A** Yes.

23 **Q** And had it been pending for a while?

24 **A** Yes.

25 **Q** Now, they've sued you for abuse of process, for

1 suing them, trying to make your criminal charges go
2 away. At the time you sued them, had the criminal
3 charges gone away?

4 **A** Yes.

5 **Q** At the time you sued them, were there any
6 criminal charges?

7 **A** No.

8 **Q** You got any idea -- have you ever been able to
9 figure out why Leon Lott sued you?

10 **A** No, I don't know why.

11 **Q** Do you have any idea how Leon Lott claims to
12 have been damaged by you?

13 **A** No, I have no idea.

14 **Q** Have you ever even met Mr. Lott?

15 **A** No, I have not met him.

16 **Q** Have you met a lot of his deputies?

17 **A** Since they've been in my house, yes. I don't
18 know them by name except for Ms. Scott.

19 **Q** Kay, in the probate court hearing that you had,
20 was there any time that when something was supposed
21 to happen in probate court, something also happened
22 in the criminal matter?

23 **A** Yes.

24 **Q** That happened often, didn't it?

25 **A** Yes.

1 Q From what you could see, was there a -- more
2 than a professional relationship between Heidi Scott
3 and the Wallace children?

4 A In my opinion, there was.

5 Q Describe what you saw -- what you saw, how they
6 acted, how they did, how they controlled.

7 MR. FRAWLEY: Didn't we cover this 30 minutes
8 ago? The question's been asked and answered.

9 THE COURT: Do you wish to be heard?

10 MR. MOORE: I think he's probably right, Your
11 Honor.

12 THE COURT: All right.

13 MR. MOORE: I'll ask it -- I'll try to shortcut
14 it.

15 BY MR. MOORE:

16 Q Were the Wallace children allowed to
17 participate in the criminal prosecution?

18 A They were always present, yes.

19 Q Did they appear to be participating in it?

20 A Yes, they did.

21 Q Participated in the search of your home and --
22 in Richland County?

23 A Uh-huh.

24 Q Participated in your {sic} search of your home
25 in Lexington County?

1 **A** Right.

2 **Q** Present at the bond hearing?

3 **A** Correct.

4 **Q** Were listed and dealt -- the warrants were
5 issued the night before the probate court hearing?

6 **A** Right.

7 **Q** Kay, of all the things you've experienced, the
8 suspension of your license, the inability to make
9 money, the arrest, the whole nine yards, what's the
10 worst thing that has happened to you as a result of
11 what these people have done to you?

12 **A** The worst thing that I can think of is they
13 keep trying to make David out to be a senile man who
14 was led around by me, and I never did that. I only
15 followed what he wanted done. I only wanted to look
16 out for his best interest. I would be caring for
17 him right now if he were alive. I really would.

18 **MR. MOORE:** Would you answer any questions
19 Mr. Frawley might have?

20 **THE COURT:** Let's break right now. Folks,
21 don't discuss the case. About a ten-minute break.

22 (The jury retires to the jury room.)

23 **THE COURT:** Okay. Ms. Paschal, you can't
24 discuss your testimony.

25 **THE WITNESS:** Yes, sir.

1 **THE COURT:** Thank you. We're at ease.

2 (Brief recess.)

3 **THE COURT:** Are you ready, Mr. Moore?

4 **MR. MOORE:** Yes, sir.

5 **MR. FRAWLEY:** I'm ready, Your Honor.

6 **THE COURT:** Had you finished?

7 **MR. MOORE:** Yes. Yes, sir. Thank you.

8 **THE COURT:** Oh, I'm sorry. I apologize.

9 Bring the jury in.

10 (The jury returns to the courtroom.)

11 **THE COURT:** Okay, Mr. Frawley.

12 **MR. FRAWLEY:** May it please the Court.

13 **THE COURT:** Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. FRAWLEY:

16 **Q** Ms. Paschal, you graduated from law school in
17 1968; isn't that correct?

18 **A** That's correct.

19 **Q** All right. And you were licensed by the South
20 Carolina Bar as an attorney in South Carolina in the
21 same year, 1968, correct?

22 **A** Yes.

23 **Q** And you practiced as an attorney in South
24 Carolina from 1968 until approximately when?

25 **A** About 2001, 2002.

1 Q In 2001 or 2002, you stopped practicing
2 actively as an attorney, correct?

3 A Yes.

4 Q Still maintained your licensure with the South
5 Carolina Bar?

6 A Yes.

7 Q And in 2001, 2002, that's when you began
8 working as secretary/administrative assistant,
9 whatever title you want to put on it, for
10 Mr. Wallace, correct?

11 A Correct.

12 Q And you worked in that capacity with
13 Mr. Wallace up until the time of his death, correct?

14 A Well, I worked with him in that capacity until
15 we moved the office and quit really working at all.

16 Q Okay. You never resumed practicing law, did
17 you?

18 A No.

19 Q So if you were to look back into what the
20 market would bear for hiring a new associate for a
21 law firm and you were to apply for a position such
22 as that, you would be applying as a licensed
23 attorney who hasn't practiced law for 13 years,
24 correct?

25 A Correct.

1 Q Now, when you did practice law, you were, I
2 guess what we call a general practitioner; is that
3 right?

4 A That's correct.

5 Q Okay. And a general practitioner, you pretty
6 much take what comes in the door within which you
7 would feel confident handling, correct?

8 A Right.

9 Q All right. Now, I understand you didn't do
10 much criminal work, correct?

11 A Very little criminal.

12 Q If you got court appointed, you would handle
13 that, but you didn't seek the criminal work?

14 A No. I had some, but not a whole lot.

15 Q Okay. You did some probate work and you did
16 some family court?

17 A Yes, sir.

18 Q And you did powers of attorney when you were
19 practicing law, didn't you?

20 A Right.

21 Q So you knew what a power of attorney was,
22 didn't you?

23 A Yes.

24 Q You also did some real estate?

25 A Yes.

1 Q And, in fact, that's how you met David Wallace;
2 isn't that right?

3 A That's correct.

4 Q You were representing a party, not necessarily
5 adverse, but it was a real estate transaction, and
6 you were representing the other party to that real
7 estate transaction, correct?

8 A My client was buying some property from David.

9 Q Right. So Mr. Wallace got to know you through
10 that transaction. And a couple weeks afterwards,
11 there was a conversation between the two of you, and
12 y'all started seeing each other at least on a social
13 basis, correct?

14 A That's right.

15 Q And that carried that way socially, just as
16 friends, maybe go out to dinner, for about a year,
17 correct?

18 A Correct.

19 Q And this first transaction you had was around
20 1984?

21 A That's right.

22 Q All right. And then about a year after that,
23 as the friendship blossomed, you became intimate
24 with Mr. Wallace in or around 1985, correct?

25 A Yes.

1 Q All right. By 1985, when you became intimate
2 with Mr. Wallace, you knew that he was married,
3 didn't you?

4 A Yes, I did.

5 Q All right. He continued to be married from
6 1985 through 2001, correct?

7 A Correct.

8 Q To that same woman, correct?

9 A Correct.

10 Q And he still resided with her, cohabitated with
11 her, correct?

12 A Yes.

13 Q And you continued to have an ongoing affair
14 with Mr. Wallace from 1985 through 2001, correct?

15 A Yes.

16 Q And even developed a friendship with his wife?

17 A Yes, I did.

18 Q In fact, toward the end, as she was getting
19 sick, you helped care for her sometimes, didn't you?

20 A I carried her to the doctor for her
21 chemotherapy when she had cancer. I carried her to
22 the grocery store. I did a lot of things for her.

23 Q All the while, you were serving also as a
24 mistress for Mr. Wallace, correct?

25 A Yes.

1 Q Also did some legal work for him, but not a
2 lot. Would you agree with that statement?

3 A I would agree with that.

4 Q Okay. So you were doing some legal work for
5 Mr. Wallace as an attorney at the same time that you
6 were having an affair with him while he was still
7 married, correct?

8 A Yes.

9 Q Now, you understood, as an attorney, that there
10 is a procedure in place for a name change, correct?

11 A You can. Yes, you can do it legally, yes.

12 Q And there's a couple ways, I guess, if you're a
13 female, you can change your name. One is you can
14 legally change your name through the court, correct?

15 A Yes.

16 Q Or you can get married and women have to change
17 their name, or sometimes they don't anymore, but
18 that's a way to change your name as well, correct?

19 A Yeah, you don't have to do it, yes.

20 Q Right. Or you can hyphenate it or whatever
21 they do now. So you never legally changed your name
22 to Wallace, did you?

23 A Yes, I did. I mean, on my driver's license and
24 on my social security card.

25 Q Okay. Did you ever get a court order where a

1 court changed your name to Wallace?

2 A No.

3 Q Okay. You never married Mr. Wallace, did you?

4 A Not -- we didn't go through a formal ceremony,
5 but, yes, we were common law. But I can't claim
6 that because I agreed not to.

7 Q Well, then you weren't common law then, were
8 you?

9 A In my heart, we still are, but I can't claim it
10 because I agreed not to. I stipulated that in
11 court, so.

12 Q Before a judge?

13 A Yes.

14 Q In the settlement of a probate court case where
15 you were paid money from his estate, correct?

16 A Some money, yes.

17 Q Okay. 223,000 --

18 A Out of six million, yes.

19 Q Okay. Out of six million.

20 The parties with whom you had that probate
21 court dispute were the Wallace children, correct?

22 A Correct.

23 Q All right. And after Mr. Wallace died, maybe
24 even in the months before he died, they attempted to
25 shut you out of his life and foreclose you, didn't

1 they?

2 **A** Right before -- I would say within the months
3 right -- months when they saw he was really going
4 downhill, then they became aggressive towards me.
5 They didn't shut me out of his life because I was
6 caring for him. They never ever -- when he was in
7 the hospital, they didn't say, You can't come to the
8 hospital. They did not deny my use of his name,
9 Wallace, while he was in the hospital. They did not
10 object when I told the doctors I was Mrs. Wallace or
11 when he himself said that I was Mrs. Wallace.

12 **Q** But you agree with me that between maybe
13 February 13 of 2011 and when he died, February 20 of
14 2011, that, during that period of time, there was
15 some excluding of you from Mr. Wallace's financial
16 affairs, personal affairs?

17 **A** They locked the door to the computer room and/
18 they had started going through everything, but I was
19 so worn out from looking after him, I wasn't
20 thinking clearly. If you can imagine, if you looked
21 after somebody for a year who was so helpless in the
22 sense that they couldn't walk, they couldn't do
23 anything for themselves physically -- mentally, I
24 could talk to him, I could love him, and he knew I
25 loved him. So I could do all those things, but I

1 couldn't -- I just was not thinking at that time. I
2 should have shut them all out and kept them away
3 from the house, but I wasn't thinking.

4 Q I appreciate that --

5 A I was loving David. I was looking after him.
6 That's all I could do.

7 Q I appreciate that. I'll take that as a, yes,
8 that they were excluding him -- you from the --

9 A No, they didn't exclude me from him. I got to
10 see him right up until he died.

11 Q But they were locking you out of the --

12 A The computer --

13 Q -- computer room.

14 A -- room, yes. But I wasn't concerned with
15 that. I was concerned about him.

16 Q Yes, ma'am. I didn't ask you if you were
17 concerned about it. I asked you if they were, in
18 fact, excluding you from certain portions of his
19 life. And they were doing that, weren't they?

20 A Yes. They were being very cruel.

21 Q All right.

22 A They were worried about their mother's estate,
23 which I told them they should have asked him about
24 her estate when she -- he was alive and right after
25 she died.

1 **MR. FRAWLEY:** Your Honor, I will ask the Court
2 to direct her to answer the questions and leave the
3 extra comments to, possibly, redirect.

4 **THE COURT:** Pose the questions and she can
5 explain her answers.

6 BY MR. FRAWLEY:

7 **Q** Now, you testified that you used the Wallace
8 name for several years --

9 **A** Yes.

10 **Q** -- before you stopped using the Wallace name,
11 correct?

12 **A** Right.

13 **Q** But you didn't really change your driver's
14 license and your social security card until after
15 Mr. Wallace died?

16 **A** That's right.

17 **Q** Okay. So while he was living, you never had
18 any legal document with the name Wallace on it, did
19 you?

20 **A** The only reason I didn't is because I was not
21 aware of a particular statute which said that if two
22 people are known to live together as husband and
23 wife and you have two witnesses to sign an affidavit
24 which you can present to probate court, then you can
25 use the name.

1 **MR. FRAWLEY:** Your Honor, I'll move to strike
2 that answer as nonresponsive. That was a yes or no
3 question. I move to strike that answer where she's
4 paraphrasing a statute.

5 **THE COURT:** In 23 years, I've never said the
6 witness has to answer a question yes or no. If it's
7 a yes or no, she may answer yes or no, and then she
8 may explain her answer.

9 BY MR. FRAWLEY:

10 **Q** All right. Then the question again is: You
11 never changed your name on any legal document to
12 Wallace until after Mr. Wallace was dead, correct?

13 **A** I didn't change my name on a legal document,
14 but I signed legal documents in the name of Kay
15 Wallace.

16 **Q** Did any entity of the State of South Carolina
17 or any other governmental entity have you listed
18 anywhere as Kay Wallace before David Wallace died,
19 February 20, 2011?

20 **A** Not any governmental entity, no.

21 **Q** Okay. You signed legal documents like checks
22 with the Wallace name, didn't you?

23 **A** Yes.

24 **Q** Okay. And you'd been doing that for several
25 years, correct?

1 **A** Yes.

2 **Q** Even though no governmental entity anywhere had
3 you listed as Kay Wallace?

4 **A** Right.

5 **Q** Your real estate license that Mr. Moore had
6 asked you questions about, that was inactive even
7 before Mr. Wallace died; is that correct?

8 **A** No.

9 **Q** All right. You mentioned on direct that it was
10 inactive at some point. When did it become
11 inactive?

12 **A** I was first aware it became inactive this year.

13 **Q** Okay. And what was the date that it became --

14 **A** June of this year, it became inactive
15 because -- and I reapplied for my license, and it's
16 still listed as inactive.

17 **Q** Okay. And when was it -- when was it declared
18 inactive?

19 **A** In June.

20 **Q** Of this year?

21 **A** Yeah.

22 **Q** So June of 2014?

23 **A** Right.

24 **Q** So up until June of 2014, it's been active?

25 **A** As far as I know, yes.

1 Q Okay. Up until June of 2014, have you been
2 engaged in the real estate practice --

3 A No.

4 Q -- to make any money?

5 A No.

6 Q You haven't. So while it's inactive now, and
7 maybe you can, maybe you can't reapply for it, you
8 haven't really been using that real estate license
9 anyway, have you?

10 A Not at this point because the license was
11 housed in his company. His company was not
12 existing, so therefore I couldn't really practice
13 it.

14 Q Okay. And you weren't practicing it, so you
15 didn't find out until a month ago that the license
16 was inactive?

17 A I got a call from the Real Estate Commission
18 that somebody had called them about my license.

19 Q Okay. And that's when you found out that it
20 wasn't active?

21 A Yeah.

22 Q Just from some -- from them calling you, not
23 because you were actually earning a living in real
24 estate?

25 A That's right. Not at this point.

1 Q You mentioned you were put out of the home.
2 You're talking about the 205 Spring Lake --

3 A Yes.

4 Q -- Road home? And that was pursuant to the
5 probate court matter?

6 A Yes. What happened was the probate judge said,
7 one, either you move out of the house, move out of
8 Spring Lake Road and go to Springdale and live or
9 I'm going to put everybody out of every house until
10 the duration of the probate hearing, which meant I
11 would have been in the street. The Wallaces had
12 money, they could rent a house. I would have been
13 out walking the street. So I had no choice but to
14 go --

15 Q Okay. Now, that action, that probate court
16 action was brought --

17 MR. MOORE: Might Mr. Frawley allow her to
18 finish answering the question before he starts
19 asking another one?

20 MR. FRAWLEY: I'd like her to answer my
21 questions as opposed to going off on a narrative
22 that has nothing to do with my question.

23 MR. MOORE: Your Honor, I'll ask that she --
24 and I apologize, I cut you off.

25 THE COURT: Go ahead.

1 **MR. MOORE:** All I would ask is that Mr. Frawley
2 give her the same courtesy he asked of me, which was
3 to let the lady finish the answers to her questions.

4 **THE COURT:** Have you finished your answer?

5 **THE WITNESS:** Yes, sir.

6 **THE COURT:** Ask your next question.

7 BY MR. FRAWLEY:

8 **Q** That probate court matter was a dispute between
9 you and the Wallace children over whether you were
10 going to claim a spousal share of this six million
11 dollar estate, correct?

12 **A** Correct.

13 **Q** All right. The Wallace children disputed that,
14 didn't they?

15 **A** Yes.

16 **Q** Okay. You were represented by counsel, weren't
17 you?

18 **A** Yes.

19 **Q** Mr. Moore and his law firm, correct?

20 **A** Yes.

21 **Q** All right. And the Wallace children were
22 represented by counsel, correct?

23 **A** Yes.

24 **Q** And there was an independent administrator
25 appointed at some point, correct?

1 **A** Yes, Allan Fulmer.

2 **Q** Okay. That's this Allan Fulmer fellow who
3 keeps showing up, correct?

4 **A** Right.

5 **Q** All right. Now, some of the early hearings in
6 that case didn't work successfully for you. Would
7 you agree with that statement?

8 **A** Yes.

9 **Q** And would you also agree with the statement
10 that the Wallaces -- the Wallace children, in
11 addition to opposing your claim within the probate
12 court, were also attempting to seek a criminal
13 action against you initially through Forest Acres
14 and then later through the Richland County Sheriff's
15 Department?

16 **A** I found that after they started searching the
17 house, yes.

18 **Q** Okay. But at that point, your probate court
19 matter is still pending, right?

20 **A** Right.

21 **Q** And then you find out that they've reported you
22 to law enforcement, correct?

23 **A** Right.

24 **Q** All right. You don't have any evidence, do
25 you, that either of the Wallace children had any

1 relationship with Heidi Scott, now Heidi Jackson,
2 before the complaint to Richland County Sheriff's
3 Department, do you?

4 A No. I didn't know any of them except the
5 Wallace children before that day. I didn't know
6 Ms. Scott.

7 Q Okay.

8 A But I have seen her actions in this case.

9 Q You've seen her actions, and we'll go into that
10 late today or tomorrow. But you have no evidence
11 that there was any prior relationship between the
12 Wallaces and Lieutenant Heidi Scott or anybody with
13 the Richland County Sheriff's Department before the
14 complaint by the Wallace children about you,
15 correct?

16 A No. I knew about the relationship between the
17 sheriff and Johnny Finns and Jeff Wallace before
18 that.

19 Q Okay. All right. You haven't sued the sheriff
20 in his individual capacity, have you?

21 A No.

22 Q You've sued him in his official capacity as the
23 Sheriff for Richland County, correct?

24 A Correct.

25 Q All right. In fact, when you filed this

1 lawsuit, you didn't just sue the sheriff, you sued
2 the investigator and you sued the Wallace children,
3 didn't you?

4 A Yes.

5 Q And you alleged an improper relationship
6 between Lieutenant Heidi Scott and the Wallaces?

7 A Right.

8 Q Now, I believe you testified on direct that you
9 didn't begin living with Mr. David Wallace
10 consistently until 2003 through 2011?

11 A Correct.

12 Q Okay. And you done some legal work for him up
13 until about 2001 and 2002?

14 A I did some real estate title searches.

15 Q Did you print out a power of attorney for him
16 around that time?

17 A I did one for him, yes, and his wife. I did
18 one for each to the other, his first wife.

19 Q Do you have Exhibits 1 and 2 -- Plaintiff's
20 Exhibits 1 and 2, the powers of attorney up there?

21 A Yeah.

22 Q Let's see if we can find them.

23 A Here they are.

24 Q Okay. You do have them?

25 A Uh-huh.

1 Q Hang on to them.

2 Now, in the lower right-hand corner of Exhibits
3 1 and 2, there is a block that has dates and then a
4 handwritten initial. Do you see that on each of
5 them?

6 A Yes.

7 Q Okay. And you testified on direct that you
8 printed those out?

9 A I printed them out off the computer, yes.

10 Q Okay. And the first one you would have printed
11 out is the one that appointed Elizabeth Wallace as
12 power of attorney, correct?

13 A That's correct.

14 Q And then you printed out the one that has you
15 as power of attorney, correct?

16 A Correct.

17 Q All right. And what is the timeframe between
18 the printing of the first one and the printing of
19 the second one?

20 A It could have been done in the same day, but it
21 was certainly done before the -- between the 17th
22 and the 20th, I think, when it was signed.

23 Q Okay.

24 A According to the signing on that.

25 Q So your testimony today is that the printing

1 would have been done within either the same day or
2 days and not weeks or months?

3 A Right.

4 Q That's your testimony?

5 A Yes.

6 Q Okay. Do you recall me taking your deposition
7 back in June of 2013?

8 A Uh-huh.

9 Q Okay. And you swore to tell the truth then
10 that day, didn't you?

11 A As far as I know.

12 Q As far as you know?

13 A Yes. Yeah.

14 Q So there's a qualification as to whether you
15 swore to tell the truth?

16 A No. I tried to tell the truth. I'm not sure
17 about my memory. I'll have to see how it goes.

18 THE COURT: Ladies and gentlemen, let me tell
19 you -- this is a deposition you're going to be
20 referring to?

21 MR. FRAWLEY: Yes, sir.

22 THE COURT: A deposition is sworn testimony
23 taken outside of court. It's taken after notice to
24 both sides. They assemble at a designated time and
25 place in front of a certified court reporter. The

1 witness is placed under oath and questions are asked
2 and answers given. There's no judge there, but the
3 rules allow us to use depositions for certain
4 purposes in trials. And you should consider
5 deposition testimony to be given under oath, which
6 it was.

7 All right. Go ahead.

8 BY MR. FRAWLEY:

9 Q All right. Ms. Paschal, I'm going to hand you
10 the original of your deposition.

11 A Okay.

12 Q There are some tabbed pages in the back. Those
13 are the exhibits that were used in the deposition.

14 A Uh-huh.

15 Q You remember you getting exhibits in the
16 deposition?

17 A Yes.

18 Q And I'll refer you to Exhibits 7 and 8 when we
19 get to that point.

20 A All right.

21 Q If you could turn to page 49 of the deposition.

22 A All right.

23 Q Line 10, I have a question -- I'll read the
24 question, if you could read the answers, all right?

25 A Uh-huh.

1 Q All right. Line 10 on page 49: Now, the lower
2 right-hand corner of page 1 and I think all
3 subsequent pages of Exhibit 8, they have that date
4 and initial block that we referred to with regard to
5 Exhibit 7, correct?

6 A Right.

7 Q All right. Could you look at the tabs and look
8 at Exhibits 7 and 8 that are attached to the rear?

9 A Okay.

10 Q And tell me when you're there.

11 A I'm there.

12 Q All right. Exhibit 7, for purposes of the
13 deposition, is the two pages, 2 of 12, power of
14 attorney that lists Elizabeth G. Wallace, correct?

15 A Correct.

16 Q All right. And that corresponds with
17 Plaintiff's Exhibit Number 1 in front of you,
18 correct?

19 A Yes.

20 Q All right. And then Exhibit 8 is the 12-page
21 power of attorney --

22 A Uh-huh.

23 Q -- that corresponds with exhibit -- Plaintiff's
24 Exhibit 2, which is the one that names you as power
25 of attorney, correct?

1 **A** Yes.

2 **Q** All right. So when we're talking in here about
3 Exhibits 7 and 8, we're talking about Exhibits 1 and
4 2 of the plaintiff in this trial, correct?

5 **A** Right.

6 **Q** All right. Let's look back on page 49,
7 beginning on line 16: And all of those dates are
8 also indicated as 5/17/02, correct?

9 **A** Correct.

10 **Q** Question: For purposes of your drafting these
11 documents, what does that date indicate? Answer?

12 **A** It could mean it was typed on that particular
13 date. It could also mean that because using the
14 computer to go back in and just switching the names,
15 it just --

16 **THE COURT:** Slow down a little bit, please.

17 **THE WITNESS:** It could mean that it was typed
18 on that particular date. It also could mean that
19 because using the computers to go back in and just
20 switching the names, that it just wasn't revised.

21 BY MR. FRAWLEY:

22 **Q** All right. If you could go over to the top of
23 page 50. Question: You just didn't change the date
24 when you updated it?

25 **A** I said, Correct.

1 Q Question: Okay. Not all of these -- then your
2 answer?

3 A I'm not sure.

4 Q Question: Okay. You have no independent
5 recollection of that today?

6 A No.

7 Q All right: Now, if you could turn to page 52,
8 line 6. Do you see it?

9 A I'm getting there. I can't read with my
10 glasses.

11 Q Do you need to get your reading glasses?

12 A No, I can't read with my glasses. I have to
13 take them off to read. I can see close up; I can't
14 see far away.

15 Okay.

16 Q All right. Page 52, if you could look at line
17 6. Question: When you prepared the proposed power
18 of attorney naming Elizabeth Wallace -- then we'll
19 skip down three or four lines -- Was that within
20 days or was it months apart? Your answer?

21 A I don't recall.

22 Q Question: You don't remember the timeframes?
23 Answer?

24 A I don't remember the timeframe. It looks like
25 it was fairly close together.

1 Q Question: Okay. Are you telling that from
2 the -- are you telling that from the fact that both
3 of them are dated 5/17/02 in the lower right-hand
4 corner?

5 A Yes. And one was executed the 20th, so.

6 Q Question: But you have no independent
7 recollection of whether it was actually days apart
8 or months apart or years apart? Answer?

9 A No. Well, it wasn't years apart, I'm sure.
10 You know, I think it was fairly close in time, so.

11 Q So according to your deposition testimony in
12 June of 2013, it could have been days or weeks
13 apart?

14 A No --

15 Q You thought it was close in time, correct?

16 A I said it was close in time, which would mean
17 it would be before the 20th --

18 Q All right. But you --

19 A -- when it was signed.

20 Q You also indicated you didn't have an
21 independent recollection, and the reason you thought
22 it was close was because the dates were the same,
23 correct?

24 A It would have been before the 20th, right.

25 Q All right. Which was the date that it appears

1 to have been executed?

2 A It was exec -- apparently executed.

3 Q Okay. Apparently because you never saw it
4 executed, did you?

5 A I did not see it executed. I only received it
6 back from David.

7 Q All right. Did you draft these documents or
8 did you just print them?

9 A I just printed them. They were -- it's a form
10 -- it's a power of attorney format.

11 Q Did you change the names?

12 A I changed the names as per his instructions.

13 Q Okay. So you did change the names. That's
14 what drafting you would have done?

15 A Yeah. I changed the names under his
16 requirements.

17 Q And printed them off the same computer?

18 A Yes.

19 Q Same printer?

20 A As far as I know. Well, I had two computer --
21 two printers that were connected to my computer, so
22 it was either one of those two.

23 Q Okay. Same paper?

24 A Well, paper that's loaded in the computer. You
25 don't have -- you don't necessarily have the

1 identical paper in both computers, nor do you have
2 the identical paper in the computer at all times
3 because you change brands, you change types. So I
4 can't say it was identical paper.

5 Q You can't explain why there's a difference in
6 the fonts of the 12-page power of attorney, can you?

7 A Yes. Sometimes I use different fonts at
8 different times, but I don't know about those fonts.

9 Q Within the same document?

10 A Within the same document.

11 Q Okay. So your testimony to this jury is that
12 you would have printed out this 12-page document on
13 a printer and changed the fonts in the midst of that
14 12-page document?

15 A All -- all I know is I printed out a power of
16 attorney, gave it to David, who took it with him and
17 then brought it back to me signed. That's all I
18 know. I did not try to change -- I don't recall
19 changing fonts or doing anything different to it.
20 All I know is I gave him a power of attorney naming
21 me power of attorney. He took it out of the office,
22 and when he brought it back to me, it was signed,
23 and he handed it to me. He said, Keep this. And I
24 put it in the file.

25 Q Okay. So you cannot explain why there would be

1 a difference in fonts within the 12-page power of
2 attorney?

3 A As you know, it was not filed until after he
4 got sick. The office -- when we moved the office to
5 the house, that document was taken to the house, it
6 was put into the computer room. As far as I know --
7 I don't know if somebody could have gone into the
8 middle of it and changed it, I wouldn't know, but I
9 didn't change it.

10 Q That's my question. You can't explain if
11 there's a difference in the fonts, can you?

12 A No, I can't. No.

13 Q Thank you. You can't explain if there's a
14 difference in the paper stock within one 12-page
15 document, can you?

16 A No.

17 THE COURT: Need to stop in five minutes.

18 MR. FRAWLEY: Thank you, Your Honor.

19 THE COURT: All right.

20 BY MR. FRAWLEY:

21 Q When this power of attorney, whichever power of
22 attorney is the effective one, was printed, May
23 17th, 2002, do you have any reason to question that
24 date?

25 A No, I don't have any reason.

1 Q Okay. And the execution date appeared to be
2 three days later, correct?

3 A I know it was the 25th --

4 Q Okay.

5 A -- because the document's there.

6 Q When that was done, you weren't living with
7 Mr. Wallace at that time, were you?

8 A No. And his daughter was in England.

9 Q Okay. Do you know where you were when you
10 printed the document? Was it in Lexington County?
11 Was it in Richland County?

12 A We were in Richland County at the office at the
13 NBSC Building, 911 Lady Street.

14 Q Now, you mentioned that you had gone to Camden
15 to get a marriage license?

16 A Right.

17 Q Okay. That's Kershaw County, right?

18 A Yes.

19 Q Y'all didn't live in Kershaw County, did you?

20 A No.

21 Q So you went to Kershaw County, where you didn't
22 live, to get a marriage license. Went there on a
23 Friday, I guess, and they didn't want to take it
24 after 4:30 or something?

25 A Right. We went to Kershaw County because a lot

1 of people in Richland County knew we were married,
2 and therefore we didn't want it published in the
3 newspaper that we were getting a marriage license.
4 That was the reason we went to Kershaw County.

5 Q Okay. Whatever the reasons you're saying now
6 are --

7 A That's what it was then.

8 Q -- you went to Kershaw County to get a marriage
9 license and not to Richland County where you lived,
10 correct?

11 A Right. That's correct. And that's the reason.

12 Q And there was an application for a marriage
13 license, but you were never ceremonially married,
14 correct?

15 A No, we didn't have the opportunity. He had the
16 stroke the next Tuesday.

17 Q And you never got married after he had the
18 stroke?

19 A No. I was waiting, hoping he would be able to
20 walk again and we'd be able to get married then.

21 Q Okay. Now, he has the stroke April 20 of 2010,
22 the day he had the surgery, correct?

23 A Yeah.

24 Q And then you filed this eight-year-old power of
25 attorney three days later, correct?

1 A Right.

2 Q Was he still in the hospital then?

3 A Yes. The hospital was requesting a copy
4 showing his health care power of attorney. And I
5 did not have his specific health care power of
6 attorney, but I had the power of attorney that had
7 health care provisions in it, and that's why I filed
8 it.

9 Q Okay. But you never recorded it in the eight
10 years between when it was executed and when he had
11 the stroke, did you?

12 A I never intended to use it, hoped I would never
13 use it. And I was hoping David would be alive for
14 five to ten more years because -- and we would enjoy
15 each other. I had no idea of ever using that power
16 of attorney.

17 Q The answer to that is, no, you never recorded
18 it --

19 A No.

20 Q -- between May 17, 2002, and when he had his
21 stroke?

22 A No.

23 Q Now, when you went to Carolina Mobility to buy
24 this van, initially, you went there without
25 Mr. Wallace?

1 **A** The first visit I went there, yes.

2 **Q** Sure. I mean, you're just checking around at
3 that point to see where the vans might be, correct?

4 **A** Correct.

5 **Q** Did you go to other places besides that one?

6 **A** There are very few places. At that time, I
7 believe they might have been the only place in town
8 that had them.

9 **Q** It's kind of a specialized niche for vans?

10 **A** Yes. I think there's a couple places now that
11 have them.

12 **Q** All right. When you went there some two months
13 after you've recorded this power of attorney,
14 eight-year-old power of attorney, did you take that
15 power of attorney with you to show Mr. Peterson?

16 **A** Not when I went to look initially at vans
17 because I was just checking on it. And then I went
18 to the -- I told him David was at HealthSouth having
19 rehab and he was supposed to go home and then I was
20 concerned how I was going to get him home, you know,
21 whether we'd have to hire an ambulance or anything.
22 And Mr. Peterson was nice enough to offer to come to
23 the facility and bring a van to take David home in
24 so he could see how it would be helpful and how we
25 could use it and to see if we wanted to buy it.

1 Q Kind of a demo of the van, correct?

2 A Pardon?

3 Q Kind of a demonstration of the van?

4 A Right. Right.

5 Q All right. So up to that point, you hadn't
6 shown Mr. Peterson a power of attorney because you
7 were still kind of in the looking stage for vans --

8 A Correct.

9 Q -- at that point, correct?

10 Then Mr. Peterson was kind enough to come to
11 HealthSouth rehab, show y'all how the van worked?

12 A Uh-huh.

13 Q And at that point -- at some point, there was a
14 conclusion that you were going to buy a van?

15 A Right.

16 Q It wasn't that one, it was a different one, but
17 there was a conclusion that there was going to be a
18 van purchased, correct?

19 A Correct.

20 Q Once you got to that point where documents are
21 going to be signed and checks are going to be
22 written, at that point, you tendered that power of
23 attorney, didn't you?

24 A No. We were talking about it. And he picked
25 David up, we took him home, we got him to the house.

1 Mr. Peterson helped me take him in the house and
2 helped me put him in the bed. And during -- you
3 know, he explained to Mr. Peterson about the van --
4 or Mr. Peterson explained to David about the van and
5 how it would be helpful, and David liked it.

6 And he -- it didn't quite go down low enough,
7 so I think it had to be adjusted some because the
8 ramp was a little bit steep. You had to -- you
9 could roll the wheelchair up the ramp, it would
10 lower itself down, and then you could roll the
11 wheelchair up the ramp. You could put him in the
12 front seat. And then it had special things that you
13 could lock the chair so it wouldn't roll backwards
14 or wouldn't turn over or anything in the van. And
15 it was a marvelous vehicle. The family appeared to
16 be very happy that he had it at this time.

17 Q And I appreciate that. But my question was,
18 You tendered the power of attorney then? And your
19 answer was no, correct?

20 A No, I didn't -- I wouldn't have given it to him
21 then. There was no reason to.

22 Q Let me ask you this: Did you ever give that
23 power of attorney to Tim Peterson to show that you
24 were authorized to sign Mr. Wallace's name?

25 A Well, David pretty much told him that I was

1 going to sign --

2 Q I didn't ask you what David told him. I asked
3 you, Did you ever give it to him?

4 A I don't remember giving him --

5 Q So you may have?

6 A I may have. I may not. I don't remember
7 giving him a power of attorney.

8 Q All right. So if you didn't, you signed his
9 name without telling -- you signed Mr. Wallace's
10 name to a check without telling Mr. Peterson that
11 you had a power of attorney?

12 A I'm sure I told him that I had this power of
13 attorney, that I could sign it anyway.

14 Q Did you also --

15 A But David was there.

16 Q Did you also tell him you were his wife?

17 A Yes.

18 Q Which wasn't true?

19 A Well, it was true at that time. I hadn't
20 agreed and stipulated at that time that I wasn't his
21 wife.

22 Q Well, you stipulated that you never were
23 married. Isn't that what was in your affidavit?

24 A Well, I told you that I was forced to make that
25 agreement. I had no choice but to make that

1 agreement.

2 **THE COURT:** We need to stop.

3 **MR. FRAWLEY:** This is a good stopping point,
4 Your Honor. Thank you.

5 **THE COURT:** All right. Ladies and gentlemen, I
6 had committed to stop at 5:15, and we're right at
7 5:15. I need you back here in the morning at 9:30
8 in the morning, please. Don't discuss the case.

9 (The jury was excused for the day.)

10 **THE COURT:** During the break, Ms. Paschal,
11 don't discuss your testimony with anyone.

12 **THE WITNESS:** Yes, sir.

13 **THE COURT:** All right. Y'all be careful as you
14 leave that you don't have contact with the jurors.
15 It's best that you wait a little while and let them
16 clear out.

17 Court's in recess until 9:30 in the morning.

18 (The proceedings were concluded for July 23,
19 2014.)

20 (The following proceedings were held on July
21 24, 2014.)

22 **THE COURT:** Mr. Frawley, are you ready?

23 **MR. FRAWLEY:** I'm ready, Your Honor.

24 **THE COURT:** Mr. Moore?

25 **MR. MOORE:** Yes, sir, Your Honor.

1 **THE COURT:** Bring in the jury.

2 (The jury enters the courtroom at 9:35 a.m.)

3 **THE COURT:** All right. You may continue,
4 Mr. Frawley.

5 **MR. FRAWLEY:** May it please the Court.

6 **THE COURT:** Yes, sir.

7 BY MR. FRAWLEY:

8 **Q** Ms. Paschal, when we left off yesterday, we had
9 talked about the power of attorney and the
10 transaction you had with Carolina Mobility Sales.
11 Do you remember that?

12 **A** Yes.

13 **Q** When you went to Carolina Mobility Sales, when
14 you actually started signing papers -- I understand
15 that Mr. Peterson was courteous enough to come give
16 you a demo of a van -- but when you got to the point
17 that you were signing papers and making a commitment
18 to buying a van, isn't it true that you submitted to
19 him a copy of the power of attorney that gave you
20 authority, in your understanding, to sign on David
21 Wallace's behalf?

22 **A** To my best recollection, he came -- brought the
23 new van to the house and took the Cadillac back with
24 him, so it wasn't a matter of us leaving the area.

25 At this point, I could not tell you if I showed

1 it to him right then or not, but I told him -- I'm
2 sure I told him I had power of attorney.

3 **Q** Okay. But the power of attorney that you would
4 have been exercising would have been the power of
5 attorney that's the subject of this lawsuit,
6 correct?

7 **A** Well, I was exercising David's will to buy the
8 van.

9 **Q** Ma'am, you signed on behalf of David Wallace
10 the documents for the purchase of the van, didn't
11 you?

12 **A** Yes.

13 **Q** You didn't sign, David Wallace by Kay Paschal
14 pursuant to POA; you just signed, David Wallace,
15 correct?

16 **A** Correct, as I usually did when David asked me
17 and instructed me to sign documents.

18 **Q** And I'm not asking you what he instructed you.
19 I'm asking you how you signed it.

20 **A** That's how I signed it.

21 **Q** You signed it, David Wallace, without
22 indicating it was pursuant to a POA, correct?

23 **A** Correct.

24 **Q** And you would have represented to Mr. Peterson
25 that you had a power of attorney authorizing you to

1 sign on behalf of David Wallace?

2 A I may have. I don't remember right at this
3 moment.

4 Q Okay. And you recall yesterday, when
5 Mr. Peterson testified, he couldn't remember?

6 A Correct.

7 Q Okay. So if Mr. Peterson had provided, during
8 the investigation, a copy of a power of attorney
9 pursuant to which you were purportedly authorized to
10 sign on his behalf, that would be an indication that
11 you did submit that power of attorney to
12 Mr. Peterson, wouldn't it?

13 A If he presented one, yes.

14 Q Now, there's an exhibit that was put in
15 yesterday, the blank power of attorney, which is
16 Plaintiff's Exhibit Number 22, which I'm handing
17 you, the unsigned copy. You recall seeing that,
18 correct?

19 A No, I don't remember it. I don't remember all
20 the aspects of the transaction.

21 Q Okay. So you don't remember having signed this
22 power of attorney?

23 A No.

24 Q Okay.

25 A There was a lot of paperwork, as usual, in

1 transactions, but I don't remember specific
2 documents.

3 Q I understand that. And that's a reasonable
4 explanation, except you were a lawyer, weren't you?

5 A I wasn't practicing law, no.

6 Q Well, you weren't practicing law, but you had a
7 juris doctorate degree from the University of South
8 Carolina Law School --

9 A Correct.

10 Q -- correct?

11 A Yes, I did.

12 Q And you understand and back then you understood
13 the importance of the paperwork that gets signed in
14 any commercial transaction, didn't you?

15 A I might have understood, but I wasn't concerned
16 with it because I was doing something for David's
17 benefit and to help him out. So I wasn't worried
18 about legalities or anything. I knew I just had to
19 have the van and we needed it for his
20 transportation.

21 Q Okay. So your testimony --

22 A As lawyers a lot of times do not read their own
23 documents.

24 Q Well, you may be speaking for yourself on that,
25 Ms. Wallace, but I don't know -- Ms. Paschal, but I

1 don't know that you speak for all lawyers with
2 regard to that.

3 A Well, many of them I said.

4 Q So what you're saying is that you had this
5 power of attorney purportedly giving you the
6 authority to sign for David Wallace, and you were
7 less concerned with the legalities of the situation
8 than getting the van? Is that your testimony?

9 A I was concerned with looking after David.
10 That's what I was concerned about. And he needed
11 that van in order to be transported to the doctor,
12 for his rehabilitation, to wherever he wanted to go
13 to keep him as mobile and able to get about as
14 possible, and that was my concern.

15 Q And you were less concerned about the
16 legalities of the situation, correct?

17 A I wasn't even thinking about whether somebody
18 was going to question the purchase of the van at a
19 later date.

20 Q Thank you, ma'am.

21 Now, Plaintiff's Exhibit Number 3 is the bill
22 of sale. Could you look that over? Particularly
23 look at the signature blocks on the bottom.

24 A Okay.

25 Q Okay. There are signature blocks for buyer's

1 signature, co-buyer's signature, and then seller..

2 Do you see that?

3 A Yes.

4 Q All right. The co-buyer's signature, you
5 signed your own name, correct?

6 A Correct.

7 Q All right. The buyer's signature, what does
8 that signature appear to be?

9 A Looks to be David's.

10 Q Okay. Did you sign that?

11 A I don't recall. I do not remember.

12 Q All right. On June 18, 2010, given his
13 physical impairments following his stroke, was David
14 Wallace able to sign his own signature?

15 A He possibly could have done some starting out.
16 This doesn't look to be a strong signature, so.

17 If I had signed it, I think it would have
18 looked -- you would have had Wallace much stronger
19 there. That would have been the entire signature,
20 and this is not.

21 Q Well, did you understand that this was a copy
22 -- a carbon copy that was attached to the back of an
23 original?

24 A It's a carbon copy apparently or it's a
25 photocopy.

1 Q This is a photocopy, but it's a copy of -- a
2 backup copy -- a carbon copy of an original, isn't
3 it?

4 A I don't know.

5 Q Do you remember any of the documents from this
6 transaction?

7 A Honestly, no. I remember I signed papers, and
8 I got the vehicle.

9 Q You signed papers and got the vehicle for --

10 A And David was there.

11 Q -- a 63,000 dollar transaction, and you don't
12 remember the paperwork?

13 A No.

14 If you'll recall, I told you that I had been
15 spending day and night with David at the hospital,
16 at the rehab and when he returned home. So I was
17 not sharp at that particular point in time.

18 Q And you were not particularly concerned with
19 the legalities of the situation?

20 A I was concerned with him getting a van to help
21 with him.

22 Q Yes, ma'am.

23 I'm handing you Plaintiff's Exhibit Number 4.

24 Do you recognize that?

25 A That's a check from -- on the account paying

1 for the vehicle.

2 Q All right. And there is a signature on that
3 check, correct?

4 A Correct.

5 Q The check is made out to Carolina Mobility
6 Sales in the amount of \$58,317.51, correct?

7 A Correct.

8 Q It's dated 18 June 2010, correct?

9 A Right.

10 Q All right. And it is signed?

11 A Yes.

12 Q All right. Did you sign this check?

13 A I believe I did on that.

14 Q Okay. You didn't sign this check, David
15 Wallace pursuant to power of attorney by Kay
16 Paschal, did you?

17 A No.

18 Q You signed it, David Wallace?

19 A Right, as I had done many times before at his
20 instructions.

21 Q Now, if you can look at Plaintiff's Exhibit
22 Number 3, which I've given you, and compare the
23 beginning of the signature for buyer's signature
24 with the signature that's on Plaintiff's Exhibit.
25 Number 4. Do those appear to be the same signature,

1 at least the portion that you can see --

2 A I'm not a handwriting expert --

3 Q -- on Plaintiff's Exhibit -- let me finish my
4 question, please. Do those appear to be the same
5 signature, at least the beginning portion, that
6 appears on Plaintiff's Exhibit 3?

7 A They may be.

8 MR. FRAWLEY: Your Honor, may I publish
9 Exhibits 3 and 4 to the jury, please?

10 THE COURT: Yes, sir.

11 BY MR. FRAWLEY:

12 Q Now, Ms. Paschal, the Moore Taylor Thomas Law
13 Firm represented you -- well, they represent you in
14 this case, correct? Mr. Moore?

15 A Yes.

16 Q And his partners and associates, whoever's
17 affiliated with that law firm, correct?

18 A Yes.

19 Q All right. They also represented you in the
20 probate court dispute between you and Jeffrey
21 Wallace and Elizabeth Wallace, correct?

22 A Yes, they did.

23 Q And they also represent you in the pending
24 criminal action in Richland County, correct?

25 A Yes.

1 Q And they had also represented you -- or
2 Mr. Moore had represented you in other matters in
3 the past; isn't that correct?

4 A Yes.

5 Q And with regard to the three initial matters,
6 they represented you first in the probate court
7 matter, then in the criminal action, then in this
8 lawsuit, correct?

9 A Yes.

10 Q In that order, correct?

11 A Yes.

12 Q Now, there was discussion yesterday about your
13 law license and its suspension and your reputation
14 as it has been allegedly affected by the criminal
15 prosecution and these two Lexington County arrests.

16 We, as attorneys, are licensed. Do you agree
17 with that statement?

18 A Yes.

19 Q Okay. We're licensed by the South Carolina Bar
20 Association, correct?

21 A Correct.

22 Q And there are certain rules and requirements of
23 professional responsibility that we have to follow.
24 Would you agree with that?

25 A Yes.

1 Q And as a practicing attorney for several years,
2 from 1968 up until 2001, you understood that we had
3 those rules and guidelines we had to practice by,
4 correct?

5 A Surely.

6 Q And there's a reason for that because we put
7 ourselves out as professionals to the general
8 public, and the general public is entitled to be --
9 they're entitled to be able to rely on our
10 integrity, correct?

11 A Yes.

12 Q And that there's certain bounds to what we can
13 do as attorneys, correct?

14 A Yes.

15 Q Now, these rules -- these disciplinary rules
16 that we have to adhere to, they are overseen by the
17 South Carolina Supreme Court, correct?

18 A Yes.

19 Q All right. And there's a division of them
20 called ODC, or Office of Disciplinary Counsel; is
21 that your understanding?

22 A That's correct.

23 Q Okay. And in the exhibit that was put in where
24 the Supreme Court had suspended your license,
25 attached to that exhibit, which I believe was

1 Plaintiff's Exhibit 13, attached to that exhibit was
2 a petition of Ms. Barbara Seymour, who is with the
3 Office of Disciplinary Counsel; is that your
4 understanding?

5 A She is.

6 Q Okay. ODC petitioned the Supreme Court for a
7 suspension, and the Supreme Court granted that
8 suspension based on these two Lexington County
9 arrest warrants, correct?

10 A I haven't seen a petition.

11 Q It's your Exhibit 13.

12 A I've seen the order.

13 Q Okay. Well, you testified yesterday that you
14 had called the disciplinary counsel or the Supreme
15 Court or whoever had to be called and kind of
16 self-reported it, correct?

17 A It was my understanding my attorneys did.

18 Q Ma'am?

19 A It was my understanding my attorneys called the
20 office.

21 Q Okay. Okay.

22 A I did not personally --

23 Q But it was somebody -- it was either you or
24 someone on your behalf?

25 A I did not personally call them.

1 Q Now, let me ask you this: Given your knowledge
2 of the disciplinary rules that we attorneys are
3 supposed to live by -- not live by necessarily, but
4 practice our profession by, are you aware that
5 there's a Rule 1.8(m) that precludes us from having
6 sexual contact or sexual relations with a client?

7 A I'm not sure what the number is, but I'm sure
8 there is one.

9 Q Okay. Regardless what the number is, there's a
10 disciplinary rule that precludes us, as professional
11 licensed attorneys in South Carolina, from having
12 sexual relations with a client, correct?

13 A Correct.

14 Q And you did that from 1985 to 2001. You
15 violated that, didn't you?

16 A Unfortunately. I fell in love. I really did.

17 Q The answer to that is yes?

18 A Yes.

19 Q Do you understand that there's also a
20 disciplinary rule that is to preclude us as
21 attorneys from profiting personally from business
22 relationships with clients?

23 A I didn't -- there is one for profiting
24 personally from business relationships with clients,
25 but David was not a client when this van was

1 purchased. He was my -- I was living with him, and
2 we were living together, and I was not practicing
3 law at that time.

4 Q He was a client -- well, you didn't turn in
5 your license, did you?

6 A No, I let it -- had my license left open so
7 that I would have a livelihood in case something
8 happened to him, but I was not practicing law and I
9 was not practicing as an attorney at that time.

10 Q Well, you substituted names in a power of
11 attorney in 2002, didn't you? 2003?

12 A At his direction, because I was acting as his
13 secretary, not as his attorney.

14 Q Okay. Okay. Where do you get the distinction
15 where you, as a licensed attorney, can take off your
16 attorney hat and put on the secretary hat and not be
17 held accountable as an attorney?

18 A Because I was not acting as an attorney in that
19 situation. He had -- he came to me. He told me, as
20 my boss, change this document and give it back to
21 me, which I did.

22 Q Okay. Are you aware of any disciplinary rule
23 that allows us as attorneys to say, you know what, I
24 don't want to be an attorney right now; I'm going to
25 be something else and allow me to obviate these

1 disciplinary rules? Are you aware of anything like
2 that?

3 A No.

4 Q Now, you testified yesterday you signed checks
5 on Mr. Wallace's behalf for several years without
6 being legally entitled to, correct?

7 A I was legally entitled to in the sense that he
8 told me to sign them.

9 Q You signed his name?

10 A At his instructions.

11 Q Okay. But you didn't sign it as, David Wallace
12 pursuant to power of attorney by Kay Paschal, did
13 you?

14 A No.

15 Q So anybody reading those checks after the fact,
16 it's going to look like David Wallace signed those
17 checks, right?

18 A Yes. But I'd signed, like, credit card
19 receipts in front of his children, signed his name,
20 and they were fully aware of that.

21 Q All right. This isn't the first time you've
22 had a run-in with disciplinary counsel, is it?

23 A No, it isn't.

24 Q You had a public reprimand in 2002; isn't that
25 correct?

1 **A** Correct.

2 **Q** As an attorney, correct?

3 **A** Yes.

4 **Q** You had a private reprimand as well, didn't
5 you?

6 **A** Yes.

7 **Q** And as far as your practicing or being a
8 practicing attorney, you agree that you had not been
9 a practicing attorney from 2001 until now, right?

10 **A** Right.

11 **Q** Even at the time you were suspended, you
12 weren't practicing, although you did have a license,
13 correct?

14 **A** That's correct.

15 **Q** When you had the license all those years, did
16 you continue to go to the 14 CLE credit hours per
17 year to maintain your accreditation?

18 **A** I was exempt from accreditation after so many
19 years of practicing. I haven't had to go to CLEs
20 for many years.

21 **Q** I understand that because I'm 63 now and I've
22 been practicing for 31 years, and this is the first
23 year in my career that I don't have to go to CLEs,
24 so I appreciate that. But up until that point, you
25 had to go CLEs, didn't you?

1 A Right.

2 Q CLEs are continuing legal education, correct?

3 A Correct.

4 Q We have to continue to maintain currency with
5 the law because it changes, correct?

6 A Right.

7 Q So for years after 2001, you weren't eligible
8 in 2001 to not attend CLEs, were you?

9 A Close to it. I'm not sure. It's been many
10 years since I've had to take a CLE, because I'm 71
11 now.

12 Q Okay. You've got to be 30 years and 60.

13 A Well, that was in the '90s. In '98, I had 30
14 years.

15 Q Okay. So you did not have to maintain any CLE
16 credits?

17 A No.

18 Q Did you go to any CLEs?

19 A No.

20 Q But you were able to maintain that license?

21 A Yeah. All I did was pay the bills, paid for
22 the renewal.

23 Q Okay.

24 A That was licensed.

25 Q Now, there was testimony yesterday about -- in

1 these search warrants that were issued in Richland
2 County and in Lexington County, about the Wallaces
3 being there, orchestrating the search, pointing to
4 the Richland County sheriff's deputies to look here,
5 look under here, take this, correct?

6 A There was some of that, yes.

7 Q All right. Some of that. Was that everything
8 that went on?

9 A Not everything. I mean, I wasn't in every room
10 that they were in, but I did see some of it, yes.

11 Q Okay. You also saw Richland County sheriff's
12 deputies going other places on their own without
13 direction and searching, correct?

14 A There was some of it, yes.

15 Q All right. Now, the Wallaces -- the Wallace
16 children, Jeffrey and Elizabeth, you understand they
17 were the complainants of the criminal charges
18 against you? You understand that, correct?

19 A Yes.

20 Q They're the ones that went to Forest Acres and
21 said, Kay Paschal is victimizing our dad and is
22 exploiting him financially. That's what they said,
23 correct?

24 A I have no knowledge of that.

25 Q Well, you got a pretty good idea because of the

1 investigation afterwards, don't you?

2 A Well, it wasn't the people from Forest Acres
3 that showed up at the house. It was the Richland
4 County Sheriff's Department.

5 Q Right. And you understand that after the
6 Wallaces complained to Forest Acres, Forest Acres
7 sent it to Richland County. Do you understand that?

8 A I did not see their names on any warrants or
9 any affidavits or anything that they had signed.

10 Q Okay. So your testimony is you don't know that
11 Forest Acres took the original complaint and
12 conveyed it?

13 A No.

14 Q Okay. But you do know that Richland County got
15 it at some point?

16 A I know Richland County showed up.

17 Q Okay. And however Richland County got it,
18 Richland County and its deputies would be in a
19 better position to testify to that than you. Would
20 you agree with that statement?

21 A Yes, I don't know about it.

22 Q All right. So however Richland County got it,
23 this complaint originated with Jeffrey Wallace and
24 Elizabeth Wallace, correct?

25 A Correct.

1 **Q** So if the investigators from Richland County
2 are conducting a search pursuant to charges made by
3 the Wallaces, wouldn't it stand to reason that the
4 Richland County deputies would ask some guidance
5 from the complainants as to where we ought to be
6 looking?

7 **A** According to the -- my relationship with the
8 Wallace children, David -- Jeffrey was a computer
9 programmer and analyst with the CIA, which he let me
10 know about, and she had claimed to me that she was
11 an extremely good investigator. So her going in and
12 their going through all this stuff and her pulling
13 out stuff and him showing things, and then he'd
14 already taken two computers from the house
15 unbeknownst to me.

16 So, yes, they took out and they gave them
17 things they specifically wanted to have, but maybe
18 not other things that they should have had.

19 **Q** Okay. I'm not sure if you even answered my
20 question, and I can't even remember my question
21 anymore. But let me ask this one: Wouldn't it
22 stand to reason that the complainants, who are
23 charging you to a governmental entity, a law
24 enforcement agency, as having committed criminal
25 transgressions, would be the ones in the search to

1 direct that criminal investigation to, You need to
2 look here because I know more about the facts?
3 Isn't that a reasonable thing to assume?

4 A No, it isn't.

5 Q Okay.

6 A Because if the law enforcement is going to be
7 unbiased in their approach and protect and look at
8 it professionally, they should be looking for the
9 truth and not for just trying to go after one person
10 and not consider everything.

11 Q Sure, sure. And they should have talked to
12 you, right?

13 A They should have talked to me, but the point I
14 was feeling with those two in the house and with
15 their assisting the sheriff's department, I did not
16 feel safe enough to talk to anybody at that time. I
17 called my attorney, who then told me not to talk to
18 anyone.

19 Q That's right. You lawyered up. You didn't
20 talk to them, right?

21 A No, I did not.

22 Q So the only people there that they can talk to
23 about, you know, we're in this house and we don't
24 know what's here, you know, what are we supposed to
25 be looking for pursuant to these criminal charges,

1 and the Wallaces are saying, Well, look over here,
2 look in here, let's look in this desk, that's a
3 reasonable thing for this jury to expect, isn't it?

4 **A** No, it isn't, because the warrant itself
5 specified what they were looking for.

6 **Q** Yes, ma'am. Thank you.

7 Now, am I correct in my recollection that you
8 testified yesterday that Lieutenant Scott did not
9 talk to neighbors or did not attempt to talk to
10 neighbors?

11 **A** It's my understanding she did not talk to the
12 next-door neighbors at all.

13 **Q** Next-door neighbors?

14 **A** Right.

15 **Q** How many neighbors did you and Mr. Wallace have
16 at 205 Spring Lake Drive?

17 **A** Well, the ones right next door were -- who --
18 in fact, I just used Mr. Hackett to come in and sit
19 with David sometimes when I would go to the grocery
20 store. The ones on the other side was an attorney
21 who worked with the McNair firm. We did not
22 socialize with them very often. We saw them on
23 occasion.

24 **Q** Did you have a neighbor across the street?

25 **A** No, we did not. The golf course was across the

1 street.

2 Q Did you have neighbors two doors down on each
3 side?

4 A Yes. And one of those would come down and show
5 off our yard to her visitors.

6 Q All right. Did you follow Lieutenant Scott
7 around everywhere she went to give her card to
8 neighbors to see if they would call her where she
9 could talk about it?

10 A No.

11 Q So you don't know that, do you?

12 A Not for -- totally.

13 Q Not for, ma'am, what?

14 A I said not totally.

15 Q Not totally? You don't -- all you know is that
16 they didn't talk to the one neighbor on the
17 left-hand side, correct?

18 A I know they did not talk to them, right.

19 Q What's that neighbor's name?

20 A Hackett.

21 Q Do you know if Mr. Hackett or Ms. Hackett, or
22 whoever lived in that house, had any knowledge of
23 you forging a power of attorney?

24 A No, because I didn't forge any power of
25 attorney. I never forged a power of attorney.

1 Never forged anything.

2 Q But you admit you did sign Mr. Wallace's name
3 to checks without indicating it was pursuant to
4 power of attorney?

5 A No, because he told me to sign them, and I
6 signed them.

7 Q The question was: Do you admit signing those
8 checks with his name without indicating it was
9 pursuant to power of attorney?

10 A Yes.

11 Q Now, let's talk a little bit about the -- your
12 testimony about when you were at the Lexington
13 County Detention Center. When you turned yourself
14 in, you turned yourself in at 5:30 in the morning,
15 correct?

16 A Yes.

17 Q And you'd been called by Lieutenant Scott the
18 afternoon before, correct?

19 A That's correct.

20 Q So you were called the afternoon of November
21 15th, 2011. That's the date of the warrant, but the
22 day before you turned yourself in, correct?

23 A Right.

24 Q All right. I mean, do you remember the
25 independent -- do you have an independent

1 recollection of the dates?

2 A Not the dates.

3 Q Okay. This case --

4 A All I know is it was the day before the hearing
5 in probate court.

6 Q Okay. And then we've got a document in here
7 that you have put in that there was a November 16
8 hearing in probate court.

9 A Yes.

10 Q So that's your point of reference. If we can
11 show that the notice of hearing was November 16th on
12 Plaintiff's Exhibit 7 -- go ahead and look at it.

13 A Yes.

14 Q It was November 16?

15 A Right.

16 Q Okay. So you can use that as a point of
17 reference, and you can be able to say that the day
18 before that, in the afternoon, you got a call from
19 Lieutenant Scott saying, two warrants at Lexington
20 County, go pick them up?

21 A Correct.

22 Q All right. When you got that call, where were
23 you?

24 A At my home.

25 Q Okay. With a telephone, because you just

1 answered the phone, correct?

2 A Correct.

3 Q Did you call your attorneys, without telling me
4 what was discussed, did you call your attorneys and
5 say, I just got a call from the Richland County
6 Sheriff's Department saying there's two arrest
7 warrants?

8 A Of course.

9 Q Did you say something to that effect?

10 A Yes.

11 Q All right. So your attorneys, you contacted
12 them, so they would have known the afternoon of the
13 15th, that you had arrest warrants to pick up?

14 A Right.

15 Q All right. After that conversation with your
16 attorneys, you went to pick up the warrants at 5:30
17 in the morning, correct?

18 A Correct.

19 Q Did you go by yourself?

20 A No.

21 Q Who went with you?

22 A One of my attorneys.

23 Q Okay. Do you know if your attorneys attempted
24 to call the probate court and say, We got this
25 hearing on the 16th, but our client's going to be

1 unavailable, can we get it continued? Do you know
2 if they did that?

3 A I have no knowledge. I assume they did --

4 Q Do you know --

5 MR. MOORE: Your Honor, he keeps --

6 BY MR. FRAWLEY:

7 Q I'm sorry. Go ahead, go ahead. I'm sorry. I
8 cut you off. You go ahead and finish what you got.

9 MR. FRAWLEY: And I apologize to counsel for
10 that.

11 Q Did you have anything else?

12 A I don't know that they called.

13 Q Okay. Okay. Do you know if Mr. Moore's law
14 firm is familiar with the process of requesting a
15 continuance from the court for hearings when there's
16 a conflict?

17 A I'm sure they're familiar with that.

18 Q But as far as you know, that probate court
19 hearing was not continued, not asked to be
20 continued?

21 A If it were asked to be continued, I think the
22 request was denied by the court.

23 Q Okay. But you don't know that, do you?

24 A No.

25 Q Now, the Lex -- after you turned yourself in

1 and you were processed in or booked, they took you
2 to the Lexington County Detention Center, correct?

3 A Well, it's in the same place, same building.

4 Q But it's called the Lexington County Detention
5 Center?

6 A Right.

7 Q The sheriff's department is on Gibson Road,
8 correct?

9 A Yes.

10 Q Right -- I don't know which direction it's in,
11 but on Gibson Road. And the sheriff's department --
12 the Lexington County Detention Center has been kind
13 of built there in the last ten years. It's a
14 relatively recent construction, isn't it?

15 A I don't know when it was built.

16 Q It doesn't matter.

17 That Lexington County Detention Center is not
18 run by the Richland County Sheriff's Department, is
19 it?

20 A No, but I was there because of the Richland
21 County Sheriff's Department.

22 Q And when you were processed in, part of the
23 processing is they take all of your personal
24 belongings, correct?

25 A Yes.

1 Q And they give you -- you don't get to wear your
2 own clothes; they give you an orange jumpsuit,
3 correct?

4 A Correct.

5 Q And that's what they originally gave you,
6 correct?

7 A Yes.

8 Q Now, at some point, you testified that somebody
9 came around and said, We're going to wash the
10 jumpsuits, so you needed to give it to them,
11 correct?

12 A Correct.

13 Q Did they just do that to you?

14 A They did it to a lot of people in the -- all
15 the people in the area.

16 Q Okay. Do you know if it's generally understood
17 that inmates who go in and are detainees at a -- at
18 the Lexington County Detention Center are going to
19 be subjected to having these orange jumpsuits taken
20 away and they only give them sheets? Do you know if
21 that's generally known?

22 A I didn't know it. It was my first acquaintance
23 with...

24 Q Okay. So if it's not generally known, it
25 wouldn't be foreseeable, would it, that they could

1 expect that if you're arrested, they're only going
2 to give you a sheet to sleep in?

3 A I think it would be foreseeable that I'd be
4 subjected to whatever the -- happened at the jail.

5 Q But that can't be proper procedure, can it?

6 A I don't know what the procedure is. All I know
7 is I was subjected to it.

8 Q And that you weren't the only one?

9 A No, which doesn't make it good.

10 Q Now, you don't have any evidence that the
11 Richland County Sheriff's Department had any notice
12 that you were going to be subjected to that type of
13 treatment at the Lexington County Detention Center,
14 do you?

15 A I have no knowledge.

16 Q Now, there was some testimony yesterday,
17 Mr. Moore asked you about Plaintiff's Exhibit Number
18 10, which I'm going to show you.

19 Do you need water or anything? Are you good?

20 A No, I don't care for water.

21 Q All right. I'm handing you Plaintiff's Exhibit
22 Number 10, which is in evidence as the Lexington
23 County Sheriff's Department Victim Notification
24 Information Checklist. Do you recall seeing that
25 yesterday?

1 A I don't recall seeing it yesterday.

2 Q Okay. Well, if the jury recalls that you saw
3 it yesterday and were asked a question about who the
4 victim listed on that document --

5 A Oh, I remember it was the bottom part. I don't
6 remember seeing the whole --

7 Q Okay. Well, the question that was directed to
8 you by Mr. Moore was, Who was listed as the victim?
9 Do you remember that question?

10 A Yes. He asked me about notification and that
11 it was telling -- to look at Heidi Scott's name at
12 the bottom.

13 Q Well, he may have asked you to look at Heidi
14 Scott's name at the bottom, but if you look at the
15 top where it says, Victim Information, who is listed
16 as the victim?

17 A I see it as Elizabeth Wallace.

18 Q All right. You didn't testify to that
19 yesterday, did you?

20 A No. I did not notice that. I didn't see it.

21 Q Now, one of the questions that was asked of
22 Mr. Moore -- or by Mr. Moore of you was, How many
23 times were search warrants issued or these arrest
24 warrants issued on dates that coincided with probate
25 court hearings? Do you remember that question?

1 **A** It coincided with hearings, but not necessarily
2 all probate court hearings.

3 **Q** Okay.

4 **A** One -- the probate court hearing was the one
5 that I was arrested and taken to Lexington County.

6 **Q** Okay.

7 **A** We were supposed to go before the Office of
8 Disciplinary Counsel and that's when the second
9 arrest was made, when the deputy came from Richland
10 County, and he came to my house at 6:00 a.m. the
11 morning before.

12 **Q** The second arrest. These are the ones that are
13 currently pending --

14 **A** Right.

15 **Q** -- in Richland County, correct?

16 **A** Right.

17 **Q** All right. Well, I may have misunderstood the
18 question because my understanding of the question
19 was you were asked, How many times had search
20 warrants or arrest warrants in this case conflicted
21 with probate court hearings, and I recall your
22 response being, Often. Do you recall testifying
23 that it was often?

24 **A** No, I don't recall that right off.

25 **Q** Okay. So your testimony now is it was two

1 times, correct?

2 A At least two times.

3 Q Well, at least -- that's what I want to find
4 out. What other times besides two?

5 A I'm not sure --

6 Q We know the November 16 one --

7 A Right.

8 Q -- for which your attorneys -- you don't know
9 if they requested a continuance or not. That's one.

10 A Uh-huh.

11 Q And we know the Office of Disciplinary Counsel
12 hearing, which occurred pursuant to the Richland
13 County warrants, which are still outstanding after
14 this lawsuit was filed. What other ones, besides
15 those two?

16 A To my knowledge, those are the two.

17 Q Okay. So --

18 A The other thing was showing up at the house
19 immediately after I moved back in, just like, We
20 knew you were going to be moving back in this day
21 because we had been informed that you were moving
22 back in this day, and therefore we show up at your
23 house. Although, they did not show up until after
24 all of David's office furniture and everything was
25 removed from the house, and I was trying to set up

1 my house so I could live in it.

2 Q Okay. But other than your supposition, your
3 connecting the dots, you have no evidence that
4 Richland County did that on purpose, do you?

5 A No. I think it's a pretty good supposition,
6 though.

7 Q Well, you would. You're the plaintiff in this
8 case, aren't you?

9 A Yes.

10 Q Now, the probate court matter, let's talk about
11 that for a little bit. The probate court matter in
12 Richland County between you and Jeffrey Wallace and
13 Elizabeth Wallace, that was a pretty hotly contested
14 matter, wasn't it?

15 A Yes.

16 Q I mean, you were claiming that you -- even
17 though you didn't have -- you didn't have a
18 ceremonial marriage, you were claiming to be a
19 common-law spouse and that you were entitled to a
20 spousal share of Mr. Wallace's estate, correct?

21 A Correct.

22 Q And Elizabeth and Jeffrey Wallace kind of blew
23 in from out of state and said, No, she's not.
24 Correct?

25 A No, that's not exactly what happened. They had

1 been around while I had claimed to be his wife and
2 then signing my name as his wife while he was in the
3 hospital. I had heard him say that -- there are
4 numerous people that heard him say I was 20 years
5 older than him and was his wife. He had announced
6 me as his wife at parties and things like that.

7 It wasn't until after he -- when he became
8 close to death and after he died that, all of a
9 sudden, that they apparently think there's a huge
10 amount of money in the estate, which is not showing
11 up and of which I have no knowledge, that, all of a
12 sudden, they became very antagonistic towards me.

13 Q All right. Let's examine what you just said.
14 They came in and said, there's a huge amount of
15 money from the estate that's not showing up --

16 A And --

17 Q -- over a period of time when you were the one
18 signing checks for Mr. Wallace, without legal
19 authority, correct?

20 A No, that's not correct.

21 Q Isn't that what they said?

22 A No. What they were saying, they were starting
23 to question about what happened to their mother's
24 estate, who had died in 2001. They did not ever ask
25 their father anything about that. And I told them

1 at the time, they should have asked their father if
2 they had questions about their mother's estate. So
3 they had this notion built up in their mind.

4 There is no other money. I mean, I can be
5 hounded by the police department, by them, or
6 anybody else for the rest of my life, and there will
7 never, ever be any other money showing up.

8 Q Because it's gone, right?

9 A There was no money there that they're talking
10 about. The only money I spent is what I have
11 elaborated on. I spent money for his health care
12 and looking after him, and we spent money because he
13 built the pond. He gave money to Palmetto Lifeline
14 for the pets and everything, what used to be -- I
15 forget the name of it previously. He gave money --
16 he gave \$50,000 to the Urban League of Richland
17 County.

18 Now, I didn't do that. David did that. He
19 gave money to the synagogue and to the Tree of Life
20 because he provided them with programs and
21 everything else. So David spent a lot of money in
22 his lifetime, which I had no control over and did
23 not do.

24 Q But you did sign his name to checks for several
25 years, correct?

1 A I signed his name for when he told me to, yes.

2 Q All right.. And you also signed checks --

3 A Well, not necessarily just checks.

4 Q Ma'am?

5 A I said, not always just checks. If we went to
6 the bank or something, he might have me to sign
7 something there at the bank for him.

8 Q Sure. Sometimes you transferred money from
9 Ameritrade to First Citizens. You did that a lot,
10 didn't you?

11 A No.

12 Q No?

13 A Not by signing checks, no.

14 Q Some other manner?

15 A He could do it by -- on his computer. He could
16 transfer funds from Ameritrade to his checking
17 account.

18 Q Getting back to my question, the probate court
19 matter was hotly disputed, correct?

20 A Yes.

21 Q And the Wallace children were accusing you of
22 misappropriating money. Would you agree with that
23 much?

24 A I don't think they said that in the probate
25 court case. I think they were challenging my right

1 to inherit.

2 Q Okay. So they were just saying, you're not the
3 common-law spouse of David Wallace?

4 A Right.

5 Q Okay.

6 A And I have proof of that --

7 Q And they did have an issue with missing money?

8 A I don't think it came up in the probate court,
9 no.

10 Q Okay. But it must have come up when they
11 referred you to law enforcement?

12 A Apparently so. I mean, that's what it -- when
13 they keep talking about a big case, that's the only
14 thing I could think of, all they -- come out of a
15 six million dollar estate --

16 Q All right.

17 A -- saying I bought a van that he needed.

18 Q All right. There were pleadings filed by the
19 Wallaces and you back and forth in that --

20 A Right.

21 Q -- case, correct?

22 A Correct.

23 Q And we've got some of them in evidence,
24 Defendant's Exhibit Number 14. Have you seen this
25 document before, Defendant's Exhibit Number 14?

1 A Yes.

2 Q This is your petition against the Wallaces
3 alleging that you're entitled to an elective share
4 as Mr. Wallace's spouse, correct?

5 A That's correct.

6 Q And an elective share, by South Carolina law,
7 means that if there's not a will or if there's a
8 will that doesn't mention the spouse, the spouse is
9 entitled by law to a certain share of that estate,
10 correct?

11 A That's correct.

12 Q So had you been the wife of David Wallace, you
13 would have been entitled to that, correct?

14 A Right.

15 Q And that's why you filed that petition,
16 correct?

17 A Yes.

18 Q All right. I'm handing you Defendant's Exhibit
19 Number 15. Go ahead and look that over for a
20 second.

21 A Yes.

22 Q This is your answer and counterclaim to a
23 petition that was filed by the Wallaces against you,
24 correct?

25 A Yes.

1 Q Okay. And what you're doing is basically
2 denying their claim. And as your counterclaim, your
3 claim against them, you're again asserting that you
4 are the common-law wife and have the right to the
5 elective share, correct?

6 A Right.

7 Q And you're asserting what you perceived to be
8 your legal rights at the time?

9 A That's right.

10 Q All right. I'm handing you Defendant's Exhibit
11 Number 16.

12 A Okay.

13 Q This is yet another answer and counterclaim by
14 you in the probate matter, correct?

15 A Right. That was the initial one.

16 Q Okay. Again, raising the same issues. At this
17 point, they have mentioned that there's a problem
18 with the power of attorney or maybe a codicil to the
19 will, correct?

20 A I think it's to the codicil.

21 Q Okay. And what a codicil is -- you're an
22 attorney. You understand that when you do a will, a
23 will basically says, if I die, I'm leaving my
24 property to a certain way. And a codicil is maybe a
25 lesser document, that kind of amends a portion of

1 that will without doing a whole will over again,
2 correct?

3 A Right.

4 Q And what they were maintaining was that your --
5 that you had somehow misrepresented a codicil to
6 Mr. Wallace's will, correct?

7 A An allegation that wasn't true.

8 Q Sure, alleging it. And then y'all deny it and
9 then raise a counterclaim saying, huh-huh, didn't do
10 it, I'm the common-law spouse, correct?

11 A Right.

12 Q All right. Now, the Wallaces had attorneys,
13 you had attorneys. And there was another attorney,
14 this Mr. Fulmer, who was appointed as an independent
15 administrator to kind of take care of things while
16 the case was pending?

17 A That's correct.

18 Q Okay. And your attorneys kept you informed as
19 to what was going on in the case. Without telling
20 me what they said, your attorneys, as good attorneys
21 would, kept the client informed as to what was going
22 on, correct?

23 A Yeah.

24 Q But by -- well, let's go over the dates on
25 these. There are time stamps on Exhibits 14, 15,

1 and 16, correct?

2 A Yes.

3 Q And by time stamps -- tell the jury what a time
4 stamp is on a pleading.

5 A Just says when it was filed.

6 Q That's the day that it was filed before that
7 court, correct?

8 A Yes, right.

9 Q And these would have been filed in the Richland
10 County Probate Court?

11 A Right.

12 Q All right. Could you tell the jury what the
13 time stamp is or the date stamp -- I don't care
14 about the time -- for Defendant's Exhibit Number 14,
15 which is your petition?

16 A 11 March.

17 Q What year?

18 A Of -- well, it's -- the year was '11.

19 Q Okay.

20 A March 31st.

21 Q Okay. March 31st of 2011, correct?

22 A Uh-huh.

23 Q All right. And Exhibit 15 was March 30, 2011,
24 correct?

25 A Right.

1 Q And that was an answer and counterclaim?

2 A Right.

3 Q All right. And then Defendant's 16 was June
4 2nd, 2011; is that right?

5 A That's correct.

6 Q All right. And that's a different pleading,
7 correct?

8 A Well, one's -- two of them are answer and
9 counterclaims.

10 Q Okay. So in late March of 2011 and in early
11 June of 2011, you got these pleadings that your
12 attorneys have prepared and filed in the Richland
13 County Probate Court for you asserting your rights
14 in that probate court case, correct?

15 A That's correct.

16 Q All right. Were there hearings in the probate
17 court matter that you're aware of?

18 A Yes, there were a number of hearings.

19 Q Did you attend some?

20 A Yes.

21 Q Did you attend all of them?

22 A No.

23 Q Okay.

24 A I couldn't. I was in jail.

25 Q Well, you could have gotten that case

1 continued, couldn't you?

2 A Probably not.

3 Q When you say probably not, you have no idea if
4 there was even a request for a continuance, do you?

5 A I have no idea about that, but I also had seen
6 the judge's actions in previous hearings, and I
7 could understand why it might not have been
8 continued.

9 Q Okay. Well, let's get into that. You were
10 aware that the rulings of the probate court in your
11 dispute with the Wallaces over a course of time were
12 not favoring you; is that an accurate statement?

13 A That's correct.

14 Q And the way you handled that was to get your
15 attorneys to ask the court to recuse itself from
16 hearing anything further, correct?

17 A I believe so, yes.

18 Q All right. And tell the jury what recusing
19 itself means. When you're asking a court or asking
20 a judge to recuse himself, what does that mean?

21 A It could mean that you think they're being
22 prejudicial.

23 Q Okay. And you want that judge out of it, I
24 want to get a different judge, right?

25 A Correct.

1 Q But what y'all did, you didn't just ask that
2 the judge be recused, you asked that the whole
3 Richland County Probate Court be recused; isn't that
4 correct?

5 A I'm not sure.

6 Q You're not sure?

7 A No.

8 Q Your attorneys kept you informed, didn't you
9 [sic]?

10 A I'm not sure -- do you have anything to show me
11 that I can look at?

12 Q Yes, I do.

13 MR. MOORE: Your Honor, I want to object to
14 this line of questioning on the grounds of
15 relevance. This is exactly the sort of stuff
16 Mr. Frawley was objecting to with me.

17 MR. FRAWLEY: Your Honor, this is consistent
18 with the -- what we're arguing is consistent with
19 this lawsuit being brought because -- to defer the
20 criminal action and with the action being brought
21 against the Wallaces in order to gain leverage in
22 the probate court case. This is a common scheme and
23 practice, and we believe it's entitled -- it is
24 relevant.

25 THE COURT: Anything else?

1 **MR. FRAWLEY:** Nothing else from me.

2 **THE COURT:** Mr. Moore, anything else?

3 **MR. MOORE:** Your Honor, I have a hard time
4 understanding how asking that a judge recuse himself
5 has anything at all to do with the facts of this
6 case.

7 **MR. FRAWLEY:** It, again, goes to an attack on
8 the process as opposed to the substance of the case.

9 **MR. MOORE:** There's no attack on the process,
10 simply asking a judge to let somebody else hear a
11 case.

12 **THE COURT:** Ladies and gentlemen, please step
13 in the jury room. Don't discuss the case.

14 (The jury retires to the jury room.)

15 **THE COURT:** Go ahead and make your proffer, so
16 I can know what you're trying to elicit.

17 IN CAMERA EXAMINATION

18 BY MR. FRAWLEY:

19 **Q** We have a letter dated January 26, 2012, to the
20 Honorable Amy McCulloch from SJU Moore. Is
21 Mr. Moore your attorney?

22 **A** Yes, he is.

23 **Q** The reference on that letter reads what?

24 **A** In the matter of David Wallace.

25 **Q** That's the probate court matter that you were

1 in the dispute with with the Wallaces, correct?

2 A Yes.

3 Q All right. And this is the letter where
4 Mr. Moore is asking not only Judge McCulloch, but
5 the entire probate court for Richland County to be
6 recused, correct?

7 A Well, I'll have to read it to see it. I
8 haven't read the letter before.

9 It's very accurate.

10 Q Ma'am?

11 A It's accurate.

12 Q Okay.

13 MR. FRAWLEY: Your Honor, that's what we would
14 be offering. We'd offer this document into
15 evidence, and then I'd move on to something else.

16 (Pause.)

17 THE COURT: And this is relevant to what,
18 Mr. Frawley?

19 MR. FRAWLEY: Common scheme and practice.
20 We've alleged abuse of process in our counterclaim
21 that the purpose for filing this lawsuit was to
22 intimidate the Richland County Sheriff's Department
23 investigators and quell the investigation. Also,
24 that the lawsuit against the Wallaces in this case
25 was to gain leverage improperly in the collateral

1 action in probate court.

2 And, in this instance, that when they did not
3 get the probate court rulings they wanted, they
4 sought some other process to have the judge recuse
5 not just herself but the entire Richland County
6 Probate Court. It's a common scheme and practice of
7 attacking when you don't get the results you want.

8 **THE COURT:** Mr. Moore.

9 **MR. MOORE:** Your Honor, the letter basically
10 speaks for itself. The only thing the rules provide
11 that I can do when I don't feel I'm receiving fair
12 treatment from the court is to grin and bear it or
13 ask for a recusal.

14 There's a hearsay letter from me, which she's
15 identified as something that she knows about. The
16 words are mine not hers. So the letter, first of
17 all, is hearsay.

18 But a common scheme and practice basically,
19 apparently, they're accusing me of having done
20 something wrong by representing my client. The
21 letter very clearly indicates that it's something
22 I'm doing with great hesitancy and that I have made
23 the conclusion that I was being treated so unfairly
24 in Richland County that I had to ask for somebody
25 else.

1 I still believe that. I have absolutely zero
2 idea of why the court conducted itself as it did.
3 But if the Court will look at the treatment received
4 in regard to trying to have a continuance, that
5 treatment continues from Richland County Probate
6 Court. I don't understand it.

7 **THE COURT:** Have a continuance of what?

8 **MR. MOORE:** As the Court will understand, it
9 was the probate court that was giving me the hard
10 time this week when I was trying to get a status
11 conference continued because I was in this case.

12 But I felt that the Richland County Probate
13 Court was abusive. I felt that they were -- would
14 not listen. I know they wouldn't listen. They
15 ignored various statutes. As a result, I felt
16 compelled to ask for a recusal.

17 But I'm not sure it's a common scheme or
18 practice as to what. All we did was ask for another
19 judge. We didn't ask that the case go away. We
20 didn't ask anything other than for another judge.
21 How in the world is that a common scheme or
22 practice? When someone follows the rules and does
23 what he's supposed to do when he feels he's being
24 treated unfairly, how in the world is that supposed
25 to be a common scheme or practice? And what

1 conceivable relevance would it have with the facts
2 in this case? I just don't understand it.

3 There's nothing that the Richland County
4 Sheriff's Department was even involved in, at least
5 allegedly, not that we -- not that we know of. We
6 certainly suspect, but we don't know of. So I can't
7 imagine how it's a -- I have, in the past, asked
8 judges to recuse in other cases. I guess that would
9 be a common scheme or practice there. They can just
10 take every time I've ever asked for a recusal, I
11 guess, and say that's some kind of common scheme or
12 practice.

13 It's beyond my ability to comprehend how this
14 letter and the fact that we asked for a recusal of
15 the probate court has some semblance of relevance to
16 the facts of this case. And then I also think it's
17 hearsay.

18 **MR. FRAWLEY:** Your Honor, may I be heard again?
19 I don't want to interrupt him, and he may not be
20 finished yet, but I'd like to be heard when he's
21 completed.

22 **THE COURT:** I think he's through.

23 **MR. FRAWLEY:** Your Honor, I'm less concerned
24 with the letter going in than I am with Ms. Paschal
25 -- the question I asked last was, Didn't they ask

1 that just -- not just the judge, but that the whole
2 probate court be recused? And she said, I don't
3 know. You know, maybe you -- can you show me
4 something to indicate that, which we did.

5 I am less concerned with Ms. Paschal having
6 read that now that if I go back and ask that
7 follow-up question, Didn't they ask that the whole
8 court be recused, that she answer that question
9 truthfully rather than putting the letter in. I'm
10 not interested in putting the letter in. I had the
11 letter as a fallback position in the event that the
12 answer I got from Ms. Wallace was not -- Ms. Paschal
13 was not complete.

14 Since she has reviewed it, I think her response
15 was, Yes, I agree with that. I think I can come
16 back and ask that question, and then I don't need to
17 put that letter in.

18 **THE WITNESS:** I was agreeing with what Jahue
19 said.

20 **THE COURT:** Wait a second. You don't get to
21 participate in argument.

22 **THE WITNESS:** Sorry.

23 **MR. MOORE:** Your Honor, I fail to see the
24 relevance that we asked for the probate judge in
25 Richland County, the entire probate court of

1 Richland County, both the judges over there, who
2 both had participated in this thing. If I'd asked
3 for the Camden Probate Court to recuse itself, the
4 Lexington Probate Court recuse itself, I just can't
5 imagine -- to recuse itself, I can't imagine how it
6 has any semblance of relevance to the facts of this
7 case.

8 **MR. FRAWLEY:** And, again, I've said -- our
9 position is that when they don't get the results
10 they wanted, they try a collateral attack that backs
11 somebody off or somehow impairs it. That's textbook
12 abuse of process, which is the basis of our
13 counterclaim.

14 **MR. MOORE:** Your Honor, are they taking the
15 position that my requesting a recusal in probate
16 court somehow is the counterclaim in this case? I'm
17 not sure I understand that.

18 **MR. FRAWLEY:** Well, then I'll make it clear so
19 he can understand it. It's a common scheme and
20 practice. It's what they did there. They brought
21 the action against the Wallaces to gain leverage in
22 the Wallace dispute, in the estate, which ultimately
23 was successful because they settled that. Then they
24 dismissed the Wallaces from this case. And they
25 brought the action against Richland County that

1 foresaw the criminal investigation, which it did for
2 a while when Richland County removed Lieutenant
3 Scott as the investigator and had to have another
4 guy get up to speed on the facts of that case. It's
5 a common scheme and practice.

6 And, you know, I'm not personally going after
7 Mr. Moore on this. He's representing a client, and
8 the client's taken that position. Mr. Moore's an
9 attorney. He's an aggressive attorney. He's a
10 great attorney. I'm not going after him personally,
11 but the client in this case is Ms. Wallace, or
12 Ms. Paschal, and we're making that claim against
13 her, just as he's making the claim against Richland
14 County Sheriff's Department and Lieutenant Heidi
15 Scott, now Heidi Jackson. It's not personal, but
16 it's an issue that we're raising as far as
17 Ms. Wallace -- Ms. Paschal having a common scheme
18 and practice in order to gain leverage in her suits.

19 **THE COURT:** Is that it?

20 **MR. FRAWLEY:** That's it.

21 **THE COURT:** Anything else?

22 **MR. MOORE:** No, sir. Thank you.

23 **MR. FRAWLEY:** Again, I'm less concerned with
24 the letter coming in than me getting the answer out
25 of Ms. Wallace.

1 **THE COURT:** Well, no objection was raised until
2 after the questions that were elicited. You handed
3 her this letter presumably in response to what she
4 said that, Can you show me something?

5 **MR. FRAWLEY:** Yes, sir.

6 **THE COURT:** Quite frankly, I've been struggling
7 to understand where the abuse of process
8 counterclaim was coming from. I have to give you a
9 chance to present your case.

10 **MR. FRAWLEY:** Yes, sir.

11 **THE COURT:** As far as the introduction of the
12 letter, the ruling of the Court is that even if it
13 is relevant, it should be excluded under Rule 403.
14 I don't know if it fits within an exception to the
15 hearsay rule or not. I'd have to try to --

16 **MR. FRAWLEY:** Your Honor -- Your Honor, I will
17 withdraw -- I don't believe I've actually offered
18 it. I handed it up to her. I haven't offered it
19 into evidence. If we come back, I'll ask her a
20 question, whatever her question is, she's already
21 answered one, whatever her question is, whatever her
22 response to that is, having reviewed that letter,
23 I'll go with that. I'm not going to put that letter
24 into evidence or I'm not going to offer it for Your
25 Honor to tell me that it's not relevant.

1 **THE COURT:** I think it's just for ID, isn't it?

2 **COURT REPORTER:** He didn't mark it.

3 **THE COURT:** Is 21 in evidence?

4 **COURT REPORTER:** They never gave that to me. I
5 never marked it.

6 **THE COURT:** All right.

7 **MR. FRAWLEY:** It's not in evidence. I just
8 marked it this morning.

9 **THE COURT:** Well, his objection was to the line
10 of questioning, so I don't want to have to bring the
11 jury in and send them right back out.

12 **MR. FRAWLEY:** Well, Your Honor, rule. I'll
13 accept whatever the ruling is and we'll move on, but
14 I'm not going to put that into evidence.

15 **THE COURT:** All right. The ruling is that any
16 continued questioning along this line is excluded at
17 this point under Rule 403.

18 Now, again, I don't want to shortcut you in
19 presenting your case. I don't know what evidence
20 you have of an abuse of process by the plaintiff.
21 This argument you're making me now is the first
22 indication I've had as to exactly where that might
23 be coming from.

24 With regard to the statements of Mr. Moore
25 about the probate court in Richland County, if

1 anybody has to read this, I was asked one day this
2 week to -- what I interpreted as just to verify that
3 Mr. Moore was involved in a jury trial in common
4 pleas court in Lexington, which I did. There were a
5 string of e-mails. I did it by e-mail to Judge
6 McCulloch and to her clerk. And there were -- there
7 was a string of e-mails.

8 Apparently, Mr. Moore had called Court
9 Administration because he was under the impression
10 that the judge was refusing to continue a hearing
11 that he had. He had set a status conference today.
12 I'm not getting in the middle of that.

13 Judge McCulloch's e-mail back, the last e-mail
14 I saw, she said she wasn't requiring Mr. Moore to be
15 there or his client, but there were other matters
16 that they could address in this conference that
17 didn't relate to them that she was intending to go
18 forward with, and she asked Mr. Moore to provide her
19 with whatever it was he was claiming was -- I forget
20 the exact word -- harsh, I think.

21 So Judge McCulloch was saying that Mr. Moore
22 misunderstood, and she apologized if there was any
23 misunderstanding, and Mr. Moore apparently thought
24 he had to be there.

25 **MR. FRAWLEY:** I knew he had a conflict with

1 something yesterday. I didn't know what the nature
2 of it was.

3 **THE COURT:** That's not my concern. All I did
4 was very respectfully notify Judge McCulloch that
5 Mr. Moore and Mr. Biediger were in court here in
6 Lexington County, gave her the case number, case
7 name. I wasn't asked to do that. I just normally
8 do that to make sure that -- make sure people know
9 that it's a legitimate case. And that was the end
10 of it, as far as I knew. I'm not saying whether
11 Judge McCulloch did or did not treat Mr. Moore
12 unfairly in any respect, in any case.

13 Anything else y'all need to put on the record?

14 **MR. FRAWLEY:** No, sir, not me.

15 **MR. MOORE:** No, sir.

16 **THE COURT:** What time is it? 10:40?

17 **THE CLERK:** Yes, sir.

18 **THE COURT:** Let's go ahead and just take a
19 short break, five to ten minutes, while the jury's
20 out.

21 **MR. FRAWLEY:** Thank you, Your Honor.

22 **THE COURT:** You know the drill, Ms. Paschal.
23 Thank you.

24 **THE WITNESS:** Thank you.

25 **THE COURT:** We're at ease.

1 (Brief recess.)

2 THE COURT: I said before I had not made a
3 decision about any exceptions to the hearsay rule.
4 It is hearsay and no exceptions were called to my
5 attention is what I meant to say.

6 All right. Are we ready?

7 MR. FRAWLEY: Defendant's ready, Your Honor.

8 THE COURT: You ready, Mr. Moore?

9 MR. MOORE: Yes, sir, Your Honor.

10 THE COURT: Bring the jury in, please.

11 (The jury returns to the courtroom.)

12 THE COURT: All right. You may continue,
13 Mr. Frawley. The objection is sustained.

14 MR. FRAWLEY: May it please the Court.

15 THE COURT: Yes.

16 CROSS-EXAMINATION cont.

17 BY MR. FRAWLEY:

18 Q Ms. Wall -- I keep calling you Ms. Wallace.

19 A That's correct.

20 Q Which is probably okay with you right now.

21 Ms. Paschal, you filed this lawsuit January
22 24th, 2012, correct?

23 A I don't know the exact date --

24 Q Okay. You don't remember --

25 A -- but I did file a lawsuit.

1 Q -- the specific date, but --

2 THE COURT: Y'all are talking over each other.

3 MR. FRAWLEY: Okay. I'm sorry.

4 BY MR. FRAWLEY:

5 Q You don't remember the specific date, but some
6 time early in the year 2012. Would you agree with
7 that?

8 A Yes.

9 Q Okay. And you sued the Richland County
10 Sheriff's Department -- well, you sued Lieutenant
11 Heidi Scott individually, didn't you?

12 A Yes.

13 Q Okay. And you sued Leon Lott as the
14 duly-elected Sheriff of Richland County in his
15 official capacity, correct?

16 A Yes.

17 Q That's the way you sue a sheriff's department,
18 by naming the elected official in his official
19 capacity; is that your understanding?

20 A Yes.

21 Q Okay. And then you also sued Jeffrey Wallace
22 and Elizabeth Wallace individually, correct?

23 A Yes.

24 Q So you had really four defendants in the
25 lawsuit originally. It was you against them,

1 correct?

2 A That's correct.

3 Q And the causes of action you alleged were abuse
4 of process, malicious prosecution, negligence, false
5 arrest slash false imprisonment, and civil
6 conspiracy; is that right?

7 A Yes, I guess.

8 Q Okay. Okay. The civil conspiracy cause of
9 action has been dismissed; is that your
10 understanding?

11 A If you say so. I don't know.

12 Q Okay. You don't know.

13 Well, you do know that Lieutenant Scott has
14 been dismissed from the case pursuant to our motion.
15 You understand that, right?

16 A Since we've been in court, I understood that.

17 Q Okay. And then the Wallaces have been
18 dismissed because you've let them out of the
19 lawsuit, correct?

20 A I had to submit to a settlement, yes.

21 Q Okay. The answer to that is you voluntarily
22 dismissed the Wallaces from this lawsuit?

23 A They were dismissed. I won't say it was
24 voluntary. I didn't just give it over to them and
25 let them out. It was because I had no choice but to

1 accept it all within that settlement that was made.

2 Q Okay. The probate court matter was eventually
3 settled, wasn't it?

4 A Yes.

5 Q I'm handing you Defendant's Exhibits 17, 18,
6 and 20, which are in evidence. I'm going to ask you
7 a few questions about those. Let's look at Number
8 17 first.

9 A Okay.

10 Q Now, Number 17, the heading on that is
11 Settlement Agreement and Mutual Releases, correct?

12 A That's correct.

13 Q All right. This is the written document that
14 put into writing the agreement resolving the probate
15 court cases, or case, correct?

16 A That's correct.

17 Q And I say cases because there were several
18 petitions and answers and everything going back and
19 forth, correct?

20 A Yes.

21 Q But it was all under the heading of the Estate
22 of David Wallace, correct?

23 A Correct.

24 Q All right. And this document, which is six
25 pages long, has signature blocks on pages 5 and 6,

1 correct?

2 A There's signatures on 5 and 6.

3 Q Okay. And the first signature is Kay Paschal.

4 You see that on page 5?

5 A Right.

6 Q All right. And before you signed this
7 document, you would have fully reviewed it?

8 A I read it.

9 Q Okay. And you had attorneys representing you,
10 correct?

11 A Yes.

12 Q All right. Now, on page 2 of this document,
13 paragraph one, the lead paragraph --

14 A Right.

15 Q -- says -- well, can you read that for the
16 record, please? And I understand you're like me,
17 when you read, you read fast. Could you read it --
18 or try to read it slowly so the court reporter can
19 get it?

20 A Kay stipulates and agrees that she was not the
21 common-law wife of David Wallace and hereby waives
22 and relinquishes any and all claims she has or may
23 have had -- have to have been the common-law wife of
24 David Wallace, including but not limited to her
25 claim for an elective share of the estate of David

1 Wallace.

2 Kay, upon the execution of this agreement,
3 shall --

4 **THE COURT:** You're reading too fast.

5 **THE WITNESS:** Excuse me.

6 -- shall execute the stipulation attached as
7 Exhibit A. The parties agree the proposed order
8 attached as Exhibit B shall be submitted to the
9 court for signature and entry. Kay agrees that
10 she shall --

11 **THE COURT:** Slow down. She's got to take down
12 everything you say. Please slow down.

13 **THE WITNESS:** Okay.

14 Kay agrees that she shall not oppose the entry
15 of the order marked as Exhibit B and will consent to
16 the order.

17 BY MR. FRAWLEY:

18 Q Okay. Let me read paragraph two, and you tell
19 me if I'm wrong on anything. Paragraph two reads:
20 Within ten business days following the date hereof,
21 the special administrator shall pay Kay \$223,323.71
22 and shall deliver a special warranty deed to Kay of
23 the estate's interest in the house and lot at 1103
24 Kitty Hawk Way, Lexington, South Carolina, in full
25 settlement and satisfaction of any and all claims of

1 any kind or nature related to the estate of David
2 Wallace or any assets of the estate of David
3 Wallace, which amount Kay accepts in full
4 satisfaction of any and all claims and in full
5 settlement and satisfaction of any and all claims,
6 which she has as a beneficiary under the last will
7 and testament or the codicils of David Wallace.

8 Is that what it says?

9 A Yes.

10 Q Okay. Now, apart from the fact, in paragraph
11 two, the attorneys who drafted this, as most of us
12 attorneys do, say the same thing about three
13 different ways, but is that setting out the amount
14 that you received from the estate, according to this
15 paragraph, in full settlement of any claim you would
16 have had against Mr. Wallace's estate?

17 A Yes.

18 Q Okay. Now, you didn't fully understand --
19 agree with that, did you?

20 A No.

21 Q Ma'am?

22 A No. I accepted it because I had to settle the
23 case. I had no choice but to settle.

24 Q Well, you keep saying you had no choice. You
25 could have pursued your rights to a hearing in

1 probate court, couldn't you?

2 A The problem was and the fact was that I was
3 almost destitute. I had very little funds. The
4 house that was on Kitty Hawk was about to be sold
5 for taxes. There was another house that belonged to
6 my family that was also -- had already been sold for
7 taxes during this year while I was looking after
8 David. That had to be reclaimed.

9 I had to pay my attorney fees. I had the
10 criminal actions that were just taking everything
11 out of me. I knew the Wallaces -- Jeffrey had his
12 own company. He told me he was quite wealthy. He
13 was going -- they were going to appeal the case. It
14 didn't matter how many times I won; they would have
15 appealed it, and appealed it and appealed it, which I
16 could not afford to do. So I had no choice. I
17 settled, and I accepted what they said.

18 Q You could have pursued your legal rights. You
19 chose not to for the reasons you just gave, but you
20 could have pursued your legal rights. And this
21 gentleman's law firm was doing a good job for you up
22 to that point. He would have continued to do a good
23 job for you, wouldn't he?

24 A Financially, I could not continue.

25 Q Part of your settlement was that you signed an

1 affidavit identifying yourself as Kay Paschal. If
2 you could look at Exhibit 18, which is in front of
3 you.

4 A Right.

5 Q And pursuant to this document, you stipulated,
6 acknowledged, and agreed that you were never married
7 to David Wallace, you were not the common-law wife
8 of David Wallace, and you denounced, waived,
9 released, and relinquished any and all rights you
10 had or may have had to being his common-law wife,
11 correct?

12 A I did that, yes.

13 Q You didn't agree with that, did you?

14 A I had no choice but to do that.

15 Q I understand that, but you didn't agree with
16 it, did you?

17 A No.

18 Q And you gave up what claim you felt you had as
19 Mr. Wallace's wife to settle that case with the
20 Wallace children, didn't you?

21 A I had to, yes.

22 Q This settlement was approved by the court.
23 There was an order introduced, correct?

24 A Correct.

25 Q And that's Defendant's Exhibit Number 20,

1 right?

2 A Right.

3 Q Could you look at that, please?

4 A Okay.

5 Q In Defendant's Exhibit 20, the probate judge
6 who heard this matter, Jacqueline Belton,
7 B-e-l-t-o-n, associate probate judge, accepted your
8 affidavit and stipulation and has a finding in here
9 that you were never married to Mr. Wallace.

10 A Based on the stipulation.

11 Q Based on the stipulation.

12 And then this, on pages 5 and 6 of Exhibit 20,
13 below this judge's signature, the parties' attorneys
14 have signed consent to that, correct?

15 A Right.

16 Q And one of those is Mr. Moore, who is the third
17 signature on page 5, correct? Go ahead and look at
18 it.

19 A I don't think Mr. Moore was present at that
20 time. He was trying a murder case in North
21 Carolina.

22 Q Okay. Well, an attorney from his office signed
23 on his behalf?

24 A Right.

25 Q All right.

1 **MR. FRAWLEY:** Your Honor, may I publish these
2 to the jury, please?

3 **THE COURT:** Yes.

4 (Pause.)

5 BY MR. FRAWLEY:

6 **Q** Then you filed this lawsuit, and the only
7 remaining defendant in this lawsuit is the Richland
8 County Sheriff's Department, correct?

9 **A** Correct.

10 **Q** You let the Wallaces out of this lawsuit
11 October 31st of 2012, correct?

12 **A** Right.

13 **Q** Ten months after you brought this suit alleging
14 that they had abused the process, that they had
15 maliciously prosecuted you, that they had done bad
16 things to you, and, in fact, arguably, they had done
17 bad things to you, you let them out of this lawsuit,
18 correct?

19 **A** At that time, yes.

20 **Q** And this jury is not going to be able to listen
21 to the Wallaces and make a determination as to
22 whether they're the bad guys in this lawsuit because
23 you let them out, correct?

24 **A** No.

25 **Q** They could hear them?

1 A You could have had them as witnesses.

2 Q You could have called them as witnesses as
3 well, right, ma'am? They're not even defendants
4 anymore.

5 A That's correct.

6 Q Because you let them out.

7 A I had to. Only way we could settle.

8 Q And you let the Wallaces out of this lawsuit as
9 soon as they capitulated and agreed to settle the
10 probate court lawsuit, correct?

11 A It wasn't that they capitulated. They insisted
12 they would not settle the lawsuit -- I couldn't have
13 gotten any money whatsoever unless I had gone ahead
14 and tried to appeal the case if they appealed it,
15 and I had no funds to do that. I had no choice but
16 to let them out.

17 Q And we don't know that because you never really
18 exercised your rights in that case, did you? You
19 settled. You quit.

20 A Yes, I gave up.

21 Q Now, you understand the only remaining
22 defendant in this lawsuit is the Richland County
23 Sheriff's Department. You understand that?

24 A Yes.

25 Q And you understand that while -- after the

1 filing of your lawsuit, the lead investigator, whom
2 you named as an individual defendant, was removed as
3 the lead investigator in that case. You understand
4 that?

5 **A** It's my understanding she was not removed until
6 she had this other warrant searched -- I don't know
7 whether she signed it or not, but until I was jailed
8 the second time. I think that's about the time she
9 was removed from the case.

10 **Q** Okay. You don't know that for sure. Richland
11 County would be in a better position to testify to
12 that. Would you agree with that statement?

13 **A** Perhaps, yes.

14 **Q** Okay. But you were able to get the lead
15 investigator removed after this lawsuit was filed.
16 You'd agree with that statement?

17 **A** I didn't get her removed.

18 **Q** You know that another investigator has been put
19 in her place and has pursued the investigation. You
20 know that?

21 **A** From what I've heard in court, but I did not
22 know it before this time.

23 **Q** I'm handing you Plaintiff's Exhibits 23 and 24,
24 which were introduced into evidence through you
25 yesterday. Do you recognize those two arrest

1 warrants?

2 A Yes.

3 Q The affiant in there is not Heidi Scott, is it?

4 A I'm trying to see who it is. Howard Hughes, I
5 guess.

6 Q Okay. Howard Hughes is the new investigator,
7 isn't he?

8 A I don't know. I just see he signed this
9 affidavit.

10 Q Okay.

11 A I don't know his position with the sheriff's
12 department.

13 Q But you know there's another investigator on
14 the case now?

15 A From what -- from here, what I've heard in
16 court, yes.

17 Q Another investigator who's had to get up to
18 speed with the facts of the case and has, once that
19 happened, signed two affidavits for two arrest
20 warrants in Richland County?

21 A It would be my understanding he would have all
22 of her work product.

23 Q At this point, you understand that the filing
24 of this lawsuit is not going to stop the Richland
25 County Sheriff's Department from continuing its

1 criminal investigation into you. You understand
2 that, correct?

3 A Apparently not.

4 Q Okay. That's what you wanted it to do,
5 correct?

6 A I don't think they should have been
7 investigating me to begin with.

8 Q You had hopes that the filing of this lawsuit
9 would have stopped the Richland County Sheriff's
10 Department from continuing its investigation against
11 you; isn't that right, Ms. Paschal?

12 A No. The lawsuit was brought because of the
13 abuse I suffered because of the Richland County
14 Sheriff's Department not because of what they were
15 doing, it's because of what they didn't do.

16 Q And you had the hopes of intimidating them or
17 getting them to back off this investigation,
18 correct?

19 A No. I, as an individual, have no ability to
20 intimidate anybody or anyone in the sheriff's
21 department of Richland County.

22 Q Now, yesterday you testified that you believed
23 there was an improper relationship between
24 Lieutenant Scott, now Lieutenant Jackson, and the
25 Wallaces, and that Sheriff Lott individually had

1 some kind of relationship with the Wallaces. Is
2 that what you testified to yesterday?

3 A No, I didn't say Sheriff Lott had a
4 relationship in the sense that he was -- came to the
5 Wallace house. Sheriff Lott was very good friends
6 with this -- best friend of Jeffrey Wallace, and I
7 think that's where the influence came in.

8 Jeffrey Wallace himself told me how much
9 influence he had in this state, and he didn't
10 realize how much he did have until he came back when
11 his father was sick, and that he was former CIA, he
12 was a computer analyst and did computer programming
13 for the CIA. He had his own company in which he
14 does contractual work with the CIA at this time.
15 And that's how I feel that Sheriff Lott had a lot
16 more to do with it, my being persecuted, than just
17 an individual case.

18 Q Okay. So Jeffrey Wallace brags to you about
19 he's a big deal with the CIA and didn't realize how
20 much he was a big deal until he got here. And from
21 that, you connect the dots that Sheriff Lott is
22 going to somehow orchestrate a persecution of you in
23 this investigation. Is that your testimony?

24 A I've seen John Finns and Sheriff Lott with
25 Sheriff Lott's arm around John Finns on TV, and I

1 knew that they had attended a number of things
2 together, so. And John Finns, we had dinner with
3 him. So we knew of his relationship with Sheriff
4 Lott.

5 Q I played baseball against Sheriff Lott 15 years
6 ago. He went to my son's wedding, but if he walked
7 through that door, he wouldn't recognize me from
8 Adam.

9 A That's between you and Sheriff Lott.

10 Q But you're saying because you saw Sheriff Lott
11 once with his arm around Mr. Finn or Mr. Finn put
12 his arm around Sheriff Lott, that that somehow
13 equates to Heidi Scott doing an improper
14 investigation, correct?

15 A No. They had told me how close the two of them
16 were, and Jeffrey indicated that that was such.

17 Q That's your evidence?

18 A Yes. That's my belief.

19 Q Thank you, ma'am.

20 What evidence do you have, other than what you
21 just told me, that Richland County Sheriff's
22 Department had an ulterior purpose in pursuing this
23 criminal investigation of you?

24 A Because of the fact that they seemed to think
25 this is such a big case when it isn't a big case.

1 There's nothing big about it.

2 Q So if you steal a small amount as opposed to a
3 big amount, that doesn't warrant a criminal
4 investigation?

5 A No. It's the zealously with which they came
6 across county lines when they had no authority to
7 try to pursue me even into Lexington County. And if
8 you look at the agreement, the Wallaces agreed not
9 to pursue anything, but they did, so.

10 Q If I look at the agreement -- the probate court
11 agreement that the jury has?

12 A Yes.

13 Q Well, the Wallaces weren't pursuing anything.
14 They were out of this lawsuit. You let them go.

15 A Apparently, they're pursuing something now if
16 you have her name on a lot of your documents.

17 Q Okay. Do you think that if there's an
18 allegation of a criminal act being done and a
19 investigation has begun, that the person who
20 complains about it later changes their mind, that
21 the criminal act stops being investigated? Is that
22 your understanding?

23 A There is no criminal act here.

24 Q Well, you don't think there's a criminal act,
25 but there's apparently enough evidence that there

1 have been warrants issued.

2 **A** One -- two of which have already been
3 dismissed, and the other two were, at the most,
4 magistrate court level, which they will be dismissed
5 when they're heard.

6 **Q** We don't know that yet, though, do we?

7 **A** I do.

8 **Q** The fact of the matter is, Ms. Paschal, that
9 you had the Wallaces in the cross hairs in this
10 lawsuit and you could have required them to come in
11 here and show cause as to why they did what they did
12 to you, that you're complaining about what they
13 initiated and did to you. You had that opportunity,
14 and you gave it up for \$223,000; isn't that right?

15 **A** And as I told you before, I had no choice, as
16 many people have submitted to things that they've
17 had to because of the fact they have no choice.

18 **Q** Ma'am, you always have a choice, don't you?
19 It's just how hard you got to go to get to that
20 choice.

21 **A** I had no choice in this matter.

22 **MR. FRAWLEY:** Thank you, ma'am.

23 **THE COURT:** Redirect?

24 **MR. MOORE:** Nothing, Your Honor.

25 **THE COURT:** Thank you, ma'am. You may step

1 down.

2 Plaintiff have any other evidence?

3 **MR. MOORE:** Your Honor, the plaintiff would
4 rest.

5 **THE COURT:** All right. Ladies and gentlemen, I
6 told you at the outset of the trial that when the
7 plaintiff rests, I have to discuss legal issues with
8 the attorneys. I'm going to have to do that outside
9 of your presence, and I'm going to try to get a
10 handle on how long that will take, and then I will
11 either send word to you that we'll get back to you
12 before lunch or I'll let you go on.

13 It's going to take at least 20 minutes, but if
14 it's only going to be 20 to 30 minutes, I'm going to
15 keep going -- have you back there and keep going.

16 You've been handed an exhibit into the jury
17 box, just leave it on the rail. When the trial is
18 submitted to you for a decision, you'll have all
19 those exhibits in the jury room when you decide the
20 case. So when you come back in, you can continue to
21 circulate it, and at the end of the trial, if you
22 don't get to see it for some reason while it's being
23 circulated, it'll be back there for you to look at.

24 Don't discuss the case. I'll let you know
25 something as soon as I know something. Thank you.

1 (The jury retires to the jury room.)

2 **THE COURT:** Motions?

3 **MR. FRAWLEY:** May it please the Court. Your
4 Honor, the defendant has motions. We'll move for a
5 directed verdict as to the false arrest cause of
6 action. We've cited in our trial brief the case of
7 Dorn versus Town of Prosperity. It's actually a
8 federal case, 375 Fed.Appx. 284, 2010 -- the year is
9 2010. It's a Fourth Circuit case. Also Richardson
10 versus Rent-a-Center. It's a 2011 case from the
11 District of South Carolina. I believe Judge Joseph
12 Anderson was the judge in that case.

13 What we have in this case is two arrests with
14 facially valid arrest warrants that are signed by a
15 magistrate judge. And those two cases that we've
16 cited discuss South Carolina law with regard to a
17 facially valid arrest warrant and whether that --
18 what effect, if any, that has on any false arrest
19 claim.

20 What the cases say is that if there is a
21 facially valid arrest warrant, the false arrest
22 claim fails because one of the elements of it must
23 be a lawfully invalid warrant and that it is then
24 subsumed into possibly a malicious prosecution
25 claim. We do have a malicious prosecution claim

1 here.

2 So we would move, based on those two cases and
3 South Carolina case law which sets forth the
4 elements of false arrest -- one of those is McBride,
5 which we've also cited in our pretrial brief -- We
6 would move that the false arrest claim be dismissed
7 and that it be subsumed into the malicious
8 prosecution claim, which we're also going to be
9 arguing be dismissed.

10 Your Honor, do you want me to --

11 **THE COURT:** No, I want to hear --

12 **MR. FRAWLEY:** -- do each of them at a time?

13 **THE COURT:** Let me hear from them.

14 **MR. FRAWLEY:** This is, again, just addressed to
15 the false arrest, false imprisonment claim.

16 **THE COURT:** Yes, sir.

17 **MR. MOORE:** And, Your Honor, in regard to false
18 imprisonment, we would cite the case of Caldwell
19 versus K-Mart, which is 410 S.E.2d, page 21, which
20 is a Court of Appeals decision; Westbrook versus
21 Hutchison, which is 3 S.E.2d 207; Jones by Robinson
22 versus Wynn-Dixie, which is 456 S.E.2d 429. Those
23 cases basically talk about that false arrest is an
24 arrest made without probable cause.

25 For example -- basically, what it says is that

1 if there is a lack of probable cause and a person
2 basically initiates an arrest or causes process to
3 issue without probable cause, then the arrest is
4 fraudulent whether or not there's any form of a
5 facially proper warrant.

6 So our first order of business would basically
7 be, as a matter of law in this case, which has not
8 been appealed or -- and there is no indication --
9 the indication is the Lexington County matter is
10 over with the ruling of the magistrate's court. As
11 a matter of law, you have -- we have a situation
12 where the arrest was made without probable cause.
13 The warrant on its face contained an affidavit which
14 was either found to not have adequate bases in fact
15 or to not state causes which give rise to probable
16 cause.

17 What you have here is a situation where various
18 facts were sworn to by Ms. Scott, which the judge
19 found not to be true. So you have a situation here
20 where a Richland County deputy has entered into an
21 affidavit which, when it was actually considered,
22 even though the facts in the affidavit, if true, may
23 have given rise to a violation, that when the matter
24 was considered for a probable cause hearing, it was
25 determined that what was sworn to by Deputy Scott

1 wasn't true.

2 We also have a situation where the code section
3 in South Carolina comes into play where it talks
4 about a warrant may be issued only if it's done by
5 affidavit of a law enforcement officer acting with
6 the official capacity. Of course, in Lexington
7 County, according to the record, and we think all --
8 factually and legally, Officer Scott did not have
9 the jurisdiction to act as a law enforcement officer
10 in Lexington County.

11 So counsel indicates the warrant is facially
12 fine. We respectfully submit that it's not. In
13 South Carolina and under the Constitution, as we
14 understand it, a person may be arrested primarily
15 for a crime not committed in the presence of the
16 officer only with a warrant. We have a situation
17 here where, facially, when the warrant is ultimately
18 looked at, the warrant violates the statute because
19 the affiant to the warrant did not have the
20 authority under the code.

21 The code section provides that, in
22 circumstances like this, there has to be a courtesy
23 summons or there has to be a warrant which is
24 attested to by an officer acting in his official
25 capacity. And, of course, in Lexington County,

1 Heidi Scott had no official capacity.

2 We also have a situation where we had Solicitor
3 Riddle recorded, and he clearly indicated to
4 Detective Scott, You need to make sure this question
5 is presented to the magistrate before you sign a
6 warrant; if it's okay with him, it's okay with me.
7 Of course, he had little or no experience with the
8 case and wasn't assigned the case, so he really had
9 no authority to speak on behalf of the case. But in
10 practice, law enforcement officers, from time to
11 time, rely upon what the solicitors tell them.

12 But Dayton Riddle basically said, You've got to
13 run this thing by the magistrate. And I believe the
14 testimony from Detective Scott was that she did not
15 follow the advice of Solicitor Riddle, that what she
16 did was she just went down and told him that she was
17 a Richland County deputy pursuing a case, and he
18 allowed her to sign the warrant without having the
19 information Mr. Riddle indicated should be given.

20 And, Your Honor, we have State versus Lorenzo
21 Labelle Jones, which is a 2000 case. In that case,
22 our Supreme Court clearly indicated that an
23 affidavit in support of a search warrant which
24 contained false information didn't create probable
25 cause.

1 Well, you have a situation here where, if
2 there's an affidavit and an arrest warrant, that
3 doesn't create probable cause. What the court is
4 basically saying is that you look at the warrant
5 itself and it might be facially okay, but when the
6 information given by the police is not true, you
7 have a situation where the affidavit itself is
8 insufficient and the warrant is no good.

9 The Jones case clearly would indicate, as here,
10 that where the affidavit is bogus, the thing may be
11 facially okay if you look at it, but we have a
12 situation where it was ultimately looked at by the
13 magistrate again, and the magistrate determined, You
14 don't have the facts that you say you have in the
15 warrant.

16 We also would cite to the Court -- I know it's
17 a lot of cases -- the State versus Boswell, which is
18 390 -- well, 707 S.E.2d 265, where the court ruled
19 that in a multijurisdictional arrest, that the
20 officers had lacked lawful authority to act outside
21 of their jurisdiction. The Boswell case is
22 important because it talks about who has
23 jurisdiction and where. And the Boswell court
24 clearly indicates that an officer of the law does
25 not have the authority to act officially outside of

1 his jurisdiction.

2 So what you have here is an officer who acted
3 without the authority, contrary to the statute,
4 putting in an affidavit things which aren't true,
5 actually dictating the actual words of the affidavit
6 and taking steps to effectuate the arrest with what
7 appears to be or at least circumstantially has
8 proven to be an ulterior motive, which was to
9 basically interfere with a court case which was
10 coming up the next day.

11 Now, with all of that, we get back to -- I know
12 I'm talking too much -- we get back to the --

13 **THE COURT:** Now, you're not basing that on
14 anything I'm doing now.

15 **MR. MOORE:** No. I'm just saying I know I'm
16 talking too much.

17 **THE COURT:** All right. Okay. I just want to
18 make sure. I haven't made any facial expressions.
19 I haven't changed my demeanor. I'm just sitting
20 here listening.

21 **MR. MOORE:** No, that wasn't -- that wasn't --

22 **THE COURT:** All right. Go ahead.

23 **MR. MOORE:** I have an incredible ability to
24 aggravate people --

25 **THE COURT:** No, sir. But, I mean, you

1 accused --

2 MR. MOORE: I'm accusing myself.

3 THE COURT: Go ahead. Go ahead.

4 MR. MOORE: I'm accusing me.

5 THE COURT: No, I'm talking about prior to
6 this. Go ahead.

7 MR. MOORE: No, no, no. I'm sorry.

8 THE COURT: I just want the record to show that
9 nothing I did prompted the comment that Mr. Moore is
10 talking too much.

11 MR. MOORE: No, no. I was telling myself that.
12 I would love the record to show that nothing Judge
13 Keesley did caused me to say that. I was just -- I
14 was hearing myself drawing on and I was --

15 THE COURT: Go ahead.

16 MR. MOORE: What I had tried to do in my career
17 is when I make legal points, instead of bunching
18 them all up, trying to make them one at a time.

19 But, Your Honor, we believe that with all of
20 the facts and circumstances, with the authority
21 granted, considering everything that we have in the
22 record, there is sufficient cause to believe that
23 there was a false arrest.

24 And as I understand it as well, false arrest is
25 more than just actually -- and I have a case that I

1 think basically says this -- I'm losing my -- my
2 papers falling all over the place -- but, basically,
3 if a person puts into process a process which
4 ultimately leads to the arrest and deprivation of
5 liberty, that that, in and of itself, is a false
6 arrest if that is done without legitimate
7 jurisdiction and without legitimate probable cause.

8 So for those reasons, we would object to the
9 motion in regard to the false imprisonment charge,
10 Your Honor. Thank you, Your Honor.

11 **THE COURT:** All right. My understanding of the
12 law in South Carolina and I -- granted it's not a
13 hundred percent settled, but my understanding of the
14 law is that if the warrant is facially valid, then
15 the cause of action to be pursued is for malicious
16 prosecution. That deals with a lack of probable
17 cause. The motion is granted.

18 The cause of action for false imprisonment is
19 stricken. Go ahead.

20 **MR. FRAWLEY:** May it please the Court. Your
21 Honor, our next motion is with regard to the
22 negligence claim. We move that the negligence claim
23 be dismissed. There was no testimony from anyone
24 with regard to a standard of care, from a standard
25 of care witness, with regard to what the standard of

1 care for proper police procedure should have been or
2 that there was deviation from that procedure, which
3 would be required. You have to show the duty, the
4 deviance from that duty, that there was damage, and
5 that the damage was proximately caused by that
6 deviation.

7 We would also point out that, as an affirmative
8 defense, we have raised section -- S.C. Code Ann.
9 Section 15-78-60, subparagraph (6), of the South
10 Carolina Tort Claims Act, which provides immunity
11 for governmental entities with regard to the manner
12 of providing police protection.

13 That section indicates that there will be no
14 recovery for loss resulting from civil disobedience,
15 riot, insurrection or rebellion or the failure to
16 provide the method of providing or fire protection
17 -- police protection or fire protection.

18 The cases -- there are two that we've cited in
19 our trial brief, Huggins versus Metts and Jones
20 versus Lott. And Huggins versus Metts is 371 S.C.
21 621, 640 S.E.2d 465. It's a 2007 Court of Appeals
22 case. Jones versus Lott is at 387 S.C. 339, 692
23 S.E.2d 900. That's a Supreme Court 2010 case.

24 Those two cases afforded absolute immunity to
25 the Lexington County Sheriff's Department in Huggins

1 versus Metts and to the Richland County Sheriff's
2 Department in Jones versus Lott. And in those
3 cases, there was discussion of whether 15-78-60,
4 subparagraph (6), afforded absolute immunity or
5 whether it would only be some kind of qualified
6 immunity with regard to whether it was based on
7 gross negligence or negligence.

8 We had originally pled in this case as one of
9 our affirmative defenses section 15-78-60,
10 subparagraph (25), which would have raised a gross
11 negligence standard for the plaintiff to prove in
12 its negligence claim. We abandoned that defense at
13 the beginning of this trial, and we have not
14 asserted that defense in this trial nor are we now
15 asserting it.

16 Huggins versus Metts and Jones versus Lott say,
17 relying upon the case of Steinke -- that's
18 S-t-e-i-n-k-e -- versus LLR. And we have cited that
19 in our trial brief as well, Your Honor, and that
20 appears at 336 S.C. 373, 520 S.E.2d 142. That is a
21 1999 Supreme Court case for South Carolina.

22 Huggins versus Metts and Jones versus Lott say
23 that if gross negligence is not asserted, then the
24 gross negligence standard and requirement is not
25 infused in all of the affirmative defenses raised

1 under the Tort Claims Act.

2 The Steinke case, that was the Myrtle Beach
3 bungee jumping case, Steinke said that the
4 affirmative defenses allowed under 15-78-60, even
5 though they may be worded as absolute, were not
6 absolute if there was a gross negligence standard
7 raised. And if there was a gross negligence
8 standard raised, the defenses were not absolute.
9 They were all gross negligence standards.

10 Huggins versus Metts and Jones versus Lott both
11 say, if you don't raise gross negligence, don't
12 assert it as a defense. It is an absolute immunity
13 defense.

14 So based on those two grounds, first, that they
15 have not offered standard of care testimony from an
16 expert in police procedure setting forth what the
17 standard of care should have been and that that
18 standard of care was deviated from that caused her
19 damage. That's our first ground that the negligence
20 claim ought to be dismissed. The second is in
21 reliance on 15-78-60, subparagraph (6) of the South
22 Carolina Code, Huggins versus Metts and Jones versus
23 Lott. Thank you.

24 THE COURT: Mr. Moore.

25 MR. MOORE: Your Honor, as to the quantum of

1 negligence alleged, we alleged in paragraph 45 of
2 the complaint that the defendants were reckless and
3 negligent in their activity.

4 My understanding is, Your Honor, that
5 recklessness is even a standard over and above that
6 of gross negligence and that recklessness consumes
7 gross negligence.

8 Your Honor, as to the governmental immunity
9 case, we would cite the case of Sabb versus South
10 Carolina State, which is 567 S.E.2d 231, which
11 basically says that the governmental entity bears
12 the burden of establishing discretionary immunity as
13 an affirmative defense. And the discretionary
14 immunity is contingent upon proof the governmental
15 entity, faced with alternatives, actually weighed
16 competing considerations and made a conscious choice
17 upon accepting professional -- of acceptable
18 professional standards.

19 Your Honor, in this case, we believe that an
20 allegation of recklessness is actually an allegation
21 over and above that of gross negligence, but if, in
22 fact, gross negligence, those words, have to be in
23 the complaint, I would ask the Court to allow us to
24 amend to include gross negligence.

25 However, I do believe that an allegation of

1 recklessness is an allegation of which consumes,
2 subsumes, and includes gross negligence. The
3 allegation in paragraph 45 in the complaint is that
4 the defendants were reckless and negligent in one or
5 more of the following particulars.

6 So, Your Honor, in regard to the pleadings, we
7 think we have enough. We think we have pled it
8 accurately, that by pleading recklessness, we do --
9 recklessness is actually even more than gross
10 negligence as I understand it.

11 And as to the immunity, they have the burden of
12 proof. And we would respectfully submit that they
13 haven't established any type of immunity.

14 Your Honor, as to the cause of action for
15 negligence, my understanding is that their
16 negligence is generally a question of fact. I can
17 list about 25 different factors which we believe
18 would be evidence of negligence. We also believe,
19 Your Honor, that violation of the statute is
20 negligence per se and proof of recklessness, that
21 if, in fact, a statute has been violated here, that
22 that would be proof of recklessness or gross
23 negligence in and of itself.

24 I can cite the Court to about 25 --
25 approximately 25 things in the state -- in the

1 testimony which we believe give evidence of a lack
2 of due care. It is our understanding, Your Honor,
3 that the quantum of negligence, whether it's gross
4 negligence or recklessness or simple negligence, is
5 a question of fact for the jury.

6 I would also respectfully submit that it is not
7 necessary to bring an expert witness in to testify
8 as to the standard of proof, especially when we have
9 a situation where a code section has been violated.

10 So with those points, Your Honor, I believe we
11 have enough evidence there to go forward on a
12 recklessness claim. If not, I'd ask the Court to
13 allow me to amend to include the words gross
14 negligence if that's necessary. And I believe he's
15 just wrong on that, that the negligence -- the gross
16 negligence claim -- the recklessness claim is valid.
17 And immunity, I would respectfully submit, doesn't
18 apply.

19 **MR. FRAWLEY:** May I be heard, Your Honor?

20 **THE COURT:** Yes, sir.

21 **MR. FRAWLEY:** Okay. We are not saying that we
22 should prevail in this because they didn't allege
23 gross negligence. What we're saying is that we --
24 first, the standard of care issue, and under Rule
25 702, there is some issue -- with Rule of Evidence

1 702 dealing with whether the finder of fact needs
2 some level of expertise to let them know what the
3 standard of care is. That's our threshold position
4 in that they didn't do that.

5 This is not something that -- the proper police
6 procedure is not something that juries typically
7 know, that lay people typically know. That's
8 something that you need expert testimony for. They
9 don't have it, therefore, they haven't established
10 standard of care nor a variance for a standard of
11 care even getting to simple negligence.

12 I'm not saying they should have to claim gross
13 negligence. What I'm saying is we abandoned our
14 gross negligence defense before this case started.
15 We haven't asserted gross negligence, and therefore,
16 under Huggins versus Metts and Jones versus Lott, we
17 have absolute immunity. It doesn't get to the point
18 of us weighing whether it's negligence or not
19 negligence, that there is immunity, absolute
20 immunity under 15-78-66 and those two cases. That's
21 what those cases say.

22 Mr. Moore cites the Sabb case. And I've read
23 the Sabb case, too, but that addresses discretionary
24 immunity, which is under 15-78-65. We have pled
25 that. Clearly, if we're going to recover on

1 discretionary immunity, I'm going to have to put
2 evidence up in conformance with Sabb. And there's
3 also -- Creech is another case out there. That's
4 not what I'm talking about.

5 I'm talking about the language of 15-78-66 and
6 then the Huggins case and then the Jones case.
7 Because we have not asserted gross negligence, the
8 Steinke case doesn't kick in as far as applying a
9 gross negligence standard across the board. The
10 only standard now is simple negligence. And under
11 Huggins and Jones, we're entitled to absolute
12 immunity under 15-78-66 to the negligence claim.

13 We're not getting into recklessness. If one of
14 the issues we need to cover is a discussion of
15 22-5-110, which is going to be my motion in a few
16 minutes that that was complied with, we can do that,
17 but our basis for this motion is, first, that
18 there's no standard of care witness, no testimony --
19 required testimony of deviation from that standard
20 of care. So they're out based on that, but they
21 should also be out because we have absolute immunity
22 under the Huggins and Jones cases and 15-78-66.
23 Thank you, sir.

24 **MR. MOORE:** Your Honor, Mr. Biediger has just
25 handed me the case of -- one of the cases

1 Mr. Frawley was talking about.

2 Section (6) deals with absolute immunity for
3 civil disobedience, riot, insurrection, or rebellion
4 or the failure to provide the method of providing
5 police or fire protection. I don't see how this has
6 to do -- anything to do with civil obedience --
7 civil disobedience, riot, there's no riot here,
8 insurrection, none of that's here, or rebellion or
9 the failure to provide the method of providing
10 police or fire protection.

11 What happened in that case was there was some
12 sort of a shooting and there was -- it was a hostage
13 situation. And there was an allegation dealing with
14 the method of providing police protection. This
15 isn't the method of providing police protection.
16 This case has to do with what the police did or
17 didn't do in regard to a prosecution and arrest of a
18 private citizen.

19 I would respectfully submit that section (6),
20 dealing with riots and the method of providing
21 police or fire protection, simply is inapplicable to
22 the facts of this case. That section would not
23 apply.

24 Here, we're not talking about the method of
25 police protection. We're talking about what the

1 police actually did in the course of an
2 investigation.

3 The Huggins case clearly talks about the
4 specific language of the code section, which, as I
5 would read the code section, those -- that portion
6 of the Tort Claim Act would appear to be
7 inapplicable to the facts of this case.

8 **MR. FRAWLEY:** Your Honor, Huggins versus Metts
9 was a shooting case in which a gentleman was
10 threatening to kill himself, the police were called,
11 he ran out in the woods with butcher knives. They
12 pursued him, tried to talk him off the ledge, and
13 then he went after one of the police officers, and
14 they shot him at that point. There was no hostage
15 situation there.

16 Jones versus Lott involved a detainee who was
17 arrested, somehow worked his way into the front seat
18 of a police vehicle, drove off and was driving at
19 one of the law enforcement officers, and they shot
20 and killed him. There was no hostage situation
21 there.

22 **THE COURT:** It doesn't have to be a riot,
23 insurrection or anything like that. I had a case in
24 Aiken where the lady complained about her husband
25 making threats, and the police went out there and

1 investigated. And it was a really, really serious
2 situation. And the law enforcement officials
3 basically told her to be careful and left, and then
4 he came back and killed her.

5 **MR. FRAWLEY:** Is that Arthurs?

6 **THE COURT:** Yes. I was involved in it. I
7 don't know if I was involved in the actual trial,
8 but I was involved in it beforehand.

9 It doesn't have to be that, but I don't see
10 this -- I need to read your cases before I rule on
11 this, but I don't see this fact scenario as fitting
12 within what I think 15-78-60 subsection (6) is
13 designed to deal with.

14 Now, your other issue I do have more serious
15 questions about. Mr. Moore, you said you could cite
16 25 examples of negligence. You began telling me
17 about the -- your position on the violation of the
18 statute. As I indicated earlier, when this came up,
19 if this was going to come up later, I needed some
20 help with this.

21 The cases that have been cited to me so far,
22 and one my law clerk found, I think, from Ohio, seem
23 to indicate that an affidavit can be obtained from a
24 law enforcement officer who does not have
25 jurisdiction in that locality:

1 The Hammond case we've discussed. And while
2 that might be different than what I would have
3 thought going into the trial, I need some cases to
4 tell me that Hammond doesn't say what it appears to
5 say. And the only case that I found so far through
6 my law clerk was the case from Ohio. He can send it
7 to y'all, but it basically said the same thing. I
8 don't know if the statutes are the same. I hadn't
9 really had a chance to read much of it.

10 (Pause.)

11 **THE COURT:** Okay. He's telling me the Ohio
12 case said that it wasn't proper, but they went to a
13 prejudice analysis and said it was probable cause
14 anyway.

15 **MR. FRAWLEY:** Your Honor, one of my motions is
16 to address 22-5-110 and that it was properly
17 complied with. Would this be an appropriate time to
18 do that?

19 **THE COURT:** Well, I mean, I guess what I'm
20 trying to wrestle with is -- the question that I
21 anticipated would come up is, what evidence is there
22 of negligence when no one has testified about proper
23 police procedure or what would be acceptable police
24 procedure? I mean, obviously, if a police officer
25 is acting with malice, I think that goes beyond the

1 bad intention that's discussed in a lot of these
2 cases. If it's been shown that the Richland County
3 Sheriff's Office was acting with malice under the
4 malicious prosecution or abuse of process or engaged
5 in abuse of process, then the plaintiff can recover.

6 My difficulty has been with the false
7 imprisonment and the negligence claim. As far as
8 knowing whether there's sufficient evidence to allow
9 the case to go to the jury on those two, I've
10 already ruled on false imprisonment based on a legal
11 understanding.

12 How many more motions do you have? And do you
13 anticipate evidence being presented by your side,
14 additional evidence?

15 **MR. FRAWLEY:** If we get past the DV version,
16 yes, sir, we do. I have about three or four more.

17 **THE COURT:** All right. Let me let the jury go.
18 Bring the jury in.

19 (The jury returns to the courtroom.)

20 **THE COURT:** All right. Ladies and gentlemen,
21 it appears this is going to take a while, so we're
22 going to stay here and work, and I'm going to ask
23 you to be back at two o'clock. Now, you may have to
24 wait some at 2:00, but I want you to be here so we
25 can start as soon as we can.

1 Now, if I see at two o'clock that we're going
2 to spend the rest of the afternoon on this, that I
3 have to deal with, then I'll send you home. But
4 we're going to stay here and work, and, hopefully,
5 around 2:00, I'll be able to get back to you. So
6 you're free to go. You're on your own for lunch.
7 Remember all those admonitions, and I need you in
8 the jury room, please, at two o'clock. Thank you.

9 (The jury was excused for lunch.)

10 **THE COURT:** All right. Do y'all need to put
11 anything else on the record about this particular
12 directed verdict motion? I'm not going to rule. I
13 need to read the cases, but do y'all need to put
14 anything else on the record?

15 **MR. FRAWLEY:** Only, Your Honor, that if his
16 argument is that there's actual malice or intent to
17 harm or crime involving moral turpitude or actual
18 fraud on the part of Lieutenant Scott, that they
19 can't raise that against the entity. That's
20 something that should have been raised against the
21 individual defendant who's been dismissed.

22 I don't know how that factors into the
23 negligence claim, but I'd want to point that out
24 under 15-78-70 of the Tort Claims Act. That's why
25 they have to sue the entity and not the individual

1 -- and they did sue the individual, we got the
2 individual dismissed -- and that they can't hold the
3 entity accountable if there were acts of malice by
4 the individual, or if that's what their case is.

5 **THE COURT:** Anything else need to be put on the
6 record about this particular motion related to
7 negligence?

8 **MR. FRAWLEY:** Not from the defendant, Your
9 Honor.

10 **MR. MOORE:** Again, Your Honor, if I might just
11 make two very brief points. And, again, I -- maybe
12 more than two, but I'll try to be very brief.

13 Your Honor, there are two warrants. There are
14 many issues that we think give rise to a question of
15 negligence, but one of which is the actual arrest
16 warrant statute itself, which is 22-5-110. Now,
17 this has nothing to do with the search warrant; this
18 is for the arrest warrant. Section (B) says, An
19 arrest warrant may not be issued for the arrest of a
20 person unless sought by a law enforcement officer
21 acting in their official capacity.

22 The question becomes whether or not Heidi Scott
23 had the official capacity to act as a law
24 enforcement officer in Lexington County. I believe
25 the testimony is at least factually questionable as

1 to whether or not she had the authority to act in
2 her official capacity while in Lexington County. My
3 understanding is that she said she didn't, that she
4 was doing what she called spillover jurisdiction,
5 but that she did not have the authority to act in
6 Lexington County as a law enforcement officer.

7 So if that is the case, under the code section,
8 she would not have had the authority to have signed
9 the warrant -- the affidavit on the arrest warrant
10 in the first place.

11 Now, Mr. Dayton Riddle, the solicitor whom she
12 called for advice when he was taped, basically told
13 her to bring that issue to the attention of Scott
14 Whittle. And according to her testimony is that she
15 did not bring that issue to the testimony of Scott
16 Whittle.

17 So her testimony would have been that she
18 relied upon the advice of Mr. Whittle, and yet, when
19 she went to talk to -- Mr. Riddle -- when she went
20 to talk to Mr. Whittle, she did not tell him what
21 the solicitor had basically said, instead she just
22 dictated the affidavit and signed the warrant. So
23 there is a question of fact as to whether or not
24 S.C. Code Section 22-5-110 was applicable.

25 Your Honor, in regard to malicious prosecution,

1 malice does not have to be an intentional ill will,
2 but any form of gross deviation from the truth and
3 the like in the prosecution. Now, my understanding
4 is that the code section says I have to bring the
5 action against the entity. I can't bring it against
6 her. As a matter of fact, that's why she was
7 dismissed as a defendant. The defendant took the
8 position that the action had to be against Sheriff
9 Lott in his official capacity pursuant to the
10 statute, so we let her out and amended it based upon
11 that claim.

12 We were told, at that time, that they
13 acknowledged that everything she did, she did in her
14 official as an officer of the sheriff's department.
15 And she has testified that everything she did was
16 approved by her supervisors, and she's testified
17 that everything she did was done in her official
18 capacity.

19 Your Honor, my understanding is -- and I could
20 be wrong on this, but I believe I'm correct -- that
21 if there is a dismissal based upon a lack of
22 probable cause or if an action is brought lacking
23 probable cause, then that infers malice. And
24 that -- and malice basically being not necessarily
25 evil intent, but a gross conduct or reckless conduct

1 on the part of the person acting.

2 So, in this case, we have a situation where
3 there is a factual inference of malice within the
4 definition of the term malice. And if it is
5 malicious as defined by the court as being a gross
6 deviation, then a malicious conduct -- a jury can
7 certainly find that malicious conduct within the
8 context of what they can infer would certainly be
9 reckless or grossly negligent or wrongful conduct
10 within the meaning of the negligence statutes.

11 So it would be -- in my belief, there is
12 adequate proof in this record of recklessness, gross
13 negligence, malice which give rise to a cause of
14 action pursuant to the Tort Claim Act, especially
15 when the evidence reflects that everything that was
16 done was approved by the sheriff's department and
17 done within the course and scope of the authority of
18 Heidi Scott. And with that, I thank you very much,
19 Your Honor.

20 **MR. FRAWLEY:** Again, Your Honor, since he
21 raised the issue about the dismissal of Heidi Scott,
22 we moved for summary judgment, and it would be in
23 the record, back over a year ago for Heidi Scott to
24 be dismissed not only based on 15-78-60, 70, that
25 they should have named the entity and not just her,

1 but also that there was a lack of evidence. There
2 was no genuine issue of material fact against Heidi
3 Scott that she had engaged in any kind of malicious
4 conduct or other conduct that would have been
5 improper.

6 At that time, there was no such evidence. And,
7 in fact, our supporting affidavit is the affidavit
8 of Heidi Scott that's in evidence here today. I've
9 forgotten the number that Mr. Moore put it in, but
10 it's a plaintiff's exhibit. It was originally
11 submitted when we had a change of venue motion
12 before Judge McMahon at the very beginning of this
13 lawsuit, and I relied on that same affidavit before
14 Judge Addy. I believe Judge Addy heard the motion
15 for summary judgment.

16 And what we argued to Judge Addy -- and we have
17 a memorandum of law that we submitted for summary
18 judgment. And in that, we argued that there was no
19 genuine issue of material fact at that time
20 indicating that Lieutenant Scott had done anything
21 improper.

22 So she wasn't dismissed from this case simply
23 because she was named individually. She was also
24 dismissed because there was no facts supporting the
25 claim against her and no genuine issue of material

1 facts. So I would differ with Mr. Moore on that.

2 With regard to this conversation with
3 Mr. Riddle, and Mr. Riddle, quote, basically, closed
4 quote, saying what Mr. Moore is maintaining, he
5 said, the transcript of what Mr. Riddle said, not
6 basically but specifically, is in evidence as
7 Defendant's Exhibit 8, and that indicates that she
8 can go to Judge Whittle and present the facts to
9 Judge Whittle, and if Judge Whittle feels those
10 facts are sufficient to establish probable cause, if
11 it's okay with him, it's okay with me, according to
12 Mr. Riddle.

13 As far as section 22-5-110, one of my motions
14 is that the arrest warrants were properly issued
15 under that code section and that failure to -- or
16 the alleged failure to comply with that code section
17 is inapposite to what's here. And, in fact, that
18 code section is directed to the magistrate issuing
19 the warrant or the courtesy summons, not the law
20 enforcement officer or the private citizen who goes
21 to the magistrate, that this was directed -- this
22 statute is directed to magistrates, Here's the
23 guidelines for how you issue a warrant.

24 And if this particular magistrate, who was an
25 experienced magistrate, talked to Lieutenant

1 Scott -- and Lieutenant Scott did testify that it
2 was clear -- she made clear to him she was a law
3 enforcement officer and that she was a Richland
4 County law enforcement officer, there's nothing in
5 this statute -- the word jurisdiction doesn't appear
6 in this statute. We've had bits and pieces
7 cherry-picked out of this statute coming in through
8 lay witnesses and law enforcement witnesses but not
9 the whole statute.

10 And I would argue that this is not a factual
11 issue. This is an issue for the Court as to how
12 22-5-110 should be applied. This is a matter of law
13 for Your Honor to decide, not for our witnesses to
14 give their opinions as to how it's applicable.

15 If we need to argue that, I'm prepared to do it
16 now. Other than that, I'm done with my argument on
17 the negligence claim, unless something else is
18 raised.

19 **THE COURT:** Yes, sir.

20 **MR. MOORE:** Your Honor, I would like to come
21 back to that argument in a moment, but there was one
22 other thing I would like to point out to the Court,
23 if I might.

24 Your Honor, after the Court asked us to
25 research the issue -- I'm now going back from the

1 arrest warrant back to the search warrant. My
2 understanding is that the cases from outside of the
3 jurisdiction, I think they're very limited, but I --
4 this case from Ohio would basically indicate that
5 under those circumstances, that search warrant
6 should not have been issued but then at a prejudice
7 analysis.

8 But we do have a specific statute in South
9 Carolina, which we did share with the Court, in
10 regard to the search warrant issued, which is
11 17-13-140, and we e-mailed that to Spencer. I don't
12 know if the Court has had an occasion to see that,
13 but the actual statute dealing with search warrants
14 basically provides that, using the search warrant,
15 it says, It shall be directed to any peace officer
16 having jurisdiction in the county where issued,
17 including members of the South Carolina Law
18 Enforcement Division, and shall be returnable to the
19 issuing magistrate.

20 So the code section in question clearly
21 dictates to whom the search warrant is to be issued.

22 We believe the Ohio case says that the issuance
23 of the search warrant itself was fatally flawed
24 because an officer without jurisdiction didn't have
25 the right to obtain it. But if we're wrong on that,

1 we certainly know that a Richland County officer did
2 not have the legal authority under 17-13-140 or,
3 from the face of the search warrant, to actually
4 conduct the search. And our position is it is the
5 conducting of the search by Ms. Scott and the
6 obtaining as well that basically violated that code
7 section.

8 If I can change gears for a moment and now --
9 and I thank the Court for letting me interject that
10 thought, but the -- getting back to the concept of
11 the -- of what malice is, the -- I'd like to cite
12 the Court to Eaves versus Broad River Electric,
13 which is 289 S.E.2d 414.

14 It says, Malice does not necessarily mean the
15 defendant acted out of spite, revenge or with a
16 malignant disposition, although such an attitude
17 certainly may indicate malice. Malice also may be
18 perceived from an ill-regulated mind, which is not
19 sufficiently cautious, before causing injury to
20 another person.

21 Moreover, malice may be implied where the
22 evidence revealed a disregard of the consequences of
23 an injurious act without reference to any special
24 injury that may be inflicted on another person.
25 Malice also may be implied in the doing of an

1 illegal act for one's own gratification or purpose
2 without regard to the rights of others or the injury
3 which may be inflicted.. In an action for malicious
4 prosecution, malice may be inferred from a lack of
5 probable cause to institute the prosecution.

6 So we understand that malice, as a legal term,
7 has a very broad factual field of what it means.
8 And if a jury may infer malice from the lack of
9 probable cause, which Mr. Baumgardner has testified
10 existed in this case and which the Court has found
11 existed in this case, knowing that the case,
12 according to the record, is finally settled,
13 certainly there could be an inference and is an
14 inference of malice within this definition. And it
15 would seem to us that that would be sufficient to
16 have a showing of negligence because negligence and
17 recklessness, as the Court has said time and again,
18 is generally a question of fact for the jury and not
19 a question of law. And I thank you for listening to
20 me.

21 **MR. FRAWLEY:** And, again, something new has
22 been brought up, so I'd like to address that
23 briefly, Your Honor.

24 **THE COURT:** Well....

25 **MR. FRAWLEY:** I'm prepared to discuss malice

1 later on, Your Honor. I'm not talking about
2 malicious prosecution at this point. My motion is
3 the negligence issue. And if we're done with that,
4 I'd like to be able to discuss malice when I discuss
5 the other motions. If Your Honor's heard all you
6 need on that point, I want to discuss malice later
7 on; I don't need to discuss it now.

8 I would like to point out that Baumgardner
9 didn't say there wasn't probable cause. He said
10 there wasn't probable cause at this time after a
11 three-and-a-half week investigation.

12 And Mr. Moore keeps quoting this preliminary
13 court judge as saying there was no probable cause
14 and that he disbelieved the factual allegations in
15 the affidavit. That ain't what happened. He did
16 dismiss it, but there was no specific reason why it
17 was dismissed. And the motions that Mr. Moore had
18 tendered to dismiss were lack of probable cause,
19 which the judge immediately rejected, and then
20 Mr. Moore purported to argue lack of jurisdiction.

21 So there were two issues he was going on, and
22 then he dismissed it, which is all I needed to say
23 on the negligence issue, Your Honor.

24 **THE COURT:** You brought up 15-78-70 --

25 **MR. FRAWLEY:** Yes, sir.

1 **THE COURT:** -- and I don't know that I read it
2 the same way you do. That statute deals with when
3 an individual -- in this case, a police officer or
4 sheriff's deputy -- can be sued. And you said that
5 if the officer acted with malice, that the agency is
6 off the hook. Where is that?

7 **MR. FRAWLEY:** No. No. That -- if I said that,
8 I misspoke. There are five factors in 15-78-70 in
9 which you say if the -- in which the statute says
10 that if the individual meets one of those five, that
11 he may be sued individually, and those are intent to
12 harm, actual fraud, actual malice, crime of moral
13 turpitude and --

14 **THE COURT:** I've got the statute in front of
15 me.

16 **MR. FRAWLEY:** Okay. That's where they can be
17 sued. That doesn't mean they can't still sue the
18 entity. But the issue that came up, he was saying
19 that they only went after Lieutenant Scott because,
20 you know, they thought that she fit under that. She
21 was only dismissed because of that code section.
22 That's not why she was dismissed.

23 **THE COURT:** Well, you've cited an order issued
24 by Judge Addy.

25 **MR. FRAWLEY:** Yes, sir.

1 **THE COURT:** I've looked through the file. The
2 only order I can find issued by Judge Addy is a Form
3 4 order. And it reads, as related to this issue in
4 its totality, Defendant Heidi Scott's motion to
5 dismiss is granted, and she is released as a party.
6 Defendant Heidi Scott and Defendant Sheriff Leon
7 Lott's motions for summary judgment are granted as
8 to the cause of action for conspiracy because the
9 plaintiff has not alleged special damages. Summary
10 judgment is denied as to all other causes of action
11 at this time.

12 So how do I know from that what Judge Addy
13 based his ruling on?

14 **MR. FRAWLEY:** I guess the -- the argument I
15 made -- the same thing we know from Mr. Moore as far
16 as why the preliminary hearing was dismissed, just
17 the result. We argued --

18 **THE COURT:** I thought y'all had a transcript
19 of --

20 **MR. FRAWLEY:** We do have a transcript. I
21 didn't want that to come in for the jury to review,
22 but if Your Honor wants to review that. This was a
23 preliminary hearing --

24 **THE COURT:** No, I don't think I need to review
25 it. It's -- go ahead. I'm sorry if I interrupted

1 you.

2 **MR. FRAWLEY:** Well, the only point I'm making
3 about that transcript is that it keeps coming up
4 that that judge found that the factual allegations
5 in the affidavit were wrong or were erroneous or
6 were inappropriate, and that's not what happened.
7 He did initially say, I'm not going to grant the
8 motion based on probable cause, what else you got?
9 And then he argued for another three or four pages,
10 and then he does dismiss it after he's purportedly
11 arguing lack of jurisdiction, which he's been doing
12 here under section 22-5-110.

13 **THE COURT:** All right. Now, the Hammond case
14 was a search warrant case?

15 **MR. FRAWLEY:** Yes, sir.

16 **THE COURT:** What case do you have that deals
17 with arrests?

18 **MR. FRAWLEY:** I have nothing. I would argue
19 that -- I would argue that by inference, Your Honor.

20 And with regard to Mr. Moore talking about the
21 search warrants being part of their claim, that's
22 not in their complaint. In their complaint, they
23 don't mention anything about a cause of action or a
24 part of the claim being the issuance of search
25 warrants. The only warrants they talk about in

1 their complaint and the only ones we've been
2 assuming for the last two years, two and a half
3 years up to this point, have been these two
4 Lexington County arrest warrants.

5 I have Hammond and I have the Herring case,
6 which, again, is a -- just by inference, there's
7 language in the Herring case, but I don't have
8 anything on point that specifically says they can do
9 that. But if you have a plain meaning -- reading of
10 section 22-5-110, that section is directed to the
11 magistrate. And it says in (B)(1), An arrest
12 warrant may not be issued for the arrest of a person
13 unless sought by a law enforcement officer acting in
14 their official capacity.

15 Heidi Scott said -- Heidi Jackson said that
16 when she went to Judge Whittle, she had her badge,
17 she identified herself as a police officer from
18 Richland County, and that it was her understanding
19 that Judge Whittle clearly understood that, that's
20 why she would be there.

21 And then, If an arrest warrant is sought by
22 someone other than a law enforcement officer, the
23 court must issue a courtesy summons.

24 Now, if Judge Whittle chose to not treat her as
25 a Richland County law enforcement officer acting in

1 her official capacity, then she would have been
2 someone other than a law enforcement officer, and
3 Judge Whittle should have issued a courtesy summons
4 under (B)(2), but he didn't. That wasn't Heidi
5 Scott's call. That was Judge Whittle's call. She
6 went in there and said, Here's the facts I've got,
7 I'm a Richland County officer, what can we do? And
8 he issued an arrest warrant based on that.

9 If there is a problem with this statute in
10 noncompliance -- and, again, there's no mention in
11 this statute of jurisdiction -- it would be with
12 Judge Whittle's discretionary call, and they haven't
13 done anything about that. They haven't gone after
14 Judge Whittle nor should they.

15 But we would argue that 22-5-110 had been
16 complied by Richland County and Lieutenant Scott in
17 that she went to the judge, she told him who she
18 was, and then whether the judge treated her as a law
19 enforcement officer acting in her official capacity
20 or as someone other than a law enforcement officer
21 was the judge's call.

22 **THE COURT:** And she did not make the arrest.

23 **MR. FRAWLEY:** No, sir.

24 **THE COURT:** The plaintiff turned herself in at
25 the Lexington County jail.

1 **MR. FRAWLEY:** Yes, sir, at 5:30 in the morning
2 the following morning, after talking to her counsel.

3 **MR. MOORE:** Your Honor, that would be after
4 Ms. Scott called her and told her.

5 **THE COURT:** I understand.

6 **MR. MOORE:** Yes, sir.

7 **THE COURT:** The question I think that's before
8 me right now is whether this statute can constitute
9 evidence of negligence, this statute being the
10 statute dealing with the issuance of arrest warrants
11 where the officer did not make the arrest herself.

12 **MR. MOORE:** Your Honor, here's where the
13 negligence lies, I believe. Again, I'm just trying
14 to help. The lady had been told of a question in
15 regard to the statute as to whether Judge Whittle
16 could issue the warrant. Solicitor Riddle said, I'm
17 fine with it, but you need to discuss it with Judge
18 Whittle.

19 Her testimony is she did not tell Judge Whittle
20 of the problems in that regard. She knew of the
21 existence of the statute because Solicitor Riddle
22 had told her. She acknowledged in that conversation
23 she knew of the existence of that statute, and yet,
24 when she went to see Judge Whittle, she remained
25 totally silent and did not do what she had been

1 instructed to do by the Lexington County
2 authorities.

3 Now, the other issue becomes, I think, whether
4 or not it was negligence for her to have signed the
5 affidavit in the first place, knowing full well that
6 there was a question about her authority to do so.

7 But the real negligence in this case is that
8 she failed to disclose to the judge the potential
9 problem with this warrant when she had been
10 instructed to do so by the solicitor. And, to me,
11 that would give rise to a question of fact as to
12 whether or not she acted properly in failing to tell
13 the judge everything that she should have told him
14 and that she had been instructed to tell him. And
15 the question then becomes a question of fact for the
16 jury as to, was it negligent for her to have ignored
17 the instructions of the solicitor?

18 **THE COURT:** And your position is that the jury
19 can decide that without regard to any expert
20 testimony establishing the standard of care.

21 **MR. MOORE:** Yes, sir. I do believe that, and
22 their -- yes, sir, I think the law is replete with
23 places that juries have the ability to make ordinary
24 decisions, which -- I mean, if you're told to do
25 something and don't do it, I believe the jury is

1 perfectly capable of making that decision without
2 the benefit of an expert opinion. Plus, plus when
3 the jury has the absolute right to infer, based upon
4 a lack of probable cause, malice, then a jury,
5 certainly if they can infer it, we know we have
6 proof of lack of probable cause. We have proof of
7 lack of probable cause from Officer Baumgardner.

8 We have -- between the time Baumgardner gave
9 the file back and the time the arrest warrant was
10 served, there were no additional facts uncovered
11 that we know of, and so when she got it back,
12 Lexington County had found no probable cause. When
13 it went before the magistrate, the magistrate can
14 only dismiss it for lack of probable cause, which he
15 did.

16 **THE COURT:** No. Why couldn't a magistrate
17 dismiss it for lack of jurisdiction?

18 **MR. MOORE:** Because the code section says --
19 the rule says so.

20 **THE COURT:** What rule?

21 **MR. MOORE:** South Carolina Rule 2.

22 **THE COURT:** You mean to tell me a judge cannot
23 throw a case out because he finds no jurisdiction?

24 **MR. MOORE:** I know this may come as a surprise
25 to the Court, but for those of us who practice law

1 in Lexington County, if you had any idea how many
2 times the magistrates of this county have told me
3 they can't dismiss something for lack of
4 jurisdiction, it would astound you. We have been
5 told over and over again that they've been told by
6 the solicitor not to dismiss anything unless they
7 find lack of probable cause. They will not --

8 **THE COURT:** What did he say in the transcript?

9 **MR. MOORE:** He basically listened to the
10 argument and listened to everything, and in the end,
11 he basically said, I'm dismissing it. The words
12 were, I'm dismissing it.

13 But if we look at Rule 2, it basically says
14 that there are -- there are only two things. He
15 says, If the probable cause be found by the
16 magistrate, the defendant shall be bound over to the
17 court of general sessions. If there be lack of
18 probable cause, the defendant shall be discharged,
19 but his discharge shall not prevent the State from
20 instituting another prosecution for the same
21 offense.

22 So the two options, according -- according to
23 Rule 2, the two options are to either find probable
24 cause or not. That's what Rule 2 says.

25 **THE COURT:** Rule 2 what?

1 **MR. MOORE:** Of the South Carolina Rules of
2 Criminal Procedure dealing with preliminary
3 hearings. Your Honor, I have an extra copy if the
4 Court would like it.

5 **THE COURT:** I've got it.

6 **MR. MOORE:** I know I'm interrupting while the
7 Court's reading, but of course Mr. Baumgardner
8 testified it was dismissed for lack of probable
9 cause, as did Ms. Paschal, which is factually in the
10 record as to why it was dismissed.

11 **MR. FRAWLEY:** Whether it's accurate or not.

12 **MR. MOORE:** Whether accurate or not is true,
13 but as I understand it from the motion, that the
14 evidence and the inference should be taken in the
15 light most favorable to the plaintiff, and
16 therefore, for purposes of this motion, it was
17 dismissed for lack of probable cause.

18 (Pause.).

19 **THE COURT:** Did you have any cases -- and I
20 apologize if you already cited them, Mr. Frawley --
21 dealing with the requirement to have an expert
22 witness to testify about matters of police
23 procedure?

24 **MR. FRAWLEY:** Not right now, Your Honor. Just
25 that -- I mean, I can try and find one, but I don't

1 have one right now. I mean, the issue there, I
2 think, is police procedure is not something that's
3 generally known. They can watch it on TV, but what
4 police procedure really is is not something that
5 your average layperson, who's going to be a juror,
6 is going to know.

7 So there has to be someone with sufficient
8 expertise or training or education who can tell them
9 that here's what it should be and here's how it's
10 deviated from, and we don't have that here. And I
11 think if you give something like this to a jury
12 without that assistance, that it's going to be
13 replete with problems with them making assumptions
14 and what is or is not negligent conduct. There has
15 to be a standard of care established, and they
16 haven't done that.

17 Even apart from that, where has there been any
18 standard of care set forth by any witnesses in this
19 case? Nobody's done that.

20 And, Your Honor, with regard to Rule 2 on the
21 preliminary hearings, Rule 2 does say, Preliminary
22 hearing is solely to determine whether sufficient
23 evidence exists to warrant the defendant's detention
24 in trial. That's in part (a). And part (c), where
25 it talks about probable cause, if there be lack of

1 probable cause, the defendant shall be discharged.

2 But there's nothing in here that precludes a
3 magistrate from concluding that this case shouldn't
4 even be in my court, that you have absolutely no
5 jurisdiction, and I'm kicking it for that. It says
6 that the hearing -- the purpose of the hearing is to
7 be specifically on the issue of probable cause, but
8 if someone comes in there and they don't have
9 jurisdiction, then this doesn't preclude him from
10 kicking it for that. And that was argued in that.

11 The lack of probable cause was argued and lack
12 of jurisdiction was argued. And when Mr. Moore made
13 the initial motion, Your Honor, I move to dismiss
14 for probable cause, the judge immediately said, I'm
15 going to deny that, continue. And then he went on
16 to talk about jurisdiction. And at the end of
17 which, he said, I've been up here reading cases, and
18 I'm going to dismiss it.

19 **THE COURT:** All right. I'm inclined to agree
20 that you can raise jurisdiction and it can be ruled
21 upon. And the remedy, if there's any uncertainty
22 about the judge's ruling, is to ask the judge to
23 address the issues that were raised and whether they
24 were specifically ruled upon.

25 Let me go on and find out what your other

1 motions are, so -- because I -- I mean, the thing
2 is, it's not my call to decide how to proceed with
3 the case. I'm going to base my decisions on what I
4 understand the law to be. And I'm not trying to put
5 myself in the place of the attorneys or the parties
6 by what I'm about to say.

7 A lot of times I get concerned when we have to
8 instruct juries -- and this is somewhat selfish, I
9 guess -- but I get concerned when I start explaining
10 all these different things to the juries when I
11 feel, in my heart of hearts, that if the jury
12 believes the plaintiff's case and if it survives on
13 these other causes of action, those are the ones
14 they're going to nail them on if they do that.

15 And I've got a real problem with letting the
16 jury decide -- I'll be honest with you, I'm not
17 ruling, but I will tell you the reason we spent so
18 much time on this, and I've given you so much
19 opportunity to say what you want to say: I've got a
20 real concern about 12 people over there deciding
21 what proper police procedure is without one shred of
22 discussion about -- in the trial, and me start
23 reading them statutes about what a magistrate is
24 supposed to do and how a warrant is obtained. And
25 I've got a real concern that that's just not the way

1 a case should be submitted to the jury, that it's
2 not fair to them, that it's not fair to the parties,
3 that it subjects folks to having arbitrary standards
4 set up that may or may not be realistic in the world
5 of law enforcement.

6 If they believe that this lady did the things
7 that the plaintiff is claiming that she's done and
8 if these claims survive this directed verdict motion
9 and survive the motions at the end, then they're
10 most likely going to find, if there's no probable
11 cause, that fits right into the other causes of
12 action. They're going to find on the other causes
13 of action. But, again, I'm going to rule on what's
14 presented to me.

15 What are your other motions?

16 **MR. FRAWLEY:** Your Honor, our third motion
17 would be, we would move that Your Honor issue a
18 directed verdict that the arrest warrants were
19 supported by probable cause. We cited Your Honor to
20 a couple federal court cases which discuss state
21 court and United States Supreme Court cases on
22 probable cause. The one I'll be quoting is Gomez
23 versus Atkins. It's 296 F.3d 253. It's a Fourth
24 Circuit case from 2002.

25 In that case, the court sets out, with regard

1 to probable cause, in assessing whether probable,
2 cause existed when a warrant is issued, the court
3 must examine the totality of the circumstances known
4 to the officer at the time of the arrest. And in
5 that case, they cite other cases that we've referred
6 to.

7 Also, The determination and the existence of
8 probable cause is a practical, nontechnical
9 conception, and it involves factual and practical
10 considerations of everyday life on which reasonable
11 and prudent men, not legal technicians, act.

12 There was questions of Lieutenant Jackson about
13 whether she specifically said she was informed, or
14 believed this or whether this was based on firsthand
15 information or information she'd gotten elsewhere of
16 hearsay information. I think that's where this
17 would apply to, that it's the totality of the
18 circumstances, and she doesn't have to be that
19 specific in the affidavit as far as whether she
20 knows that information through her investigation or
21 whether she knows it firsthand.

22 Furthermore, that in determining whether
23 probable cause exists, the evidence must be seen and
24 weighed not in terms of library analysis by
25 scholars, but as understood by those versed in the

1 field of law enforcement.

2 Gomez also says that, Probable cause will be
3 found to exist when the facts and circumstances
4 within an officer's knowledge or of which she
5 possesses reasonably trustworthy information are
6 sufficient in themselves to convince a person of
7 reasonable caution that an offense has been or is
8 being committed. While probable cause demands more
9 than mere suspicion, evidence sufficient to convict
10 is not required.

11 And, also, Reasonable law enforcement officers
12 not need -- need not resolve every possible doubt
13 about a suspect's guilt before probable cause is
14 established. And that, Officers may not disregard
15 readily available exculpatory evidence, but the
16 failure to pursue a potentially exculpatory lead is
17 not sufficient to negate probable cause.

18 There was testimony from Ms. Paschal that there
19 was no asking of neighbors questions and so forth.
20 That latter cite there would obviate that, that they
21 have to have enough to indicate that, in good faith,
22 a crime has been committed.

23 What we've got in this case, Your Honor, is if
24 you look at the totality of the circumstances as
25 they elicited at that part -- at that point,

1 Lieutenant Jackson's testimony, they had credible
2 questions about the power of attorney. We've got
3 two different, almost identical, but different
4 versions of a power of attorney, both of which
5 appeared to have been executed May 17 or drafted May
6 17, 2002. And they've got forensic expert document
7 reports from an independent guy, Dawson, and then
8 from SLED indicating that there are questions about
9 this power of attorney.

10 We've got the Wallaces saying that their father
11 has been poorly cared for medically. That's not an
12 issue in this case, but that -- they had that. They
13 had money that's missing. They had this lady who's
14 been living with him for eight years.

15 **THE COURT:** Well, I mean, the witness said
16 several times that money was missing, but nobody
17 bothered to share with the Court or the jury what
18 money they're talking about and what it was spent
19 on. And I'm going to let you make your full motion,
20 but I'm telling you, I went to a car show this
21 weekend, I didn't see anybody drive up there with a
22 handicap van to show off.

23 I mean, if people are going to convert money,
24 they usually -- that usually means they're using it
25 for themselves, and that lady is not handicapped.

1 **MR. FRAWLEY:** Well, Your Honor, we --

2 **THE COURT:** And I understand, technically, the
3 title was put in both names. And if she survived
4 him, that she would have obtained the title, and
5 there was a trade-in and it was \$5,000, but all that
6 seems to me to be jury issues.

7 **MR. FRAWLEY:** Well, Your Honor, as far as us
8 coming in here and trying the criminal case, we
9 weren't going to do that, and we said that on the
10 front end, that what we're looking at is what's in
11 those two affidavits. And that's the next thing I
12 was going to point out to Your Honor is the
13 affidavits that were submitted to Judge Whittle,
14 Judge Whittle found to be probable cause. And he
15 issued them based on the -- that information.

16 Now, we've got a power of attorney that's
17 unusual or flaky. We've got her testifying that,
18 for several years, she would sign checks on his
19 behalf, not David Wallace by Kay Paschal, POA, but
20 just simply signing his name. She did that with the
21 58,000 dollar check, and that was the one example
22 they had that was the Lexington County component of
23 this bigger investigation into Richland County.

24 They didn't get into the 50,000 dollar or
25 25,000 dollar, whatever else was missing in Richland

1 County, that wasn't put in that affidavit because
2 that had nothing to do with the Lexington County
3 warrant. So that's how I would respond to that.

4 THE COURT: I mean, again, not to belabor the
5 point, most people that do this buy Corvettes; they
6 don't buy handicapped vans. Go ahead.

7 MR. FRAWLEY: Well, I understand that, but I
8 don't think --

9 THE COURT: It's not my call. I think it's a
10 jury call. And I don't think you freeze the
11 evaluation of whether or not there's probable cause
12 at the point in time of what's presented to the
13 magistrate if -- I mean, she hasn't had her chance
14 to show there wasn't any probable cause here. This
15 was done for some malice or some abuse of process.
16 Now, whether that's true or not is not my decision
17 to make.

18 MR. FRAWLEY: Yes, sir.

19 THE COURT: Go ahead.

20 MR. FRAWLEY: And probable cause is normally a
21 jury issue unless there's only one -- it's only
22 susceptible to one conclusion. I understand that.

23 THE COURT: And my point I'm trying to make,
24 and making it poorly, is that this is not only
25 capable of one decision.

1 **MR. FRAWLEY:** Yes, sir. Yes, sir.

2 Well, and then, finally we would say that from
3 Lieutenant Jackson's testimony, there was a good
4 faith belief that she had probable cause, that she
5 did consult with several different levels before she
6 came over here to do that. And, again, we would
7 refer Your Honor to the affidavit, so that's our
8 third motion.

9 **THE COURT:** That motion is denied. What's your
10 next motion?

11 **MR. FRAWLEY:** All right. The next motion is
12 that -- and we may have argued this in passing
13 already -- that the arrest warrants were properly
14 issued under section 22-5-110. I've already argued
15 that to your motion -- to Your Honor reading section
16 (B)(1) about it's directed to a magistrate, how the
17 magistrate is to issue the warrant, that it has to
18 be a law enforcement officer in official capacity,
19 that Lieutenant Jackson testified that she told the
20 magistrate she was a Richland County deputy. It
21 appears he was aware of that. The discussion or the
22 issue could either be an issuance of a arrest
23 warrant or a courtesy summons, but that discretion
24 is with the magistrate, not with the law enforcement
25 officer, and he chose to issue the warrant.

1 So that's.-- that's our next motion was that
2 the arrest warrants were properly issued under that
3 code section.

4 **THE COURT:** All right. What's your next
5 motion?

6 **MR. FRAWLEY:** We would ask Your Honor to
7 dismiss the abuse of process claim. There's no
8 evidence that there was improper procedures
9 followed.

10 They do argue that the 22-5-110 was not
11 complied with, so this is somewhat linked with our
12 previous motion that 22-5-110 was properly complied
13 with. And it was complied with after consulting
14 with her own superiors, after consulting with a
15 Fifth Judicial Circuit Solicitor, and after
16 consulting with an Eleventh Judicial Circuit
17 Solicitor, and then going to a Lexington County
18 Magistrate and discussing it with him. It was a
19 Richland County criminal investigation that bled
20 over into Lexington County.

21 Nor is there any evidence that there's ulterior
22 motive. Abuse of process requires an ulterior
23 motive and improper use of a legal process, and that
24 legal process has to be some improper use, not just
25 the logical progression or proper progression of a

1 legal process.

2 When I asked Ms. Wallace what evidence she had
3 of an ulterior motive, what she's talked about as
4 far as evidence is her perception, her belief of the
5 conspiratorial conversations between Lieutenant
6 Scott and Elizabeth Wallace, the Wallaces pointing
7 out where to go on these arrest warrants or the
8 search warrants. She admitted that -- well,
9 Lieutenant Jackson said she didn't know the Wallaces
10 before this, she hasn't had anything to do with them
11 since then, and that she did not act outside the
12 scope of her official duties, they weren't friends
13 of hers.

14 This is a situation in which this is an
15 investigator who has communication with the
16 complainants during the search warrants. One of the
17 things they're complaining of is that the Wallaces
18 appeared to be directing traffic for the search
19 warrants.

20 Well, the Wallaces were the ones that
21 complained. They're the ones that know where the
22 skeletons are, I guess, for lack of a better term,
23 and they're the ones that were directing the
24 Richland County sheriff's deputies to look where
25 they knew this material was. That's not an

1 indication of improper motive. Lieutenant Scott
2 talking to the complainant is not an indication of
3 improper motive. Ms. Wallace talking to Ms. Scott
4 or Lieutenant Scott is -- there's nothing wrong with
5 that. She's one of the complainants.

6 And if Ms. Paschal is complaining that they
7 didn't talk to her, they tried to talk to her and
8 she had a lawyer and exercised her right not to talk
9 to the police. So there's no evidence of ulterior
10 motive. I don't think that amounts to evidence of
11 ulterior motive.

12 She's got this thing about Johnny Finns knowing
13 somebody who knew somebody else and that that
14 somehow implicates Sheriff Lott as being improperly
15 involved, but there's nothing there except her
16 personal belief, no evidence beyond her personal
17 belief, and that should not be sufficient evidence
18 of ulterior motive for this cause of action to go to
19 the jury.

20 Finally, Your Honor, we would move to dismiss
21 the malicious prosecution claim. The elements of
22 that are the institution or continuation of original
23 judicial proceedings by or at the assistance of the
24 defendant, termination of those proceedings in the
25 plaintiff's favor, malice in instituting such

1 proceedings, lack of probable cause, and resulting
2 injury or damage. The probable cause issue, we've
3 argued that already and Your Honor's reserving
4 judgment on that or has denied, so I understand
5 that.

6 Mr. Moore has been quoting cases, I think the
7 Eaves case, saying that lack of probable cause means
8 malice. The language in those cases says that the
9 lack of probable cause may infer malice. It's not a
10 mandatory inference. It may be, but you'd have to
11 look at other circumstances besides that. In
12 looking at the totality of those circumstances,
13 malice is not inferred.

14 The termination of proceedings in the
15 plaintiff's favor, these two warrants were
16 dismissed, but the overall action -- the overall
17 investigation is still pending. That's still going
18 on in Richland County. So this thing hasn't gone
19 away because of this lawsuit.

20 So we'd ask that the malicious prosecution
21 claim be dismissed as well. And that's all of our
22 motions at this time, Your Honor.

23 **THE COURT:** Well, on the abuse of process, I
24 understand there has to be a showing of some
25 ulterior purpose or bad intent and that if all that

1 the defendant did was simply carry out a lawful
2 process, whether there was a bad intent or not, that
3 that cannot form a basis of abuse of process claim.
4 At this stage, it seems to me, the ruling may change
5 depending upon how I ultimately rule on the
6 warrants, but at this point, it appears to me that's
7 a jury issue.

8 As far as the malicious prosecution, again, I
9 think they're issues for the jury. So at this
10 stage, I'm going to deny the fifth and sixth
11 directed verdict motions, if I've numbered them
12 correctly, the abuse of process cause of action and
13 malicious prosecution cause of action.

14 I'll talk to you after lunch about the arrest
15 warrants being properly issued. And we'll finalize
16 the ruling on the negligence cause of action at this
17 stage.

18 Be back at two o'clock, and we'll take up those
19 matters.

20 **MR. FRAWLEY:** Thank you, Your Honor.

21 **MR. MOORE:** Thank you, Your Honor.

22 (Whereupon, there was a luncheon recess.)

23 **THE COURT:** I have one other question I meant
24 to ask earlier about punitive damages. Are they
25 being sought?

1 **MR. FRAWLEY:** I don't recall if I mentioned it
2 in our counterclaim, but we're not -- I'm less
3 concerned with punitive damages. And I don't know
4 if they pled -- they've pled for punitives, but I
5 believe it was against the Wallaces.

6 **MR. MOORE:** Your Honor, we are seeking
7 punitives. The question becomes whether or not they
8 are recoverable under the tort claim law. If they
9 are, under intentional circumstance, I would seek
10 them, but I honestly believe they're probably not
11 recoverable.

12 **MR. FRAWLEY:** 15-78-120(b), and they're not.
13 We have pled that, I believe.

14 **MR. MOORE:** I will rely upon that and withdraw
15 any claim for punitives.

16 **THE COURT:** They're not recoverable against --
17 they're not recoverable under the tort claims case
18 against the sheriff's department.

19 **MR. MOORE:** I'll withdraw those. That makes it
20 a lot easier anyway. Thank you.

21 **THE COURT:** All right. Now, also, I wanted to
22 make certain that I was understanding you right,
23 Mr. Frawley. The basis for your claim of absolute
24 immunity that you argued was that -- was it founded
25 in 15-78-60 subsection (6)?

1 **MR. FRAWLEY:** Yes, sir, it is. And that's
2 based on the manner of providing police protection.
3 I think either Huggins or Jones in a footnote refers
4 to a typo in that section that the Legislature has
5 never changed. They've got an "of" in there that
6 doesn't read right, and that footnote kind of
7 explains how the court has interpreted that. So
8 we're arguing absolute immunity under that code
9 section as interpreted by Huggins versus Metts and
10 Jones versus Lott.

11 Your Honor, I had also -- one of the issues
12 that came up was whether we had any case law
13 supporting my argument that in order to establish
14 standard of care, expert testimony was necessary.
15 We've -- over lunch, we looked for, and were unable
16 to find, a police procedures case where that came
17 out.

18 We did find a South Carolina Court of Appeals
19 case that deals with engineering. It had to do with
20 a water line that was put in. Tommy L. Griffin
21 Plumbing -- and I'll try to talk more slowly for the
22 court reporter -- and Heating Company versus Jordan,
23 Jones and Goulding, Inc. That appears at 351 S.C.
24 459, 570 S.E.2d 197. It's a 2002 case. We've
25 handed a copy of that up to your law clerk and to

1 Mr. Moore.

2 And on page 570 S.E.2d 204, on the right-hand
3 column, there's language that says, Expert testimony
4 was required to establish the standard of care and a
5 breach of that standard by the Goulding firm.
6 Without expert testimony, a jury cannot determine
7 whether Goulding was negligent when it relied upon
8 CPW studies in designing the project because there's
9 no way for a jury to compare Goulding's actions with
10 the actions of other similarly situated engineering
11 firms that would have taken -- what they would have
12 taken when confronted with the same situation.

13 Your Honor, this is not like an intersection
14 wreck or a traffic-type case. There's some
15 specialized issues here as far as police procedure
16 and whether those were varied from. And we would
17 argue by analogy, based on this Griffin Plumbing
18 case, that expert testimony was necessary to
19 establish standard of care. The failure to have
20 that expert testimony establish the standard of care
21 should warrant the negligence claim being dismissed.

22 **THE COURT:** Well, the case you handed up cites
23 the standard that Howard -- excuse me -- the Tommy
24 Griffin Plumbing case, Where the subject matter is
25 of common knowledge or experience so that no special

1 training is required to evaluate the defendant's
2 conduct, expert testimony is not required unless the
3 -- it cites some cases, one of which reads: Unless
4 the subject is a matter of common knowledge, expert
5 witness testimony is required to establish both the
6 standard of care and the defendant's failure to
7 conform to the standard.

8 That's what I understand the law to be in this
9 state. But the question is whether it is something
10 within the common knowledge or experience of
11 individuals who don't have the specialized training
12 that, say, a physician or an engineer or some other
13 professional would have.

14 So even when there is a professional negligence
15 case of that type, if -- I think the example that's
16 typically used is if somebody has surgery and
17 there's a surgical device left inside the body that
18 anybody would know would not be left there, there's
19 a scalpel sewed up in the body, you don't need an
20 expert to come in and say that's negligence.

21 **MR. FRAWLEY:** Yes, sir.

22 **THE COURT:** All right. Let me ask these other
23 questions: Was there an objection at the beginning
24 of the trial or at any time thereafter to the
25 introduction of the evidence regarding the search

1 warrant based on that not being pleaded in the
2 complaint? Was there a motion to exclude that
3 evidence?

4 **MR. FRAWLEY:** Your Honor, I made an argument
5 when he was -- or an objection when he was going
6 into questions about it, that we would object to
7 that, and I wanted to preserve my rights under a
8 possible Rule 15 motion to amend. And based on --
9 and I said it wasn't in the pleadings. He pointed
10 out something that he maintained was in the
11 pleadings, which I disagreed with. But I did object
12 to the testimony on that issue. But, clearly, those
13 arrest warrants are in -- not arrest warrants -- the
14 search warrants are in evidence.

15 **THE COURT:** All right. In the limited time I
16 had over lunch, I tried to find any type of
17 definition that would relate to the authority to
18 swear out an affidavit for an arrest warrant. What
19 has been given to me is section 22-5-110, subsection
20 (B)(1), which we discussed many times: An arrest
21 warrant may not be issued for the arrest of a person
22 unless sought by a law enforcement officer acting in
23 their official capacity.

24 I have -- the only thing I have found is --
25 excuse me, I had to write it on a napkin. There are

1 two code sections that deal with the authority of
2 law enforcement officers in situations where the
3 officer is operating outside of her jurisdiction.
4 And section 23-1-210 and section 23-1-215 deal with
5 these multijurisdictional compacts and the authority
6 of officers to act outside of their jurisdiction.

7 Now, I'm having a real hard time reconciling
8 the assertion that the officer had any authority to
9 swear out a warrant for a person's arrest, in this
10 case in Lexington County, with those two statutes.
11 I'm having trouble reconciling that with those two
12 statutes. I'm trying to pull them up. Excuse me.

13 210 deals with temporary transfer of an
14 assignment of a law enforcement officer so that a
15 law enforcement officer can be temporarily assigned
16 outside of her normal jurisdiction. Mutual aid
17 agreements are discussed, and that gives that
18 officer the powers and authority of a law
19 enforcement officer employed in that jurisdiction to
20 which she has transferred. It requires a written
21 agreement prior to the officer taking any action in
22 the new jurisdiction and a bond.

23 And then section 215 -- 212 goes through a long
24 discussion about the power of federal law
25 enforcement officials in South Carolina.

1 Then 215 deals with these multijurisdictional
2 compacts. Subsection (A) starts out, In the event
3 of a crime or crimes that have occurred where
4 multiple jurisdictions, either county or municipal,
5 are involved, law enforcement officers are
6 authorized to exercise jurisdiction within other
7 counties or municipalities for the purpose of
8 criminal investigations only if a written agreement
9 between or among law enforcement agencies involved
10 has been executed.

11 Then it states that the limitation on law
12 enforcement activity shall not apply to activity
13 authorized under 17-13-40. And quite frankly, I
14 didn't have time during lunch to look that up, so I
15 don't know what 17-13-40 is. I don't know if that's
16 hot pursuit or --

17 **MR. MOORE:** That's hot pursuit.

18 **THE COURT:** And then subsection (B), Any law
19 enforcement officer working under this agreement is
20 vested with equal authority and jurisdiction outside
21 his resident jurisdiction for the purpose of
22 investigations, arrests, or any other activities
23 related to the criminal activity for which the
24 agreement was drawn.

25 Now, if an officer can come from Richland

1 County to Lexington County and swear out a warrant,
2 that renders all that language meaningless in the
3 absence of a written agreement between the two
4 jurisdictions. And that's why I'm saying I have a
5 whole lot of trouble reconciling -- now, I
6 understand your argument that the statute that we're
7 talking about is entitled -- in section 22-5-110 is
8 a statute dealing with magistrates.

9 **MR. FRAWLEY:** Yes, sir.

10 And had she not been there in her official
11 capacity, she would have been an other person, and
12 there would have been a courtesy summons that he
13 would have issued. He makes that call, not the
14 officer.

15 And to impute culpability on her for going
16 there and the magistrate making that decision, it's
17 almost like she's in apposite to that statute. That
18 statute is directed to the magistrate, not to the
19 law enforcement officer.

20 **THE COURT:** But the situation here -- just
21 devil's advocate -- the situation here is she goes
22 -- assuming the evidence in the light most favorable
23 to the plaintiff, which I'm required to do at this
24 time, lieutenant goes, after having had a
25 conversation with the deputy solicitor -- nobody's.

1 identified him as a deputy solicitor, but he wasn't
2 an assistant, he was a deputy. He was right below
3 Solicitor Myers. There's more than one deputy. I
4 don't mean to imply that -- I don't know where
5 Dayton was in relationship to the two other
6 deputies. But, anyway, he's pretty high up the
7 chain at that time.

8 She has a conversation with the deputy
9 solicitor of Lexington County in which, in the light
10 most favorable to the plaintiff, the deputy
11 solicitor called her attention to the fact that
12 there is a statute. Now, he didn't cite the statute
13 by number. He just mentioned the statute in terms
14 of, You know there's that statute about a courtesy
15 summons, you know what I'm talking about. I don't
16 know if she knew what he was talking about or not.
17 It would be perfectly understandable, I suppose, if
18 she didn't.

19 But, again, in the light most favorable to the
20 plaintiff, he tells her, There's a statute out
21 there. Then she goes and she doesn't say, I'm
22 appearing as a private citizen. She says, I'm a
23 Richland County officer.

24 And I'm not -- in the abstract, I'm not
25 faulting her for that, but in the light most

1 favorable to the plaintiff, she identifies herself
2 as a law enforcement officer, acting in her official
3 capacity. And what I'm saying is I don't think she
4 had any authority under this statute and under the
5 law to do that.

6 Now, you're saying it's the magistrate's call,
7 and if the magistrate issued a warrant, so be it. I
8 don't think it's that cut and dry.

9 **MR. FRAWLEY:** Well, Your Honor, for instance,
10 if she goes to the magistrate and the magistrate,
11 having heard her recounting of the facts and the
12 affidavit, decides, you know, that's nice, but it
13 doesn't amount to probable cause, he's not going to
14 issue a warrant.

15 By the same token, if she came in there and
16 said, I'm a Richland County officer -- it's not like
17 she tried to conceal that. The testimony is clearly
18 that she identified herself as a Richland County
19 Sheriff's Department officer, she was there seeking
20 a warrant, and the judge, within his discretion --
21 just like if there wasn't probable cause, he could
22 have said, Sorry, I'm not going to give you that
23 warrant. But that was the judge's call on that.

24 And I understand Your Honor's dilemma, but with
25 regard to whether this statute was complied with by

1 Lieutenant Scott --

2 THE COURT: It was not --

3 MR. FRAWLEY: -- it's not Lieutenant Scott to
4 comply with. It's the magistrate's statute to
5 comply with.

6 THE COURT: Yeah, but you say, Was the statute
7 complied with? Whether you say it was complied with
8 by the magistrate or complied with by the officer,
9 the question you say is whether it's complied with.
10 I'm telling you it's not, based on the evidence in
11 the light most favorable to the plaintiff.

12 MR. FRAWLEY: Well, then the question comes
13 down to whether that is a step in culpability of the
14 defendant in this case when if it wasn't complied
15 with by someone who's not a party in this lawsuit.

16 THE COURT: Well, I mean, they would argue that
17 it was -- it's one more block in the wall, one more
18 link in the chain that she was -- again, devil's
19 advocate -- she was told by the solicitor over here,
20 look -- she had questions about it.

21 MR. FRAWLEY: Yes, sir.

22 THE COURT: She made the call. She was told,
23 there's this statute out there. Then she went to
24 the magistrate. Apparently, she did not try to look
25 up the statute, and she did not alert the magistrate

1 to the statute. Now, whether she needed to or not,
2 that might be a factual issue.

3 Let me see what your motion was. If I wrote it
4 down right, you wanted me to rule that the arrest
5 warrants were properly issued.

6 **MR. FRAWLEY:** That was the motion, Your Honor.

7 **THE COURT:** I can't do that at this stage.
8 Now, I might change the ruling later, but I just --
9 if there is something that was obtained by some
10 subterfuge -- and again, I'm not taking sides in
11 this -- you can't say it was properly obtained. She
12 -- I can't reconcile those two statutes with a
13 ruling that she was a law enforcement officer acting
14 in her official capacity, because her official
15 capacity would imply that she had the authority to
16 go before a magistrate in Lexington County and sign
17 an affidavit on an arrest warrant not as a private
18 citizen, because the statute treats law enforcement
19 officers differently than it does private citizens.
20 There is some credence given to law enforcement
21 officials.

22 And I don't know what the magistrate would have
23 done had he known that Lexington County had
24 conducted some investigation and had not yet
25 determined whether probable cause existed related to

1 this van, which I understand is the only issue in
2 Lexington County is the van.

3 And I've already cited to y'all, as a practical
4 matter, you know, you've got two separate crimes
5 here; we can't lose sight of that. Forgery is
6 different than breach of trust with fraudulent
7 intent. I know the lawyers know that. The law
8 enforcement officers know that. It's different.

9 The forgery can be just the presenting of a
10 document that's been counterfeited or forged. The
11 intent is a different level of intent. With a
12 breach of trust, it's not just whether there was
13 some sort of breach in the trust agreement. It's
14 whether the breach was done with the necessary
15 criminal intent.

16 And, again, in the light most favorable to the
17 plaintiff, it was used to purchase a handicap
18 accessible van by a lady who was not handicapped.
19 She didn't buy a Corvette that he couldn't even sit
20 in. She bought a handicap accessible van. And the
21 jury could look at that and say, Wait a minute,
22 that's all kind of red -- that calls for more
23 investigation, that calls for more inquiry.

24 And earlier when I said that y'all didn't tell
25 any of us what money was missing, that, to me, links

1 to probable cause. I'm not faulting you for the way
2 you try your case by any stretch of the imagination.
3 Both of y'all are excellent attorneys. And as I
4 told y'all at the outset, I knew from day one when I
5 put this robe on, I would never know a case as well
6 as good attorneys would know their case. I don't
7 pretend to do that. I don't know all the ins and
8 outs of the case. I only know what's been presented
9 here.

10 But when somebody's called upon to evaluate
11 whether there's probable cause of criminal intent,
12 knowing where the money went is always important.
13 If my wife writes a check improperly to obtain my
14 heart medication, you ain't got any evidence of
15 criminal intent. She bought the medicine for me.
16 She doesn't need heart medicine.

17 All right. I'll give y'all a few minutes to
18 digest, but I can't make that ruling right now. And
19 I'm going to decline the ruling on directed verdict
20 on all the motions.

21 On the negligence, I guess the best way to
22 handle that right now is just to say that I'll take
23 it under advisement. I still have that nagging
24 issue. First, I had the nagging issue of the jury,
25 of what law I have to tell them and how long that

1 makes the charge and how complicated it makes the
2 charge, but aside from that, I'll do my job. I'll
3 put the charge together if I have to stay up all
4 night; I've done it before.

5 What Mr. Moore is saying is that you've got
6 evidence at least as regards to the officer --
7 lieutenant not following up with finding out about
8 the statute about courtesy summons. And I
9 understand your arguments. I don't know how I'm
10 going to rule on this. I think the thing to do
11 right now is just take it under advisement and tell
12 y'all before you go into your closing arguments how
13 I'm going to rule.

14 How many witnesses do you anticipate,
15 Mr. Frawley?

16 **MR. FRAWLEY:** Your Honor, we'll be calling
17 Lieutenant Jackson briefly to rebut a couple of
18 things that came through Ms. Paschal, and then I'll
19 have four more. They'll be short for my end. I
20 expect to get them done by today.

21 **THE COURT:** All right. No more than about five
22 minutes, and I'll let y'all put anything you need on
23 the record and then we'll move on.

24 (Brief recess.)

25 **THE COURT:** Do y'all need to put anything else

1 on the record in relation to the directed verdict
2 motions?

3 **MR. FRAWLEY:** Nothing from the defense, Your
4 Honor.

5 **MR. MOORE:** Nothing, Your Honor. Thank you.

6 **THE COURT:** All right. Bring the jury in,
7 please.

8 (The jury returns to the courtroom.)

9 **THE COURT:** All right. Ladies and gentlemen,
10 it's typical during trials that the cases get
11 refined and the issues get narrowed, and that often
12 happens for different reasons, and I'm telling you
13 don't try to speculate about why these things happen
14 because you're probably going to guess wrong. You
15 just have to take me at my word.

16 If you recall -- and I don't know if you do or
17 you do not -- but at the outset of the trial, there
18 was mention made to you about the different legal
19 theories that the plaintiff was pursuing, and there
20 were several, and one of those was for false
21 imprisonment or false arrest.

22 Now, during my conference with the attorneys
23 while you were out, I made a legal ruling that false
24 imprisonment/false arrest is consumed in one of the
25 other legal theories that the plaintiff is pursuing.

1 So you will not be hearing any more about the legal
2 theory of false imprisonment or false arrest because
3 it's included within one of the others, so that one
4 will not be before you any further.

5 Where we are in the trial now is that the
6 plaintiff has rested and the defense is given an
7 opportunity to present anything that they want you
8 to consider regarding the evaluation of the
9 plaintiff's claim. And as I mentioned to you at the
10 outset, in this trial, when the defendant -- when
11 the sheriff's office got the complaint, they filed
12 an answer and they filed a counterclaim. The
13 counterclaim is a cross-suit. It's a suit back over
14 against the plaintiff in which the defendant, the
15 sheriff's office, is claiming that Ms. Paschal is
16 liable to the sheriff's office for abuse of process.
17 So the defense can respond to the plaintiff's claims
18 and present the defendant's claims about abuse of
19 process.

20 As to the counterclaim, the defense has the
21 burden of proof. I'll explain all this to you in
22 more detail when I tell you about the law, but I
23 want you to know what we're doing.

24 I invite your close attention now. From
25 talking to the attorneys, this is where I think we

1 are procedurally: My best guess is that you're
2 going to hear all the evidence today, but you're not
3 going to get the case today. You're probably going
4 to hear the closing arguments and the charge in the
5 morning. That's what I think is going to happen
6 right now.

7 So I invite your close attention. You should
8 get the case some time tomorrow. We'll order your
9 lunch in tomorrow if you're still here.

10 All right. Mr. Frawley, call your first
11 witness, please.

12 **MR. FRAWLEY:** May it please the Court.

13 **THE COURT:** Yes, sir.

14 **MR. FRAWLEY:** Your Honor, we would call
15 Lieutenant Heidi Jackson to address issues that came
16 out on Ms. Paschal's testimony.

17 **THE COURT:** All right. Lieutenant, you're
18 still under oath. Just have a seat up here, please.

19 **MR. FRAWLEY:** May it please the Court.

20 **THE COURT:** Yes, sir.

21 HEIDI JACKSON,
22 having been previously duly sworn, resumed the
23 witness stand and testified as follows:

24 *****

25 *****

DIRECT EXAMINATION

BY MR. FRAWLEY:

Q Ms. Jackson -- Lieutenant Jackson -- I've been calling you Lieutenant Scott, Lieutenant Jackson, and calling Ms. Paschal, Ms. Wallace and Ms. Paschal.

Lieutenant Jackson, you are still under oath, you understand that?

A Yes, sir.

Q Okay. When you began your investigation, did you speak with Tim Peterson?

A Yes, I did.

Q When you spoke with Mr. Peterson, what, if anything, did you review with regard to documents that he had?

A When I went to his office, he showed me the file that he had. In fact, he gave me copies of each document that was in his file. He gave me a copy of the power of attorney that Kay had presented him. He gave me a copy of the DMV form, and he gave me the sales form for actually selling the vehicle and a copy of the check that she had written.

Q All right. I'm handing you two copies of the same thing. One is Plaintiff's Exhibit 2. The other is Defendant's Exhibit 13. These are both in

1 evidence. Do you recognize these documents?

2 A Yes, sir.

3 Q Identify those for the jury, please.

4 A These are the power of attorneys.

5 Q All right. This is the power of attorney that
6 was the subject of the claims of fraud?

7 A Yes, sir.

8 Q All right. I'm handing you Defendant's Exhibit
9 Number 6. Do you recognize that document?

10 A Yes. This is a copy of the check.

11 Q Okay. Now, you were originally -- or were you
12 originally named as a party defendant in this
13 lawsuit?

14 A Yes, I was.

15 Q Okay. You're no longer a party defendant in
16 this lawsuit, are you?

17 A No, sir.

18 Q After this lawsuit was filed, did you continue
19 to serve as the lead investigator in the
20 investigation against Ms. Paschal?

21 A No, I did not.

22 Q Okay. When were you removed, if you remember?

23 A I was removed shortly after the lawsuit was
24 filed.

25 Q All right. Do you know who the current

1 investigator is?

2 A Yes, Captain Hughes.

3 Q Now, there was some question that was raised on
4 Ms. Paschal's testimony with regard to whether you
5 ever talked to the next-door neighbor or any
6 neighbors. Did you or did you not make an attempt
7 to talk to the neighbors in the 205 Spring Lake
8 Drive area?

9 A Yes, I did.

10 Q All right. Tell the jury what you did with
11 regard to investigating and talking to the
12 neighbors.

13 A On one side of her house, when I knocked on the
14 door of the neighbor, they answered, and I went
15 in and -- they invited me in. And I probably spent
16 about 15 minutes talking to them, asking them
17 questions about the Wallaces and Ms. Paschal and
18 about the relationship that they had between them,
19 how well they knew them, so forth like that.

20 And then when I went to the other -- on the
21 other side of Mr. Wallace's house, no one was home.
22 I left a card on the door, and they returned my
23 call. And I spoke both to the gentleman of the
24 house and the wife of the house.

25 Q What was the name of that gentleman of the

1 house, if you remember?

2 A It was the name that Ms. Paschal said earlier,
3 but I can't remember that name off the top of my
4 head.

5 Q Okay. Well, whatever his name, you testified
6 you spoke to the neighbors on one side of the house?

7 A Yes. Yes.

8 Q Then you went to the other side and left a
9 card?

10 A Yes, sir.

11 Q And having left that card, what next happened?

12 A They returned my call.

13 Q So you did talk to the neighbors on both sides
14 of the house, whatever their names?

15 A Yes, sir.

16 Q You were at the January 20, 2012, preliminary
17 hearing, weren't you?

18 A Yes, sir.

19 Q Following the completion of that January 20,
20 2012, preliminary hearing, did you have any
21 conversations with Mr. Moore, the attorney for
22 Ms. Paschal?

23 A Yes, sir.

24 Q All right. What -- describe that conversation
25 for the jury.

1 **MR. MOORE:** Object to any hearsay, please, Your
2 Honor.

3 **MR. FRAWLEY:** Your Honor, we're not offering it
4 to prove the fact of the matter asserted, only what
5 was said.

6 **THE COURT:** A conversation with whom?

7 **MR. FRAWLEY:** Mr. Moore. Well, a remark that
8 was made across the parking lot to her following the
9 hearing.

10 **MR. MOORE:** Your Honor, I think I'd even get
11 disqualified -- if I disagree with the remark, I'd
12 be disqualified to testify as one of the lawyers in
13 the case, plus a comment would be irrelevant and
14 hearsay.

15 **THE COURT:** Folks, I'm going to have to hear
16 what they're talking about. Step in the jury room.
17 Don't discuss the case.

18 (The jury retires to the jury room.)

19 **MR. FRAWLEY:** Your Honor, I would like to
20 proffer what she would say.

21 **THE COURT:** Please.

22 IN CAMERA EXAMINATION

23 BY MR. FRAWLEY:

24 **Q** Lieutenant Jackson, if I ask you the question,
25 the question would be, What was the remark that was

1 made to you by Mr. Moore, Ms. Paschal's attorney, in
2 that parking lot -- across the parking lot?

3 **A** Yeah. He hollered across the parking lot and
4 let me know that he would -- to tell Sheriff Lott
5 that he would be suing him.

6 **THE COURT:** This was when?

7 **MR. FRAWLEY:** In the parking lot right after
8 the preliminary hearing, January 20th, 2012. This
9 was filed four days later.

10 **THE COURT:** Do you wish to be heard?

11 **MR. MOORE:** Which is exactly what we did, Your
12 Honor. I think it's a hearsay statement. I'm not
13 sure that it can be offered for anything other than
14 the fact that I told her we'd -- to tell Sheriff
15 Lott we were going to be suing. The fact that we
16 were going to be suing is exactly what we did. I
17 don't understand how that question is not hearsay.
18 I'm not sure I know what it would be offered for
19 except to somehow or another prejudice the jury.
20 And for the life of me, I can't see the relevance,
21 and I can't see how it would not be hearsay.

22 **MR. FRAWLEY:** We're not offering it to prove
23 the fact of the matter asserted. And it plays into
24 the abuse of process counterclaim we have that they
25 were attempting to intimidate and back the sheriff's

1 department off from the investigation. We just won
2 the preliminary hearing; we're fixing to sue you
3 next. That's what it comes down to.

4 **MR. MOORE:** Your Honor, I've told many people
5 many times that I was going to sue them and have
6 basically followed through with that. I'm not
7 certain where that conduct on my part could be
8 imputed somehow to Kay Wallace. We did what we said
9 we were going to do.

10 That's the first time I've -- in a long time
11 I've -- somehow or another I've been accused of all
12 kinds of things, but, apparently, I'm abusing the
13 process by asking the witness to notify Sheriff Lott
14 that he's going to be the subject of a suit, which
15 he was. That, to me, has no relevance, and I don't
16 see how it can be anything other than the fact that
17 it's hearsay. And I couldn't even refute it if I
18 wanted to because I'm disqualified as a witness in
19 the case, and I haven't been listed as a witness.

20 But I will acknowledge that I did tell her
21 that, Please tell Sheriff Lott to put his carrier on
22 notice because we would be filing an action. No
23 doubt about that. I'm not sure if I yelled it.

24 **MR. FRAWLEY:** We've sanitized it. I mean,
25 we've -- we're not putting the word carrier in

1 there, obviously, but it was clearly a threat of
2 suit.

3 **MR. MOORE:** That's actually what was said, as I
4 -- as it's been relayed to me. I don't recall the
5 conversation specifically and other people do, and I
6 believe that the actual comment was, Please tell
7 Sheriff Lott to put his carrier on notice.

8 **MR. FRAWLEY:** And I'm not going to use the word
9 carrier.

10 **THE COURT:** All right. I'm ready to rule.

11 **MR. FRAWLEY:** Thank you, sir.

12 **THE COURT:** Do you want to offer any other
13 evidence on this proffer?

14 **MR. FRAWLEY:** No, sir. This is going to be it.
15 However Your Honor rules, for or against, this will
16 be my last question.

17 **THE COURT:** Where Ms. Paschal was at the time
18 or anything like that?

19 **MR. FRAWLEY:** No, sir. I'm not sure she knows.

20 **THE COURT:** Well, she didn't know even -- I
21 have a hard time understanding how it's relevant,
22 unless you have some indication Ms. Paschal caused
23 it to be done or exceeded -- acceded in its being
24 done. But even if it is relevant, under Rule 403,
25 the probative value of it is substantially

1 outweighed, in my estimation, by the danger of
2 unfair prejudice, confusion of the issues,
3 misleading the jury, and presentation of cumulative
4 evidence unnecessarily. The jury knows she intended
5 to sue the sheriff because she did.

6 **MR. FRAWLEY:** Okay.

7 **THE COURT:** All right. Thank you.

8 **MR. FRAWLEY:** Thank you, Your Honor.

9 **THE COURT:** Bring the jury back.

10 **MR. FRAWLEY:** I'll conclude with her by saying
11 no further questions when they come back in.

12 **THE COURT:** Okay.

13 (The jury returns to the courtroom.)

14 **THE COURT:** The objection is sustained.

15 Do you have any other questions of the witness,
16 Mr. Frawley?

17 **MR. FRAWLEY:** Thank you, Your Honor. I have no
18 further questions.

19 Please answer any questions Mr. Moore has for
20 you. Thank you.

21 **THE COURT:** Cross?

22 **MR. MOORE:** Thank you, Your Honor.

23 **THE COURT:** Yes, sir.

24 *****

25 *****

1 CROSS-EXAMINATION

2 BY MR. MOORE:

3 Q Ms. Scott, I want to just make sure I do
4 clarify a couple of things. Detective Baumgardner
5 got involved in investigating the Lexington County
6 case at your request, correct?

7 A Yes, sir.

8 Q And you had relied upon the Richland County
9 Solicitor's Office for advice, correct?

10 A Yes, as well as the Lexington County
11 Solicitor's Office.

12 Q The Richland County Solicitor's Office had
13 suggested to you that you turn over the Lexington
14 investigation to the Lexington Sheriff's Department
15 for handling, correct?

16 A Yes, in our first conversation.

17 Q What solicitor in Richland County told you you
18 should turn the Lexington portion of the case over
19 to the Lexington County authorities?

20 A Joanna McDuffie.

21 Q Now, I want to talk some more about
22 Mr. Peterson half a moment. You talked about
23 documents that Mr. Peterson gave you, you claim he
24 gave you, whatever.

25 Did you ever meet with Mr. Peterson

1 face-to-face before you signed the warrants accusing
2 Kay of fraud and breach of trust?

3 A We spoke on the phone beforehand even before
4 that I -- before I gave the case to Detective
5 Baumgardner. And then afterwards is when I went to
6 his office and got the written statement.

7 Q Did you ever speak to Mr. Peterson face-to-face
8 before you signed the warrants -- the affidavits on
9 the warrants in Lexington County?

10 A No, sir, we spoke on the phone. We spoke
11 face-to-face after.

12 Q All right. So the way this thing worked then
13 is that you had no documents at all from
14 Mr. Peterson at the time you signed the warrants
15 which resulted in the arrest of Kay Paschal?

16 A No, sir, but we did confirm that he had the
17 documents.

18 Q You had seen no documents at all from
19 Mr. Peterson at the time you signed the arrest
20 warrants or the affidavits on the arrest warrants
21 which caused the arrest of Kay Paschal, correct?

22 A No. I confirmed that he had those documents
23 with him. I had him read them to me, but I did not
24 see them until afterwards when I went there and got
25 the statement, and he gave me copies of everything.

1 **Q** So the answer is, before you signed the
2 affidavits which resulted in the arrest of Kay
3 Paschal, you had never seen any documents from
4 Mr. Peterson?

5 **A** Yes, sir.

6 **MR. MOORE:** Thank you very much.

7 No further questions, Your Honor.

8 **THE COURT:** Redirect.

9 REDIRECT EXAMINATION

10 BY MR. FRAWLEY:

11 **Q** Lieutenant Jackson, with regard to whether
12 you'd seen the documents, had you spoken with
13 Mr. Peterson and had him read the power of attorney
14 to you over the phone?

15 **A** Yes, sir.

16 **Q** Did he describe the power of attorney to you?

17 **A** Yes, sir..

18 **Q** Did he tell you how many pages?

19 **A** I'm not sure that he told me how many pages,
20 but he read the first section of it to say who was
21 the power of attorney. And it was not the DMV form.
22 He gave me that also.

23 **MR. FRAWLEY:** Thank you, ma'am.

24 **THE WITNESS:** Yes, sir.

25 **THE COURT:** Recross.

1 **MR. MOORE:** No, sir, Your Honor.

2 **THE COURT:** Thank you. You may step down.

3 Call your next witness.

4 **MR. FRAWLEY:** Your Honor, we would call

5 Sergeant Kevin Isenhoward, please. That's

6 I-S-E-N-H-O-W-A-R-D.

7 **THE COURT:** Let the clerk swear you in, please.

8 KEVIN ISENHOWARD,

9 having been duly sworn, testified as follows:

10 **THE CLERK:** Have a seat and state your name for
11 the record.

12 **THE WITNESS:** Kevin Isenhoward.

13 **MR. FRAWLEY:** May it please the Court.

14 **THE COURT:** Yes, sir.

15 DIRECT EXAMINATION

16 BY MR. FRAWLEY:

17 **Q** Sergeant Isenhoward, can you -- you've given
18 your name. By whom are you employed?

19 **A** I work for the Richland County Sheriff's
20 Department in the Investigations Division.

21 **Q** Okay. And what is your rank there, sir?

22 **A** I'm a sergeant.

23 **Q** How long have you been with the Richland County
24 Sheriff's Department?

25 **A** Seventeen years.

1 Q In the Investigations Division, are there -- do
2 you have a specialty that you work in or is it just
3 general, anything that comes down the pike?

4 A I'm the supervisor in the Major Crimes Unit,
5 primarily investigating armed robberies, violent
6 crimes, suspicious deaths, those sort of things.

7 Q Okay. Did you have -- describe for the jury
8 what your job duties are. As an investigator, what
9 is it that you do?

10 A Well, I have sort of split duty. I supervise
11 detectives or investigators who work those crimes I
12 just described, and I also assign myself a caseload
13 and investigate. It can be anything, like I said, a
14 robbery or, you know, a suspicious death or a
15 murder, an obvious homicide.

16 Q Okay. Did you have occasion to be involved in
17 an investigation involving Kay Paschal in or around
18 March of 2011?

19 A I was asked to take a look at the death of
20 Mr. Wallace.

21 Q Okay. When you say, Look at the death of
22 Mr. Wallace, this would be Mr. David Wallace?

23 A Yes.

24 Q And what do you mean by, Look at the death of
25 Mr. Wallace?

1 **A** Well, I was advised that, basically, he passed
2 away in the hospital. And there are now allegations
3 that -- of elder abuse, possible financial
4 exploitation, and that Heidi Scott or Heidi Jackson
5 had been investigating that portion of it.

6 When he passed away in the hospital, the
7 coroner's office didn't respond, so there had been
8 no real examination of the body and his injuries or
9 so-called injuries. So I basically had to go about
10 the process of exhuming his body, coordinating that
11 with the coroner's office, and having his injuries
12 and his body examined during an autopsy.

13 **Q** All right. Do you know how the Richland County
14 Sheriff's Department got this investigation, got
15 this case?

16 **A** It was my understanding that, initially, it was
17 reported to the Forest Acres Police Department. And
18 for some reason, maybe a conflict, I think was
19 described, it was turned over to my office.

20 **Q** All right. Were you the lead investigator in
21 the case?

22 **A** No.

23 **Q** Who was?

24 **A** Heidi Jackson.

25 **Q** Okay. And were you to assist, at that time,

1 Lieutenant Scott?

2 A Yes, but primarily, my job was, while she ran
3 down the financial exploitation investigation, like
4 I said, I looked at the death, and obviously had to
5 interview some physicians that treated Mr. Wallace,
6 and then eventually ruled out any sort of homicide
7 case.

8 Q Okay. Once homicide was ruled out, on that end
9 of it, did you continue to assist Lieutenant Scott
10 in acquiring a search warrant?

11 A I don't believe it had been ruled out at that
12 point in time, but I did --

13 Q Okay.

14 A -- did obtain a search warrant for the
15 residence.

16 Q All right. Well, I misspoke. Let me give you
17 Defendant's Exhibit Number 2. Look that over and
18 tell me if you recognize that document.

19 A I do.

20 Q Okay. What is that document?

21 A This is a search warrant issued for the
22 residence at 208 Spring Lake Road in Forest Acres.

23 Q All right. And what's the date on that
24 document?

25 A The date is March the 8th of 2011.

1 Q Okay. That's basically a four-page document,
2 correct?

3 A That's right.

4 Q All right. On pages three and four, there are
5 signatures on the bottom. Do you recognize those
6 signatures?

7 A I do.

8 Q Okay. Are those your signatures?

9 A My signature, as well as the signing judge.

10 Q Right. So the signature kind of on the
11 right-hand side of the page at the bottom, that's
12 your signature?

13 A That's correct.

14 Q Okay. And the judge's signature is on the
15 left-hand side, correct?

16 A That's correct.

17 Q All right. At the bottom and to page 4, there
18 is an affidavit. Do you see that?

19 A Yes.

20 Q Tell the jury briefly what the purpose of that
21 affidavit is.

22 A It's to outline the facts and circumstances
23 that led you to this point. Basically, you're
24 informing the judge what you know at that point and
25 your reason for requesting the ability to search the

1 home or whatever.

2 Q And you signed that affidavit?

3 A I did.

4 Q Was that the information that you understood to
5 be the facts of the case at that time?

6 A It was.

7 Q Was that search warrant -- obviously, it's
8 signed, so it was issued by the judge?

9 A It was.

10 Q Did you go to the 205 Spring Lake Road or
11 Spring Lake Drive address to execute that warrant?

12 A I did.

13 Q Okay. This would be in Richland County at that
14 time, correct?

15 A It is.

16 Q Did you have any other role in the
17 investigation?

18 A No.

19 Q Okay. Have you had a continuing role in the
20 investigation since that search warrant?

21 A No. Well, after the search warrant, we were
22 still -- I was still working my portion of the
23 investigation, but shortly thereafter, you know, we
24 got an idea of what was going on. It was not
25 criminal in that aspect, and I moved on to other

1 duties.

2 Q Okay. You have other cases, don't you?

3 A Yes.

4 MR. FRAWLEY: Thank you, Sergeant. Please
5 answer any questions Mr. Moore would have for you.

6 THE COURT: Cross.

7 CROSS-EXAMINATION

8 BY MR. MOORE:

9 Q Sergeant, you would agree with me that the
10 power of arrest is something that is given to
11 various law enforcement officers, correct?

12 A That's correct.

13 Q The power of a law enforcement officer to
14 arrest is a pretty awesome power, isn't it?

15 A Yeah. It comes with a great deal of
16 responsibility.

17 Q Yes, sir. And it comes with a great deal of
18 responsibility because the power to arrest can bring
19 about a good bit of harm, can't it?

20 A I suppose it can.

21 Q And, actually, the powers under which a law
22 enforcement officer such as yourself can arrest,
23 those powers are not unlimited, are they?

24 A No. They are outlined.

25 Q The code is fairly well clear on who can arrest

1 and who can act as an official police officer,
2 correct?

3 **A** Like I said, it's outlined in the code as to
4 how to go about it and what our responsibilities and
5 our duties are.

6 **Q** And as a matter of fact, that sort of
7 information is something that every officer is
8 supposed to be taught at the Criminal Justice
9 Academy, correct?

10 **A** Well, the basics are taught there. And then as
11 you work cases, you find that there are certain
12 circumstances where it might go further than a
13 typical person may think or may believe,
14 jurisdictional boundaries kind of thing.

15 **Q** Tell me about what a jurisdictional boundary
16 is.

17 **A** Well, depending on your employment, your
18 authority rests with the government or the body of
19 people or citizens that have allowed you to have
20 that authority.

21 For instance, I work for the Richland County
22 Sheriff's Department. You know, typically, my
23 jurisdiction is within the boundaries of Richland
24 County. However, in the process of investigating
25 those crimes that occur in Richland County, often

1 times, I'm kind of drug out of Richland County, all
2 over the state and the southeast in my career.

3 Q But your jurisdiction as a law enforcement
4 officer is confined to the bounds of Richland
5 County?

6 A Yes, to crimes that occur in Richland County.

7 Q And that would be the same for Heidi Scott?

8 A Yes.

9 Q Now, have you continued involved in this case
10 at all when the recent new charges were made in
11 Richland County?

12 A I haven't.

13 Q All right. You were asked questions about the
14 search warrant in Richland County, correct?

15 A Yes, sir.

16 Q May I see that?

17 A (Witness complies.)

18 Q This is the one that you procured for the
19 Spring Lake home, right?

20 A Yes.

21 Q Was Heidi Scott with you when this property was
22 searched?

23 A Yes.

24 Q Was Jeffrey Wallace there when this property
25 was searched?

1 **A** I believe -- I believe he was.

2 **Q** Was Elizabeth Wallace there?

3 **A** Yes, I believe so.

4 **Q** Now, what other officers would have been on the

5 premises when the Spring Lake Road property was

6 searched?

7 **A** We had several investigators there assisting

8 us. I believe some attorneys from your office came

9 there.

10 **Q** At the Spring Lake Road property?

11 **A** Yes.

12 **Q** They certainly didn't assist in the search.

13 **A** No. No. But it was my -- people from my

14 department there.

15 **Q** What bonding company has issued your bond as a

16 law enforcement officer?

17 **A** I have no idea.

18 **Q** Do you even know if you have one?

19 **A** I think it's in the statute that the sheriff's

20 office is to provide one.

21 **Q** I understand it's in the sheriff's department

22 that it may. Are you able to testify under oath

23 that at the time you engaged in the search of the

24 Spring Lake property, that you were a bonded law

25 enforcement officer?

1 A Yes.

2 Q What bonding company?

3 A I don't know.

4 Q Well, sir, what did the bond consist of?

5 A I don't know the details of the bond. I know
6 that to be employed as a police officer, you are to
7 be bonded.

8 Q You are to be bonded. Exactly.

9 My question is: What steps did you take to get
10 bonded?

11 A I didn't take any. The sheriff's office and
12 the Richland County government did.

13 Q Do you know as a fact who, if anyone, ever took
14 steps to bond you when you became a law enforcement
15 officer for Richland County?

16 A Yes.

17 Q Who?

18 A My employers. I mean, I couldn't tell you the
19 specific person whose duty that is, but like I said,
20 I'm employed by the county of Richland and the
21 Sheriff of Richland. I'm bonded. By law, they have
22 to do it, and I am.

23 Q I understand by law they have to do it. As a
24 matter of fact, the bond has to stay current,
25 correct?

1 **A** I believe so.

2 **Q** Who was it that did those steps necessary to
3 keep your bond current at the time you searched the
4 Spring Lake home?

5 **A** I'm not sure.

6 **Q** Can you testify, based on your firsthand
7 knowledge, that you know you had a current bond at
8 the time you searched the Spring Lake road?

9 **A** I can tell you that if I didn't have a bond, I
10 wouldn't be employed there.

11 **Q** That wasn't my question, was it? You assume
12 you had a bond.

13 **MR. FRAWLEY:** Your Honor, I'm going to object
14 to this line of questioning. They haven't offered
15 any evidence in their side of the case that none of
16 the Richland County Sheriff's Department deputies
17 and officers weren't bonded, and now he's asking
18 this gentleman whether he is or not -- isn't bonded.
19 What does that have to do with the case here?

20 Again, he's getting into the search warrant,
21 which is in evidence. But if he's trying to
22 establish grounds for a Rule 15 motion to amend, I'm
23 going to object to it.

24 **THE COURT:** Do you wish to be heard, Mr. Moore?

25 **MR. MOORE:** Your Honor, he's exactly correct.

1 I'm doing cross-examination in regard to a document
2 that has been placed into evidence. He's exactly
3 right. I'm not trying to do any kind of -- I don't
4 even know what Rule 15 is. But I'm simply trying to
5 ask the man regarding a search warrant that is in
6 evidence.

7 **MR. FRAWLEY:** And the substance of this case is
8 the arrest warrants. They haven't mentioned search
9 warrants in their pleadings at all.

10 **THE COURT:** You're asking him questions about
11 an arrest warrant served in Richland County?

12 **MR. MOORE:** No, sir, a search warrant served in
13 Richland County.

14 **THE COURT:** I'm sorry. I apologize. A search
15 warrant served in Richland County.

16 **MR. MOORE:** Exhibit Number 2.

17 **THE COURT:** You're asking him whether he was
18 bonded?

19 **MR. MOORE:** Yes, sir.

20 **THE COURT:** The name of his bonding company?

21 **MR. MOORE:** If he was bonded, yes, sir.

22 **THE COURT:** I don't see where that has anything
23 to do with this lawsuit.

24 **MR. MOORE:** Your Honor, may I show the Court
25 the actual wording of the search warrant which has

1 been placed into evidence with regard to --

2 **THE COURT:** But you didn't sue for a search in
3 Richland County, did you?

4 **MR. MOORE:** Your Honor, we've sued for an
5 overall -- the lawsuit talks about the overall
6 investigation. Yes, sir, this would be part of it.

7 **MR. FRAWLEY:** They haven't mentioned search
8 warrants at all in the complaint. It's two arrest
9 warrants in Lexington County.

10 **THE COURT:** I understand that the search
11 warrant is directed to bonded law enforcement
12 officers. But again, Mr. Moore, I apologize. I
13 think you've asked him the question. He said --
14 he's given you an answer. I don't see where any
15 further inquiry into this is relevant. If it is
16 relevant, I think it's excluded under Rule 403.

17 **MR. MOORE:** Could I simply ask him to publish a
18 portion of this search warrant?

19 **THE COURT:** Sure. It's in evidence.

20 BY MR. MOORE:

21 **Q** Sir, would you publish the portion of the
22 search warrant there at the beginning indicating to
23 whom the magistrate was making direction?

24 **A** To any bonded law enforcement officer of this
25 state or county or of the municipality of -- and it

1 has a blank.

2 Q Thank you very much.

3 Do you know where Sheriff Lott is today?

4 A No, sir.

5 Q There's a counterclaim in this case wherein
6 Sheriff Lott, as the duly-appointed Sheriff of
7 Richland County, has sued Ms. Paschal. You wouldn't
8 be privy to any reason as to why that lawsuit --
9 that countersuit got filed, would you?

10 A No, I have no idea.

11 Q Do you know of any damages anywhere that Leon
12 Lott, as the -- in his official capacity as the
13 Sheriff of Richland County, has sustained any damage
14 at all as a result of this lawsuit?

15 A I'm sure some money was spent defending it.

16 Q Okay. Some lawyer's fees. But do you know of
17 any damage that's been sustained?

18 A I couldn't speak about that.

19 Q But you are the supervisor for Investigator
20 Scott, correct?

21 A No.

22 Q Were you her supervisor at the time she signed
23 the arrest warrants -- the affidavits on the arrest
24 warrants which placed Kay Paschal in jail?

25 A No, I was not.

1 **MR. MOORE:** Thank you very much,
2 Mr. Isenhoward. I appreciate you answering my
3 questions.

4 Your Honor, thank you. I have no further
5 questions.

6 **THE COURT:** All right. Any other questions of
7 this witness?

8 **MR. FRAWLEY:** Just a few, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. FRAWLEY:

11 **Q** Sergeant Isenhoward, Mr. Moore asked questions
12 about whether Mr. Wallace was there, Jeffrey
13 Wallace, and then Elizabeth Wallace, when you
14 conducted the search at 205 Spring Lake Road.

15 In your experience, is it usual or unusual for
16 complainants to be at the premises of a search -- of
17 a search, subject to a search warrant, to assist or
18 answer questions of the investigating officers?

19 **MR. MOORE:** Your Honor, I have an objection as
20 to the relevance. What is usual or unusual for
21 other people to do would have no relevance to the
22 facts of this case.

23 **MR. FRAWLEY:** Your Honor, they've raised the
24 issue of Mr. Wallace and Ms. Wallace directing
25 traffic during the investigation. That's why the

1 question was asked by him.

2 **THE COURT:** The objection is overruled. You
3 may continue.

4 BY MR. FRAWLEY:

5 **Q** Do you understand my question?

6 **A** Yes. It's not -- it's not -- in circumstances
7 like this, it's not unusual. When you're dealing
8 with the possible exploitation of a vulnerable
9 adult, it's not unusual.

10 **MR. FRAWLEY:** Thank you, sir. No further
11 questions.

12 **THE COURT:** All right. Any other questions of
13 the witness, Mr. Moore?

14 **MR. MOORE:** No, sir. Thank you, Your Honor.

15 **THE COURT:** Thank you, Sergeant. You may step
16 down.

17 All right, folks, I hate to do this to you, but
18 I've got to go to the bathroom, so just take a short
19 recess. I basically ate lunch at my desk and worked
20 through this stuff, and I've been out here on the
21 bench. Give me just a few minutes.

22 (The jury retires to the jury room.)

23 **THE COURT:** Court's in recess.

24 (Brief recess.)

25 **THE COURT:** Ready?