

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS
R. Keith Kelly, Circuit Court Judge

Court of Appeals Appellate Case No.: 2015-000701
Circuit Court Case No.: 2014-CP-42-02846

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FEB 22 2017

S.C. SUPREME COURT

Paula Rose, ... Respondent,

v.

Charles Homer Rose, III, ... Petitioner.

APPENDIX

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The South Carolina Court of Appeals

Paula Rose, Respondent,

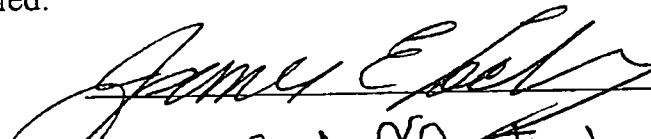
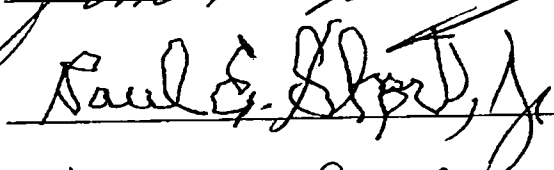
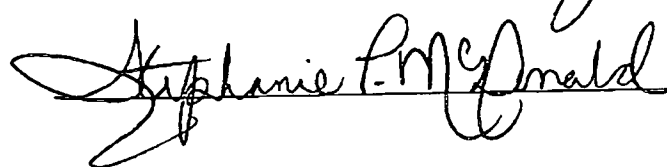
v.

Charles Homer Rose, II, Appellant.

Appellate Case No. 2015-000701

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.
 J.
 J.

Columbia, South Carolina

FILED

January 20, 2017

cc:

J. Falkner Wilkes, Esquire
Charles J. Hodge, Esquire
N. Douglas Brannon, Esquire
Christopher David Kennedy, Esquire
Kim R. Varner, Esquire

Timothy Ryan Langley, Esquire
The Honorable R. Keith Kelly



The South Carolina Court of Appeals

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November 09, 2016

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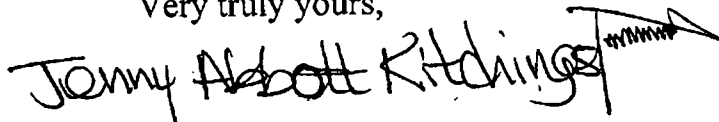
Mr. Timothy Ryan Langley, Esquire
PO Box 2765
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Re: Paula Rose v. Charles Homer Rose, II
Appellate Case No. 2015-000701

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

A handwritten signature in black ink that reads "Jonny Abbott Kitchings". The signature is written in a cursive, somewhat stylized font. The first name "Jonny" is written in a larger, more prominent script. The last name "Kitchings" is written in a similar cursive style. The middle name "Abbott" is written in a smaller, more compact script. There is a small, dark mark or smudge at the end of the signature.

CLERK

cc: The Honorable R. Keith Kelly

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Paula Rose, Respondent,

v.

Charles Homer Rose, III, Appellant.

Appellate Case No. 2015-000701

Appeal From Spartanburg County
R. Keith Kelly, Circuit Court Judge

Unpublished Opinion No. 2016-UP-452
Submitted September 1, 2016 – Filed November 9, 2016

AFFIRMED

Kim R. Varner, of Varner & Segura, and J. Falkner
Wilkes, both of Greenville, for Appellant.

Charles J. Hodge and Timothy Ryan Langley, of Hodge
& Langley Law Firm, PC; and Christopher David
Kennedy and N. Douglas Brannon, of Kennedy &
Brannon, P.A., all of Spartanburg, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *Roberson v. S. Fin. of S.C., Inc.*, 365 S.C. 6, 9, 615 S.E.2d 112, 114

(2005) ("The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the [circuit court]."); *id.* ("The [circuit] court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion."); *id.* ("An abuse of discretion in setting aside a default judgment occurs when the [court] issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support." (quoting *In re Estate of Weeks*, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct. App. 1997))).

AFFIRMED.¹

LOCKEMY, C.J., and SHORT, and MCDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

R. Keith Kelly, Circuit Court Judge

Appellate Case No.: 2015-000701
Circuit Court Case No.: 2014-CP-42-02846

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JAN 11 2016

SC Court of Appeals

Paula Rose, ... Respondent,

v.

Charles Homer Rose, II, ... Appellant.

APPELLANT'S BRIEF

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STATEMENT OF THE ISSUES

- 1) Did the Court err in denying Defendant's motion to set aside default?
- 2) Does reversal and/or remand of the default issue require reversal and remand of the damages issue as well?

TABLE OF AUTHORITIES

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STATEMENT OF THE CASE

The parties were married at the time this action was initiated. This action was commenced by the filing of a Summons and Complaint on October 2, 2014. The Defendant was served on October 6, 2014. On December 19, 2014 the Defendant filed an Affidavit of Default and Motion for Damages Hearing. On January 20, 2014 the Plaintiff filed a Motion for Enlargement of Time and to Set Aside Any Default; a Memorandum in support of the motion; and an Answer.

T. Ryan Langley, Charles J. Hodge, N. Douglas Brannon, and Christopher D. Kennedy represented the Plaintiff/Respondent below. Kim R. Varner represented the Defendant/Appellant below. J. Falkner Wilkes and Kim R. Varner represent Appellant on appeal.

STATEMENT OF FACTS

Respondent, Paula Rose, sued her husband, Homer Rose, in a circuit court action for damages based on a claim of assault and battery. Mr. Rose was served with the summons and complaint on October 6th of 2014. Shortly after receiving the complaint Mr. Rose met with his divorce counsel who then forwarded a copy of the summons and complaint to Mr. Rose's insurance company. (T. p. 49). In late October Mr. Rose returned to his divorce counsel's office to follow up on the case and discovered that the insurance company had taken no action on the summons and complaint claiming that Mr. Rose had failed to make a "formal claim". (R. p. 20; 49). Learning this Mr. Rose immediately called his agent and made a "formal claim" with the insurance company so that it could act on the summons and complaint. (R. p. 20; 49). Mr. Rose's divorce counsel then notified Mrs. Rose's counsel of the situation with the insurance carrier and requested an extension of time in which to answer. (R. p. 20). The affidavit of Mr. Rose's counsel indicates that Plaintiff's counsel consented to the request for an extension. (R. p. 20). Plaintiff's counsel, although admitting to having a discussion about the situation with the insurance company, denied ever having granted an extension in which to answer the complaint. (R. p. 41-42).

The insurance company subsequently notified Mr. Rose that they would not provide coverage nor defend under a reservation of rights. (R. p. 20; 50). Near the end of time the complaint was due a medical condition arose and Mr. Rose was hospitalized. (R. p. 2). Mr. Rose required surgery and almost died. (R. p. 50). During the time Mr. Rose was in the hospital, Mrs. Rose came to visit him regularly. (R. p. 50). Photos show Mr. and Mrs. Rose at the hospital together. (R. 36-40; 50). In the photos of Mr. and Mrs. Rose at the hospital the

parties appear to have reconciled their differences. During this time Mrs. Rose was assuring Mr. Rose that she was dropping the lawsuit. (R. p. 20-21; 23-27; 33-34; 35; 50). Mrs. Rose's assurances that she would drop the case began even prior to Mr. Rose's admittance to the hospital. (R. p. 50-52).

In December when Mr. Rose was released from the hospital he was heavily medicated. (R. p. 51). During Mr. Rose's hospitalization through his convalescence and up to January 17th Mrs. Rose repeatedly assured Mr. Rose that the lawsuit was or would be dropped. (R. p. 21; 23-40; 50).

On January 19th, in what appears to be a "suicide note," Mrs. Rose rambles that she did not want to sue him, that she did not intend to, and that it was her fault that she didn't stand up to the lawyers. (R. p. 33-35; 51). Once it became clear from the January 19th email that Mrs. Rose might not dismiss the action as she had repeatedly promised, Mr. Rose immediately (January 20th) filed a motion to set aside the default and enlarge the time to answer the complaint. (R. p. 14). At the same time Mr. Rose also filed an answer to the complaint. (R. p. 13; Supp. App. 1). The motion to set aside the default and the damages hearing were each set to be heard on the same day. At the hearing the trial court denied Mr. Rose's motion to set aside the default, took testimony as to damages, and awarded Mrs. Rose \$149,016.00, \$111,762 of which were punitive damages. (R. p. 1-7; p. 42-221).

In its order the trial court recognized the complicated relationship between Mr. and Mrs. Rose, as well as problematical nature of the text messages from Mrs. Rose to Mr. Rose. (R. p. 3). While the court appears to have recognized Mr. Rose's reliance on Mrs. Rose's

assurances that she was not pursuing the case, it nevertheless failed to grant relief from the default. (R. p. 3).

ARGUMENT

I. THE COURT ERRED IN REFUSING TO GRANT RELIEF FROM DEFAULT WHERE GOOD CAUSE WAS SHOWN.

The standard for granting relief from an entry of default under Rule 55(c) is mere "good cause." Rule 55(c), SCRCP. "This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009).

"Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted." *Id.* at 607-08, 681 S.E.2d at 888. The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the circuit court. Harbor Island Owners' Ass'n v. Preferred Island Props., Inc., 369 S.C. 540, 544, 633 S.E.2d 497, 499 (2006). The circuit court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion. Mitchell Supply Co. v. Gaffney, 297 S.C. 160, 163, 375 S.E.2d 321, 322 (Ct.App.1988). An abuse of discretion occurs when the judgment is controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support. In re Estate of Weeks, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct.App.1997). In this case record shows that the trial court's

ruling was both, controlled by an error of law and is without evidentiary support.

The *good cause* standard of Rule 55(c) requires, as a threshold burden, a party to put forth "an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." Here, the record shows a number of factors that, in combination, sufficiently explain why Mr. Rose failed to file a timely answer. Initially, Mr. Rose acted timely in taking the summons and complaint to his divorce lawyer who immediately forwarded the complaint to Rose's insurance company. Again, Rose acted timely by returning to his divorce attorney's office within a few weeks to follow up on the complaint. When it was discovered that the insurance company had taken no action on the complaint due to some technicality, Rose again acted immediately to cure the problem so as to allow the insurance company to act on the complaint. When the insurance company denied coverage and defense, Rose's divorce counsel acted immediately to request an extension from the Plaintiff's counsel. Mr. Rose was told that he had an extension to answer the complaint. Then, near the end of the time the answer was due, Mr. Rose nearly died and was hospitalized for emergency surgery. While Mrs. Rose was visiting him in the hospital she assured Mr. Rose that she would be dropping the case. She continued to assure Mr. Rose that the case was, or would be dropped, up to January 19, 2015, when she wrote the rambling suicide note stating that she didn't have the strength to "stand up" to her attorneys. After the January 19th email raised suspicion as to Mrs. Rose's true intent, Mr. Rose immediately filed a motion for relief along with an answer to the complaint.

As found by the trial judge, Mr. Rose entered the hospital near the end of the time the answer was due. Possibly before, but no later than the time of Mr. Rose's

hospitalization, Ms. Rose began a pattern of repeatedly assuring Mr. Rose that the case would be dismissed. These repeated assurances by Mrs. Rose that she would not proceed with the case, whether fraud or misrepresentation, are each a specifically identified basis for relief of default under Rule 60. Any ground for relief under Rule 60 is also a ground for relief under Rule 55:

It is often observed, as the court of appeals held in the present case, that the criteria for obtaining relief from judgment under Rule 60(b) — mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation — are relevant in determining whether good cause has been shown under Rule 55(c), SCRCP. *See New Hampshire Ins. Co. v. Bey Corp.*, 312 S.C. 47, 50, 435 S.E.2d 377, 378-79 (Ct.App. 1993) (holding that, "as a practical matter," the 60(b) factors are relevant under both rules). However, we caution that this language invites trial courts to apply a heightened standard to Rule 55(c) motions. The Rule 60(b) factors are indeed relevant to a Rule 55(c) analysis, but only inasmuch as proof of any one of these factors is sufficient to show "good cause." No trial court should ever find good cause lacking based solely on the absence of a Rule 60(b) factor.

Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009).

Because the showing required under Rule 55 is less than that required in Rule 60, the misleading assurances by Mrs. Rose, even if not rising to the level of relief individually, require relief when taken in combination with all other factors. In addition to the misrepresentations by Mrs. Rose that she would drop the case, Mr. Rose had been told that he had an extension of time in which to answer. He then suffered severe medical problems requiring surgery and hospitalization prior to the end of the time he reasonably believed the complaint was due. Mrs. Rose made repeated assurances during Mr. Rose's convalescence, while he was heavily medicated. The assurances continued through January

17th, when she again indicated that she could "call this off". On January 19th, realizing from the "suicide note" that Mrs. Rose may not be abandoning the case, Mr. Rose immediately filed an answer to the complaint and motion for Rule 55 relief.

But for the delays caused by outside influences, Mr. Rose took timely and appropriate action at every juncture. He was reasonable in his reliance on the insurance company and his divorce attorney. He acted promptly when he discovered a problem and was told that he had an extension just prior to his hospitalization. There was clearly confusion amongst his divorce attorney and the insurance company. Although that alone would not require relief, it is relevant when combined with all other factors. "Although the presence of other factors, in the totality of the circumstances, may amount to a showing of "good cause," a defendant may not be relieved from the entry of default solely because it relied to its detriment on a negligent insurance agent. *See Ricks*, 293 S.C. 372, 360 S.E.2d 535 (holding that good cause was shown in the totality of circumstances involving misplaced reliance on insurance agent)." *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 681 S.E.2d 885 (2009). Given the totality of the circumstances, Mr. Rose clearly met the satisfactory explanation requirement of Wham and Rule 55 SCRPC. The trial court's ruling to the contrary is unsupported by the record.

Under Rule 55(c) of the South Carolina Rules of Civil Procedure, a default may be set aside "for good cause shown." Rule 55(c) should be "liberally construed to promote justice and dispose of cases on the merits." *Bage v. Southeastern Roofing Co. of Spartanburg, Inc.*, 373 S.C. 457, 471, 646 S.E.2d 153, 160 (Ct.App. 2007), *cert. granted* (Mar. 20, 2008). Public policy favors the disposition of cases "on their merits rather than on

technicalities." Micronics, Inc. v. South Carolina Department of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct.App. 2001) *citing* Columbia Pools, Inc. v. Galvin, 288 S.C. 59, 339 S.E.2d 524 (Ct.App. 1986). Rule 55(c) should be "liberally construed to promote justice and dispose of cases on the merits." Dixon v. Besco Eng'g, 320 S.C. 174, 178, 463 S.E.2d 636, 638 (Ct.App. 1995); Ricks, 293 S.C. at 374-75, 360 S.E.2d at 536; *see also* Mann v. Walker, 285 S.C. 194, 328 S.E.2d 659 (Ct.App. 1985) (holding under the earlier statutory provisions for default judgment pursuant to section 15-27-130 of the 1976 Code of Laws of South Carolina, the rules dealing with default are liberally construed to see that justice is promoted and to strive for the disposition of cases on their merits). The trial court in this case failed to properly construe Rule 55. Its ruling is therefore controlled by an error of law as well as lacking in evidentiary support.

An abuse of discretion in setting aside an entry of default arises when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support. In re Estate of Weeks, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct.App. 1997); Boland v. S.C. Public Service Authority, 281 S.C. 293, 315 S.E.2d 143 (Ct.App. 1984). The trial court's ruling in this case, being supported by neither law nor fact, therefore constitutes an abuse of discretion.

Additional Factors for Relief

Due to the erroneous ruling that Mr. Rose had failed to provide a satisfactory explanation for his default the trial court failed to conduct an analysis of additional factors required for relief. Under a Rule 55 analysis, once a satisfactory explanation for the default

has been shown, the court must consider the factors as set forth in Wham. See Sundown, 383 S.C. at 607-08, 681 S.E.2d at 888.

The factors as set forth in Wham:

(1) The timing of motion for relief;

Considering Mr. Rose's belief that he had been given a period of extension, the motion for relief was filed only six weeks after the answer would have been due. (R. p. 53, l. 14). During this time Mr. Rose was convalescing from his surgery and while being told repeatedly by Mrs. Rose that she was dropping the case. In light of the totality of the circumstances, Mr. Rose's delay was based on Mrs. Rose's actions and therefore, should not be considered against him, especially where he filed immediately after there was an indication by her that she might not "stand up to her lawyers" and dismiss the case as repeatedly promised.

(2) Whether the defendant has a meritorious defense;

Through his Answer, Motion, and Affidavits, as well as the audio recording of the alleged incident, the defense offered his version of the events denying the assault. (R. p. 49). The audio recording would establish a defense to the allegations and thus is necessary to consider in the *Wham* factors. Despite having been presented the tape, and it having been played in open court, it appears the tape may not have been properly recorded or preserved for this Court's review. To the extent that the record does not allow this Court to fully evaluate the issue of a meritorious defense, a remand is necessary for further consideration by the trial court. Nevertheless, the Appellant submits there is a sufficient factual basis for this Court to determine that he has a meritorious defense.

To establish that he has a meritorious defense, a complainant need not show that he would prevail on the merits, only that his defense is meritorious. Thompson, 299 S.C. at 120, 382 S.E.2d at 903. A meritorious defense need only be one "worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation or a real controversy as to real facts arising from conflicting or doubtful evidence." *Id.* (quoting Graham v. Town of Loris, 272 S.C. 442, 248 S.E.2d 594 (1978)). Here, the record shows sufficient evidence to establish a genuine question as to the allegations of assault and battery.

The record before the trial court was sufficient to establish a question of fact and thus meet the meritorious defense requirement.

In yet another case, the court of appeals found a meritorious defense in a party's prehearing statement. Micronics, Inc. v. S.C. Dep't Rev., 345 S.C 506, 511, 548 S.E.2d 223, 226 (Ct.App. 2001). In so finding, the court reiterated that the standard for finding a party raised a meritorious defense is a low one. *Id.* ("To establish a meritorious defense, a party is not required to show an absolute defense."). Further research would likely reveal a multitude of similar cases. In my view, the key inquiry is merely whether the materials submitted to the trial court reflect, in any way, that a contest on the merits might render different results than the result reached by the default judgment.

McClurg v. Deaton, 395 S.C. 85 (2011), *Chief Justice Toal dissenting*.

Here, given Mr. Rose's version of the facts, as set forth in his affidavit, as well as audio tape of the proceedings, and other matter before the trial court, the record is sufficient to show that a contest on the merits might render different results.

(3) The degree of prejudice to the Plaintiff if relief is granted.

Here the delay was not significant. Even had an answer been filed, the Plaintiff's

case would not have been able to proceed as Mr. Rose was in the hospital or recovering from surgery for a significant amount of the time at issue. Setting aside the default would not in any way prejudice the Plaintiff's ability to proceed with the case, present any evidence, or avail herself of any procedure.

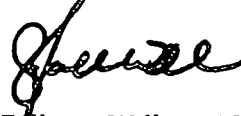
The record is sufficient for this Court to find the existence of additional factors set forth as set forth in Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct.App. 1989). The trial court's ruling as to a sufficient reason for the delay was unsupported by facts and based on an error of law. The record therefore establishes a basis for a granting of relief by this Court. Policy favors a decision on the merits of a case rather than by default or technicalities. The decision of the trial court should therefore be reversed and the matter remanded for a trial on the merits.

The reversal of the lower court's ruling on default requires a reversal and remand of the damages award as well. Due to the finding of default in this case, defense counsel's participation limited to cross-examination and objection to plaintiff's evidence. Howard v. Holiday Inns, Inc., 271 S.C. 238, 246 S.E.2d 880 (1978). Howard still governs post-default proceedings. Limehouse v. Hulsey, 404 S.C. 93 (2013). Consequently, the erroneous ruling on default prejudiced Mr. Rose's ability to defend on the issue of damages. A reversal and remand on the default ruling therefore requires a reversal and remand of the damages award as well.

CONCLUSION

The trial court's denial of relief pursuant to Rule 55 should be reversed. The findings and award of punitive damages should also be reversed and remanded.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Wilkes', is written over the typed name.

J. Falkner Wilkes, 12893
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COUNSEL FOR APPELLANT

January 6, 2016.

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THE STATE OF SOUTH CAROLINA
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SC Court of Appeals

Paula Rose, ... Respondent,

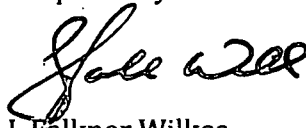
v.

Charles Homer Rose, II, ... Appellant.

CERTIFICATE OF COUNSEL

I certify that the Appellant's Brief and Reply Brief comply with Rule 211(B), SCACR.

Respectfully submitted,



J. Falkner Wilkes
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COUNSEL FOR APPELLANT.

January 6, 2016.

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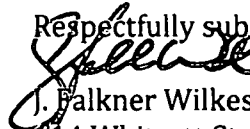
Charles Homer Rose, II, ... Appellant.

CERTIFICATE OF SERVICE

I certify that on the 6th day of January 2016, I served the Appellant's Brief, Appellant's Reply Brief and Certificates on the Respondent by placing a copy of same in the U. S. Mail, first class postage prepaid, addressed to counsel of record as indicated below:

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In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

R. Keith Kelly; Circuit Court Judge

Case No. 2014-CP-42-02846
Appellate Case No. 2015-000701

Paula Rose,

Respondent,

v.

Charles Homer Rose, III,

Appellant.

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Dated: January 6, 2016
Spartanburg, South Carolina

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
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(B) STATEMENT OF ISSUES ON APPEAL

The only issue on appeal to this Court is whether default should have been entered against Appellant.

(C) STATEMENT OF THE CASE

Plaintiff/Respondent (hereinafter "Respondent") filed this action for assault and battery against Defendant/Appellant (hereinafter "Appellant") including allegations Appellant physically struck Respondent in the head multiple times with his handheld police radio on or about September 18, 2014. The Summons and Complaint in this matter were duly served on the Appellant on October 6, 2014. The appropriate affidavits of default were submitted to the court and default was entered pursuant to S.C.R.Civ.P. 55(a) on or about December 19, 2014. A damages hearing was scheduled for January 21, 2015. Upon receiving notice of the hearing, counsel for Respondent hand delivered notice of the hearing to Appellant and sent a courtesy copy to Appellant's divorce counsel on or about January 13, 2015. Appellant failed to file any responsive pleading until January 20, 2015, one-hundred and seven (107) days after service, when Appellant filed an Answer and a Motion to Set Aside the Default. The Court heard extensive argument on the default issue, held the default issue in abeyance, and proceeded to a damages hearing. After hearing evidence at the damages hearing, the Court entered an Order on February 25, 2015 finding no good cause to set aside the default and further finding for the Plaintiff in the amount of \$37,254.00 in actual damages and \$111,762.00 in punitive damages. This is the Order from which Appellant appealed when he filed his notice of appeal on March 23, 2014.

(D) ARGUMENT

(D) I. Facts

Respondent filed this action against Appellant for assault and battery following an incident in which Appellant physically struck Respondent in the head multiple times with his handheld police radio on or about September 18, 2014. (R. pp. 8-10). Appellant admits that he was served with the summons and complaint on October 6, 2014. (Appellant Brief, p. 2). As indicia of the seriousness of the matter, Appellant was served at the Spartanburg County Sherriff's Office. (R. p. 11). No extension to answer was ever given. (R. pp. 41-42). It is undisputed that there is no documentation of any kind – email, letter, text message, or otherwise – that would meet the writing requirement of South Carolina Rule of Civil Procedure 6(b). (R. p. 53). Thus, the Answer was due no later than November 9, 2014. Appellant admits that he never filed any responsive pleading of any kind until January 20, 2015. (Appellant Brief, p. 3).

The Court moved forward into the damages hearing. Respondent called multiple witnesses, including a psychiatrist who diagnosed Respondent with PTSD following the assault by Appellant. Respondent also called Chaz Reed, Appellant's step-son, to the stand and he testified as to seeing a great deal of blood after hearing the screams of Respondent when she was struck with Appellant's police radio. (R. pp. 141-145). Reed also testified about how Appellant attempted to conceal his wrongdoing by hiding his shirt from the incident. (Id.). Appellant called no witnesses and did not take the stand because he would have pled his Fifth Amendment right against self-incrimination if he had taken the stand. (R. p. 211, line 21 to p. 212, line 6). The parties stipulated to certain things that Appellant would have testified to if he had taken the stand. Included in that

was that Appellant had a trust account with \$3.8 million dollars in it and that he received approximately \$146,800.00 from that account each year. (R. p. 213).

(D). II. Analysis and Citation of Authority

- a. The lower court did not abuse its discretion in ruling Appellant's negligence, miscommunications, and lack of diligence to hire counsel to timely answer the Complaint failed to demonstrate good cause to warrant relief from default.**

Under South Carolina law, the standard for granting relief from an entry of default under Rule 55(c) is "good cause." Sundown Operating Co., Inc. v. Intedge Industries Inc. 681 S.E.2d 885 (S.C. 2009). That standard requires a party seeking relief from an entry of default "to provide an explanation for the default and give reasons why vacation of the default would serve the interest of justice." Id. at 888. The trial court's decision whether or not to set aside an entry of default or a default judgment will not be disturbed on appeal absent a clear showing of an abuse of that discretion. Roberson v. S. Fin. of S.C., Inc., 365 S.C. 6, 9, 615 S.E.2d 112, 114 (2005).

It is well settled in South Carolina's jurisprudence that negligent handling or oversight of a properly served Complaint, by either the defendant or the defendant's agents does not constitute "good cause" to justify setting aside entry of default. See, Roche v. Young Bros., Inc. of Florence, 456 S.E.2d 897, 900 (1995) (upholding trial court's entry of default where "[l]osing a summons and complaint within the corporation" offered as reason to set default aside); Sundown Operating Co., Inc., *supra*, 681 S.E.2d at 889 (defaulting corporate defendant failed to show good cause for relief from an entry of default where registered agent forwarded the suit papers to company's manager, manager

forwarded the complaint to the vice-president, and vice-president telephoned the company's insurer about the lawsuit but did not forward the complaint to its insurer or follow-up until several days after the time to answer expired); Dixon v. Besco Eng'g Inc., 463 S.E.2d 636, 639 (S.C. App. 1995) (affirming denial of motion to set aside default on grounds defendant failed to show good cause where company employee in charge of responding to the complaint failed to timely retain local counsel and missed the deadline to answer complaint because he erroneously assumed company was given extension to respond).

“Court deadlines and rules ‘serve important social goals, and a party should not be permitted to flout them with impunity.’ Respect for judicial guidelines and judicial economy and efficiency suggest a more stringent interpretation of good cause...” Eli A. Poliakoff, *Setting Aside Entries of Default: South Carolina Should Require a Reason*, 54 S.C. L. Rev. 477, 480.

Here, there is no reasonable explanation as to why the Appellant did not file an answer until one-hundred and seven (107) days after he was served.

Appellant's brief alleges that Appellant's attorneys had obtained an extension to answer. (Appellant Brief, p. 6). Rule 6(b) of the SCRPC requires any enlargement of time to be in writing. There is no evidence of any writing regarding an extension. Indeed, the lawyer from whom the extension was purportedly obtained provided an affidavit to the contrary. (R. pp. 41-42). Therefore, Appellant was in default thirty one (31) days after he was served. Appellant never sought to get out of default from Plaintiff's counsel at any time. This is not good cause.

Appellant's brief alleges that he relied on Mrs. Rose who purportedly told him she was going to drop the case. This is nonsensical based on Appellant's own affidavit. (R. pp. 23-27). In the Affidavit, Appellant goes through a detailed history of all the harms that Respondent has done to him and horrible acts he alleges Respondent committed to harm him. Specifically, the affidavit states that Respondent was unstable psychologically and had been taking psychiatric medication/getting treatment for the past fifteen years (R. p. 27, para. 34). The affidavit also states that Respondent had schemed Appellant with a credit card machine (R. p. 24, para. 13-14) and that she stole vast sums of money from him up to half a million dollars by transferring or secreting funds from their accounts. (R. p. 24, para. 13-14). Based on all of this, Appellant admitted that he did not have a clear understanding of whether or not Respondent was going to drop the case. (R. p. 50, lines 17-22). Combining this admission with the foregoing history of a volatile relationship, there was no reasonable reliance by Appellant on any purported statement made by Respondent and therefore no misrepresentation or fraud.

In the absence of a clear understanding, the diligent party takes action to protect its interests, particularly if involved in divorce litigation with the party in whom reliance is supposedly placed. Appellant took no such action, made no written confirmation that Respondent was dropping the case, made no contact to Respondent's counsel, and despite having years of knowledge of the court system, made no review of the Court's file. A trip to the clerk's office would have revealed that Respondent had filed a motion for default and request for damages hearing. No, Appellant did not do any of those things. In sum, Appellant did not do anything at all to support an argument for good cause.

In the absence of “good cause” for failure to timely respond to the Summons and Complaint, South Carolina law makes it clear that a motion to set aside an entry of default must be denied. Here, there was no evidence of “good cause” and the trial court properly exercised its sole discretion in reaching this conclusion.

b. The Wham factors support the decision of the lower court holding Appellant in default.

Even assuming Appellant had somehow shown “good cause” for the default, the following relevant factors weigh in favor of the lower court’s finding of default: “(1) the timing of the defendant’s motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted.” Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 465, 381 S.E.2d 499, 501–02 (Ct.App.1989).

As to the timing, Appellant’s motion for relief from default was filed by the Clerk of Court on January 20, 2015, one hundred and seven (107) days after Appellant was served with the Complaint. Appellant had missed the S.C.R.Civ.P. 12(a) deadline to answer the suit papers by forty (40) days at the time default was sought by the Plaintiffs on December 19, 2014. (R. p. 12). Likewise, Appellant waited until one day before a damages hearing was scheduled to be heard before filing their motion. These are all facts that weigh heavily in support of the discretion the lower court exercised in denying the motion to set aside default.

Appellant has failed to set forth any facts demonstrating he has a meritorious defense. As discussed above, Respondent went to great lengths to support her claim; calling several witnesses including the only eye witness and an expert psychologist to establish PTSD from the attack by Appellant. Maybe the best evidence illustrating a lack

of a meritorious defense is from Appellant, however. Specifically, Appellant's own Facebook page includes a picture that states: "I'm wondering how much jail time I would get for knocking the stupid out of someone." Subsequent to the attack on Plaintiff on September 14, 2014, Appellant responded with a comment: "None...I tried it." (R. p. 241). As noted above, Appellant never took the stand in order to preserve his 5th Amendment right against self-incrimination. (R. p. 212). Under such circumstances, the lower court judge was obligated to draw an adverse inference against Appellant as the South Carolina Court of Appeals has reversed a trial judge for failing draw such an inference against a party invoking the Fifth Amendment privilege. Griffith v. Griffith, 506 S.E.2d 526, 532 (S.C. App. 1998). Add to this the audio recording of the attack by Appellant, the pictures of Respondent's injuries, the eye-witness testimony corroborating Respondent's version of the attack, the history of violence by Appellant shown in his text messages and prior divorce based on Appellant's physical cruelty, and there is no meritorious defense. (R. pp. 224-235, pp. 236-240, and pp. 242-245).

Respondent filed suit in the instant case on October 2, 2014, shortly after experiencing the complained-of injuries. (R. pp. 8-10). We are past the one year anniversary of the date suit was filed. During the over 365 days that have passed since suit was filed, Respondent has been denied appropriate funds from Appellant to address the mental health damages Appellant caused. To set aside the entry of default at this juncture would add significant time to what has already amounted to a very long wait for the Respondent. During this wait, Respondent has undergone what treatment she can afford and met with specialists but still lacks the funds to obtain the treatment that will be required.

A longer delay would also prejudice the Respondent in the discovery process. It is undisputed that the longer a case is delayed the more difficult it becomes to find documents, secure witnesses with a clear memory of the event, and properly litigate a case through discovery. The undue delay caused solely by the Appellant has the significant threat of prejudicing the Respondent, who will likely not be able to obtain the same discovery she would have a year ago.

c. Authority cited by Appellant is inapposite to the case at bar.

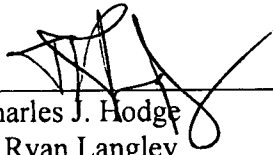
Appellant cites to Ricks v. Weinrauch, 293 S.C. 372, 374, 360 S.E.2d 535, 536 (Ct.App.1987) as purported support for its position. There are marked distinctions that render that decision inapposite to the case at bar. Specifically, the Defendant in Ricks filed her answer only eleven (11) days after the entry of default; some sixty (60) plus days earlier than Appellant in this case. Further, the Defendant in Ricks had good cause for the delay as she acted diligently but was just a few days late due to bankruptcy of her insurance agent and a broken down vehicle. Appellant did not act diligently and did not file his motion to set aside until January 21, 2015; 75 days after the entry of default. The Ricks case is inapposite to the case at bar.

(E). CONCLUSION

The trial court went to great lengths to take due consideration of all factual issues and reasonably concluded that there was no good cause for Appellant's failure to file an Answer until one-hundred and seven (107) days after he was served. This was far from an abuse of discretion and accordingly the decision should be upheld. Thus, Respondent respectfully requests that this Court affirm the Final Order of Default and Damages against Appellant.

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THE STATE OF SOUTH CAROLINA
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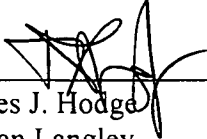
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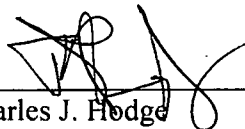
v.

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The undersigned certifies that this Final Brief of Respondent complies with
SCACR Rule 211(b).


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THE STATE OF SOUTH CAROLINA
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Charles Homer Rose, II, ... Appellant.

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STATEMENT OF THE ISSUES IN REPLY

- 1) Is it appropriate to apply an adverse inference to Appellant's exercise of his Fifth Amendment rights where the default hearing was held prior to the dismissal of the Appellant's criminal domestic violence charge?

TABLE OF AUTHORITIES

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(2009) 3

RULES

Rule 55(c), SCRCP. 3

ARGUMENT IN REPLY

I. THE APPLICATION OF AN ADVERSE INFERENCE BASED ON THE APPELLANT'S EXERCISE OF HIS FIFTH AMENDMENT RIGHTS IS INAPPROPRIATE IN THE PRESENT CASE.

The Respondent misstates the holding of Griffith arguing that under the facts of this case the trial judge was *obligated* to draw an adverse inference against the Appellant for invoking his Fifth Amendment rights. Griffith only held that it was *permissible* to draw such an inference. Under Griffith an adverse inference is not mandatory, nor is the judge obligated to apply such an inference: "We join with these jurisdictions in concluding that it is permissible for the fact finder to draw an adverse inference in a civil case against a party invoking the Fifth Amendment privilege against self-incrimination." Griffith v. Griffith, 332 S.C. 630, 646-47, 506 S.E.2d 526, 534-35 (Ct. App. 1998). In Griffith the Court found the permissive inference persuasive in light of the wife's refusing to testify although she had been granted immunity and therefore, had no legal basis to claim the Fifth in her case. Application of the adverse inference in that case turned on the Court's finding that there was no good faith reason to claim the Fifth when immunity had been granted. The default hearing in the present case occurred prior

to the dismissal of the Appellant's criminal domestic violence charge. He therefore had a valid basis for the exercise of his Fifth Amendment right at the time of the default hearing. An adverse interest under Griffith does not apply.

The standard for granting relief from an entry of default under Rule 55(c) is "good cause." Rule 55(c), SCRPC. "This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009).

The Respondent argues that the passage of just over three months before filing for relief from default is essential to the case. This argument talks a lot about what the Appellant could have done to corroborate the Respondent's assurances that she was dismissing the case but it fails to address the fact that the Respondent's assertions caused the Appellant to delay in his a response. The Respondent does not argue that the Wife did not make promises to dismiss the case that delayed the Appellant's filing an Answer or motion for relief, but that due to the volatile nature of the relationship the Appellant should not have relied on the Respondent's promises. Here, the Respondent lulled the Appellant into believing the case would be dropped thus obtaining a default judgment. Right up

to just before the default hearing she continued to assure the Appellant that she would not pursue the case. Now she is arguing the delay she caused and that he should not have believed him. A default judgment under these facts is simply inequitable.

CONCLUSION

Based on the foregoing the decision of lower court should be reversed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Falkner Wilkes", written in a cursive style.

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THE STATE OF SOUTH CAROLINA
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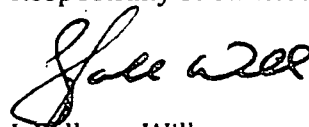
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I certify that the Appellant's Brief and Reply Brief comply with Rule 211(B), SCACR.

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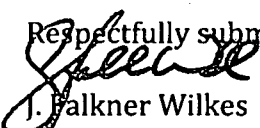
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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Paula Rose,

Plaintiff

Charles Homer Rose, III,

Defendant.

IN THE COURT OF COMMON PLEAS

FINAL ORDER ON DEFENDANT'S
MOTION TO SET ASIDE DEFAULT
AND PLAINTIFF'S
MOTION FOR DAMAGES
CA NO.: 2014-CP-42-3846

This matter came before the Court following an entry of default upon Plaintiff's Motion for Damages and Defendant's Motion to Set Aside/Enlargement. After hearing significant arguments on the law as well as two days of testimony, the Court finds as follows:

I. DEFAULT

The Summons and Complaint in this matter were duly served on the Defendant Charles Homer Rose, III on October 6, 2014. The appropriate affidavits of default were submitted to the court and default was entered pursuant to S.C.R.Civ.P. 55(a) on or about December 19th, 2014. A damages hearing was scheduled for January 21st, 2015. Mr. Rose failed to file any responsive pleading until January 20th, 2015 when he filed an Answer and a Motion to Set Aside the Default.

Motions to set aside any default are governed by Rule 55(c) of the South Carolina Rules of Civil Procedure. This is a less stringent rule than Rule 60. In considering a 55(c) motion, courts have more discretion and are more lenient than a 60(b) motion. Eli A. Poliakoff, *Setting Aside Entry of Default: South Carolina Should Require a Reason*, 54 S.C. L. Rev. 477, 478. "Court deadlines and rules 'serve important social goals, and a party should not be permitted to flout them with impunity.' Respect for judicial guidelines and judicial economy and efficiency suggest a more stringent



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interpretation of good cause..." *Id.* at 480. Rule 55(c) also sets forth a "good cause" requirement. Good cause requires the "moving party to provide an explanation for the default or to give reasons why vacation of the default entry would serve the interests of justice." *Id.* at 484. Here, there is no reasonable explanation as to why the defendant, Mr. Rose, did not file an answer until one-hundred and seven (107) days after he was served. "The threat of judgment by default serves as an incentive to observe and follow court rules." *Id.* at 480. Mr. Rose knowingly, intelligently, and voluntarily did not file an answer.

Mr. Rose alleged that he had a medical condition that prohibited him from answering but this condition did not arise until near the end of the time the complaint was due. Further, the condition appeared to have resolved by early December and yet another six or so weeks went by before any answer was filed. The Court is not persuaded that Defendant's allegations constitute good cause.

Mr. Rose alleged that his attorneys had obtained an extension to answer. Rule 6(b) of the SCRPC requires any enlargement of time to be in writing. There is no evidence of any writing regarding an extension before the Court. Therefore, Mr. Rose was in default thirty one (31) days after he was served. Mr. Rose did not seek to get out of default from Plaintiff's counsel. The Court is not persuaded that Defendant's allegations constitute good cause.

Mr. Rose alleged that he could not afford counsel during the time the answer was due. During this time, Mr. Rose was represented by legal counsel in other litigation but did not retain an attorney for this matter even after consulting with one. Mr. Rose has in excess of \$3.8 million dollars in assets in a trust, of which he is the beneficiary. He has received approximately \$146,000 a year for the last three years as beneficiary of the trust. Additionally, the Defendant receives retirement and social security income; has some equity in his home, and at the time of the allegations the complaint he was employed with the South Carolina Highway Patrol as a State Trooper. There is no

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meaningful or persuasive argument that Mr. Rose lacked the resources to hire an attorney. Indeed he was represented by two attorneys during parts of the damages hearing on January 21st, 2015. Mr. Rose made an informed decision not to retain counsel. He did not consult with other attorneys or file any pro se answer. At his peril, he refused to participate. The Court is not persuaded that Defendant's allegations constitute good cause.

Mr. Rose alleged that he thought the Plaintiff was dismissing the matter. The relationship between Mr. and Mrs. Rose is complicated to say the least. The text messages provided to the Court do little to uncomplicate the factual picture. At the end of the day, the two are embroiled in a contentious divorce and if Mr. Rose thought Mrs. Rose was going to drop this action then he should have contacted Mrs. Rose's counsel to confirm. Mr. Rose never did any such thing. The Court is not persuaded that Defendant's allegations constitute good cause.

Counsel for Mr. Rose urged the Court to review the case of *Ricks v. Weinrauch*, 293 S.C. 372, 374, 360 S.E.2d 535, 536 (Ct.App.1987). The Court has reviewed *Ricks* and there are marked distinctions that render that decision inapposite to the case at bar. Specifically, the Defendant in *Ricks* filed her answer only eleven (11) days after the entry of default; some sixty (60) plus days earlier than Mr. Rose. Further, the Defendant in *Ricks* had good cause for the delay as she acted diligently but due to a series of unfortunate events including bankruptcy of her insurance agent and a broken down vehicle was a few days late. Mr. Rose did not act diligently and did not file his motion to set aside until January 21, 2015; 75 days after the entry of default.

For these reasons, the Defendant's motion to set aside the default/for enlargement of time is denied.

II. DAMAGES

It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the allegations against it and to have conceded liability. *Roche v. Young Bros., Inc.* of

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Florence, 318 S.C. 207, 210, 456 S.E.2d 897, 900 (1995). Accordingly, the following allegations in the Complaint are deemed admitted by the Defendants:

- On or about September 18, 2014, Mr. Rose committed assault and battery against Mrs. Rose. Mr. Rose, with force and violence, inflicted bodily harm on the Mrs. Rose when he unlawfully struck her repeatedly in the head with a handheld police radio. Mr. Rose committed these acts with intention of bringing about harm to the Mrs. Rose in a rude, insolent, and/or revengeful way.
- Mrs. Rose had to seek immediate medical care and treatment for the injuries and damages sustained as a result of being struck in the head repeatedly by Mr. Rose with a handheld police radio.
- Mrs. Rose will continue to need additional medical care and treatment, both physically and emotionally, as a result of this incident.
- The assault and battery acts of Mr. Rose proximately caused Mrs. Rose substantial physical and emotional damages.

The following facts were established through testimony/evidence:

- Mrs. Rose was treated for injuries to her head, face, and ear on September 18th and 19th at Spartanburg Regional Hospital.
- The total medical bills were \$5,018.00.
- Due to the incident with Mr. Rose, Mrs. Rose has been diagnosed with post-traumatic stress disorder, and exacerbation of her severe depression by Dr. Todd Morton.
- Dr. Morton's expert psychological opinion was that Mrs. Rose would require \$7,400.00 in future medical treatment, over the next calendar year, exclusive of any additional issues, emotional events, or hospitalizations.
- Mrs. Rose has significant pain, scarring, and emotional instability because of the incident with Mr. Rose.

Defendant called no witnesses to dispute any of these facts and only stipulated to some testimony that Mr. Rose would testify to if he took the stand, which he did not. Included in the stipulation was that Defendant had a net worth in excess of \$3.8 million dollars.

Based on the foregoing, the Court finds actual and compensatory damages in the amount of \$37,254.00

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Based on the following, the Court also finds that punitive damages in the amount of \$111,762.00 are appropriate. This amounts to three times the actual damages found appropriate by the Court.

There are eight factors that a Court is to consider when determining the amount of punitive damages. They are set forth in *Gamble v. Stevenson*, 405 S.E.2d 350, 354 (1991) as follows.

- (1) defendant's degree of culpability;
- (2) duration of the conduct;
- (3) defendant's awareness or concealment;
- (4) the existence of similar past conduct;
- (5) likelihood the award will deter the defendant or others from like conduct;
- (6) whether the award is reasonably related to the harm likely to result from such conduct;
- (7) defendant's ability to pay; and
- (8) other factors deemed appropriate.

The trial court need only make findings as to those factors that are relevant to the individual case. *Id.* ("The trial court is not required to make a finding of fact for each *Gamble* factor to uphold a punitive damages award.").

a. Defendant's degree of culpability

The Defendant is clearly culpable for the injury to the Plaintiff; which was an intentional act to inflict harm. Defendant bragged about evading punishment for the incident on his Facebook page. The Plaintiff was seriously injured. Defendant's culpability weighs in favor of a significant punitive damages finding.

b. Defendant's awareness or concealment

The evidence included a Facebook posting from Defendant in which one could infer that Defendant was boasting about striking Plaintiff and not suffering any consequences. No evidence or testimony was elicited to dispute that this posting was made by Defendant or that the posting related to Plaintiff. This indicates an awareness of wrongdoing by Defendant.

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Further, there was testimony and circumstantial evidence in the form of pictures indicating that Defendant attempted to conceal his involvement in injury to Plaintiff by removing and attempting to clean Plaintiff's blood off the shirt he was wearing at the time of the altercation.

c. The existence of similar past conduct

The Plaintiff introduced documentation that Defendant was previously involved in a divorce in which Defendant's previous spouse made allegations of physical cruelty by Defendant. No evidence or testimony was introduced by Defendant to dispute this allegation.

d. Defendant's ability to pay

The defendant stipulated to a net worth of over \$3.8 million. He is paid from various sources in excess of \$180,000.00 per year. He has equity in a home. The \$111,762.00 punitive damages award in this case amounts to less than 3% (2.9% exactly) of Defendants total net worth and less than one year of his trust income. The ratio of punitive to actual damages is likewise limited as it is only three times the actual damages award. Given Defendant's intent to harm, this ratio could have been much larger because in such a case there is no statutory limit on punitive damages per S.C. Code Sections 15-32-510, et seq.

e. Other relevant factors

In addition to the factors enumerated above, the Court was entitled to consider that the defendant never accepted responsibility for his actions and has never offered a word of apology. See *Smith v. Smith*, 9 S.E.2d 584, 591 (S.C. 1940) (finding relevant, in a slander case, the refusal of the publisher to correct the defamatory statement or to apologize). The Defendant made no attempt to cure the wrong committed or mitigate the plaintiff's anxiety over the incident. The Court would not mean to suggest that the award somehow legally rests on the remorsefulness or lack thereof of the defendant, although it is a legitimate consideration, see *Smith*, 9 S.E.2d at 591. But, these

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considerations certainly inform the Court's view as to issues of the defendant's culpability, malice, and indifference.

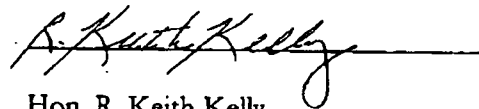
For the reasons set forth above and the presence in varying degrees of the Gamble factors, the Court is comfortable that the punitive damages award is justified under South Carolina law.

III. CONCLUSION

Based on the admitted allegations, the documents received into evidence, and the testimony of Plaintiff supporting the allegations, the Court finds that the Plaintiff is entitled to a compensatory damages recovery of \$37,254.00 and punitive damages in the amount of \$111,762.00.

IT IS THEREFORE ORDERED that Plaintiff shall have judgment against Charles Homer Rose, III in the total amount of ONE HUNDRED FOURTY NINE THOUSAND AND SIXTEEN DOLLARS (\$149,016.00).

This the 24 day of February 2015, at Gaffney, SC



Hon. R. Keith Kelly,
Chief Administrative Judge
7th Judicial Circuit

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
(JURY TRIAL DEMANDED)

Paula Rose,

Plaintiff,

vs.

Charles Homer Rose, III,

Defendants.

SUMMONS

C. A. No. 2014-CP-42-3846

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is attached herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscribers at their office at Post Office Box 2765, 229 Magnolia Street, Spartanburg, South Carolina, 29304, within thirty (30) day after such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiffs in this action will apply to the Court for the relief demanded in this Complaint.

Respectfully submitted,


Charles J. Hodge
T. Ryan Langley
Hodge & Langley Law Firm, P.C.
229 Magnolia Street
Spartanburg, SC 29306
Ph.: 864-585-3873
Fax: 864-585-6485

N. Douglas Brannon
Christopher D. Kennedy
Kennedy & Brannon, P.A.
229 Magnolia Street
Spartanburg, SC 29306
Ph: 864-707-2020
Fax: 864-707-2030

ATTORNEYS FOR PLAINTIFF

Dated: 10/1, 2014
Spartanburg, South Carolina

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Paula Rose,

Plaintiff,

v.

Charles Homer Rose, III,

Defendant.

COMPLAINT

CA No.: 2014-CP-42-3846

JURY TRIAL DEMANDED

The Plaintiff, complaining of the Defendant, would respectively allege and show unto this Court as follows:

1. That the Plaintiff is a citizen and resident of the State of South Carolina, County of Greenville.
2. That the Defendant is a citizen and resident of the State of South Carolina, County of Spartanburg.
3. This Court has subject matter jurisdiction pertaining to all matters related to this lawsuit and venue is proper in Spartanburg, South Carolina.
4. On or about September 18, 2014, Defendant committed assault and battery against the Plaintiff. Defendant, with force and violence, inflicted bodily harm on the Plaintiff, and Defendant unlawfully struck the Plaintiff repeatedly in the head with a handheld police radio. Defendant committed these acts with intention of bringing about harm to the Plaintiff in a rude, insolent, and/or revengeful way.
5. The Plaintiff had to seek immediate medical care and treatment for the injuries and damages sustained as a result of being struck in the head repeatedly by

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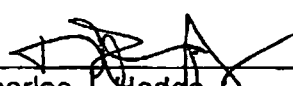
Defendant with a handheld police radio, and the Plaintiff will continue to need additional medical care and treatment, both physically and emotionally, as a result of this incident.

6. The assault and battery acts of the Defendant upon the Plaintiff proximately caused Plaintiff substantial physical and emotional damages.

WHEREFORE, Plaintiff prays for judgment against the Defendant for an amount deemed just and proper, including but not limited to:

- a. actual and compensatory damages found to be fair and equitable within the discretion of the fact finder;
- b. punitive damages against Defendant if proven by clear and convincing evidence and found to be fair and equitable within the discretion of the fact finder;
- c. for the costs and disbursements of this action;
- d. for prejudgment interest at the rate as authorized by the South Carolina Supreme Court and S.C. Code Ann. § 34-31-20 (B); and,
- e. for such other and further relief as the Court may deem just and proper.

Respectfully submitted,



Charles J. Hodge
T. Ryan Langley
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229 Magnolia Street
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Ph.: 864-585-3873
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Christopher D. Kennedy
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ATTORNEYS FOR PLAINTIFF

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APPENDIX PAGE 64

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Paula Rose,

Plaintiff,

vs.

Charles Homer Rose, III,

Defendant.

IN THE COURT OF COMMON PLEAS

AFFIDAVIT OF SERVICE

2014-CP-42-3846

PERSONALLY appeared before me, the undersigned, who being duly sworn, says that he served:

- (X) Summons, Complaint
 () Subpoena
 () Rule to Show Cause and Complaint
 () Other:

in this action on: Charles Homer Rose III

☒ By personal delivery to him/her at Spartanburg County Sheriff's Office at approximately 8:30 a.m./p.m.
 () By delivery to _____, a person of discretion residing in the same residence and present at the time of service
 () By delivery to _____, a person of discretion at his/her place of employment and present at his/her place of employment at the time of service, and leaving with him copies of same at _____, on 10/6, 2014 at approximately _____ m., and that deponent is not a party to this action.

SWORN TO before me this

7th day of October, 2014.

Tracy Black (SEAL)
 NOTARY PUBLIC FOR S.C.

My Commission Expires: 7-18-2017

R. Todd Dillard
 R. TODD DILLARD, PROCESS SERVER

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
Paula Rose.)
Plaintiff.)
v.)
Charles Homer Rose, III.)
Defendant.)

IN THE COURT OF COMMON PLEAS

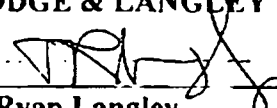
**AFFIDAVIT OF DEFAULT AND
MOTION FOR DAMAGES HEARING**

CA NO.: 2014-CP-42-3846

PERSONALLY APPEARED before me, T. Ryan Langley, who being duly sworn, deposes and states that he is the attorney for Plaintiff in the above action: that a Summons and Complaint was duly served on the Defendant Charles Homer Rose, III on October 6, 2014, as shown by the Affidavit of Service filed herein; that more than thirty (30) days elapsed since the service of said Summons and Complaint; and that Defendant Charles Homer Rose, III has not served an Answer, Notice of Appearance, Motion or other pleading in this matter within thirty (30) days and now this Defendant is in default.

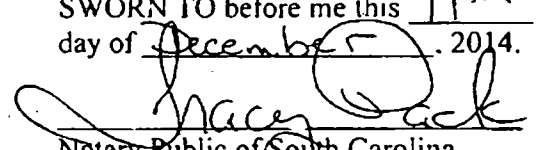
Plaintiff moves the Court for an order adjudging Defendant Charles Homer Rose, III in default in this action, and, after a damages hearing as required by law, for a judgment against this Defendant in such amount as may properly be found due.

HODGE & LANGLEY LAW FIRM, PC


T. Ryan Langley
Attorney for the Plaintiff
Post Office Box 2765
Spartanburg, SC 29304
(864) 585-3873

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SWORN TO before me this 19th
day of December, 2014.


Notary Public of South Carolina

My Commission Expires: 2-18-17

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

PAULA ROSE,)
PLAINTIFF,)

C.A. NO.: 2014-CP-42-3846

VS.)

ANSWER

CHARLES HOMER ROSE, III.,)

DEFENDANT.)

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The Defendant answering the Complaint of the Plaintiff would respectfully show unto
this Honorable Court as follows:

FOR A FIRST DEFENSE

1. That the cause of action alleged herein in did occur in its entirety within the
confines of the County of Greenville, State of South Carolina and that venue is not appropriate in
Spartanburg County.

FOR A SECOND DEFENSE

2. That any and all allegations of the Complaint not herein specifically admitted,
modified, or explained are denied and strict proof demanded thereof.

3. The allegations of Paragraphs 1 and 2 are admitted.

4. The allegations of Paragraph 3 are denied and the Defendant asserts that
Greenville County is the proper venue for this action.

5. The Defendant denies so much of the allegations of Paragraph 4 as alleges that on
September 18, 2014 that there was an altercation of a minor nature between the parties. The
Defendant asserts that he never committed any assault or battery against the Plaintiff and that
there was no force or violence or infliction of bodily harm on the Plaintiff whatsoever. The



STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

PAULA ROSE,)
PLAINTIFF,)

C.A. NO.: 2014-CP-42-3846

VS.)

MOTION FOR ENLARGEMENT OF
TIME AND TO SET ASIDE ANY DEFAULT

CHARLES HOMER ROSE, III.,)

DEFENDANT.)

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TO: THE PLAINTIFF AND HER ATTORNEYS, T. RYAN LANGLEY, CHARLES J. HODGE, AND N. DOUGLAS BRANNON, ESQUIRE:

YOU WILL PLEASE TAKE NOTICE that the Defendant, Charles Homer Rose, III., by and through his undersigned counsel, hereby moves before the presiding Judge of the Spartanburg County Court of Common Pleas for an Order Enlarging the Time for the Defendant to File Responsive Pleadings and to Set Aside any Default in this action. This Motion will be held at the Spartanburg County Courthouse at 180 Magnolia Street, Spartanburg, South Carolina on a date and time to be set by the Court. This Motion is made pursuant to Rule 6(b) and 55(c) of the South Carolina Rules of Civil Procedure and on the grounds that there is good cause for the Enlargement of Time and setting aside any entry of default:

1. The Defendant in this matter has insurance coverage and forwarded a copy of the Complaint to his carrier for coverage on this above-referenced case and an extension of time was requested by his domestic counsel and was granted by the Plaintiff's counsel;
2. As set forth in the Affidavit of Charles Homer Rose, III., the Defendant has a meritorious defense to the Plaintiff's claims;
3. There will be no prejudice to the Plaintiff if the Motion is granted; and

4. That the Defendant and his wife, the Plaintiff herein reconciled and he has been repeatedly told that the action was either dismissed or will be dismissed. At such time he did not have the funds to hire an attorney on this matter and was assured that the case was being dismissed.

This Motion is supported by the pleadings in his case, any affidavits or supplemental affidavits which may be submitted, any memorandum of law which may be respectfully submitted, all applicable statutes, case, or authority, the applicable rules of South Carolina Rules of Civil Procedure, and such other as evidence of authority as the Court may find acceptable.

The Defendant states that he has provisionally filed an Answer in this action on January 19, 2015 pending the Court's granting of the Motion.

The undersigned counsel certifies that prior to filing this Motion he communicated with opposing counsel in good faith attempt to resolve the matters contained in this Motion



Kim R. Varner
Attorney for the Defendant
304 Pettigru Street
Greenville, South Carolina 29601
(864) 271-2232

January 19, 2015
Greenville, South Carolina

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STATE OF SOUTH CAROLINA)	
COUNTY OF SPARTANBURG)	IN THE COURT OF COMMON PLEAS
PAULA ROSE,)	C.A. NO.: 2014-CP-42-3846
PLAINTIFF,)	
VS.)	BRIEF IN SUPPORT OF DEFENDANT'S MOTION
CHARLES HOMER ROSE, III.,)	FOR ENLARGEMENT OF TIME AND TO SET
DEFENDANT.)	ASIDE ANY DEFAULT

This brief is filed on behalf of the Defendant in support of Rule 55(c) and Rule 6(b).

FACTS

A Complaint was filed by the Plaintiff, who is the wife of the Defendant alleging criminal domestic violence in an assault against the Plaintiff. The parties have appeared before the Family Court and certain rulings have been issued. The Defendant was thereafter served with the Complaint in early October of 2014 at which time he went to Kim R. Varner, his domestic attorney and advised him of the said lawsuit. The Complaint was thereafter immediately submitted to the insurance carrier on behalf of the Defendant for coverage on the above referenced case. The Defendant's domestic attorney Kim R. Varner did follow up and was subsequently advised in early November that no coverage would be afforded and that the company would not defend on a reservation of right. The Defendant's domestic attorney advised Defendant that he needed to enter into a contract for representation, pay a fee, and even advised him of civil attorneys who could possibly handle the matter and their costs. Defendant was furthermore advised that an extension of time had been granted. The Defendant would point out that at the alleged time and place of the physical assault that he has a full audio recording which

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was used in the domestic proceeding and is submitted to this Court for review to show that there was in fact no physical assault or attack whatsoever.

In November the Defendant had a medical emergency in which two double hernias ruptured and he almost died. That at time he and the Plaintiff herein reconciled their marriage and he has submitted photographs of when he was taken from the hospital. That the Defendant chose not to engage counsel because of monetary restrictions and the fact that he was assured by both the words of the Plaintiff and the deeds of the Plaintiff as will show by text messages herein that the Plaintiff has repeatedly advised him that he did not need an attorney and that this action would be dropped and that their marriage would be resumed.

That the Plaintiff went to her attorney's office on Thursday, January 15, 2015 and advised the Defendant that she was going there to dismiss all pending lawsuits and to sign an affidavit not to prosecute in regard to the criminal charges. The Defendant even as late as January 17, 2015 was advised by text that the action was being dismissed and that she would not be present at any default hearing and he was further encouraged not to even appear.

LAW

The Motion cites S.C.R.C.P. 55(c) alleging that there has been mistake, inadvertence, surprise, or excusable neglect. The Defendant's Motion to Set Aside Default and Enlargement of Time for an Answer, which was filed on October 2, 2014 and served on the Defendant a few dates later.

The Defendant thereafter received a Notice of Motion set forth Wednesday, January 21, 2015 on a Motion for Damages hearing and the finding of Default.

The standard for granting relief for an entry of default under Rule 55(c) is mere good cause. Rule 55(c) of the S.C.R.C.P. The standard requires that the parties seeking relief from an

entry of Default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interest of justice. Once a party has set forth a satisfactory explanation for the default, the trial court must also consider:

1. The timing of the Motion for relief;
2. Whether the Defendant has a meritorious defense; and
3. The degree of prejudice to the Plaintiff if relief is granted. (*Sundown Operating*

Co., Inc. v. Intedge Indus. Inc., 383 S.C. 601, 607-08, 681 S.E. 2d 885, 888 (2009); See *Whan v. Shearson Lehman Bros. Inc.*, 298 S.C. 462, 465, 381 S.E. 2d 499, 201-02 (Ct. App. 1989). See *Wilder v. Blue Ribbon Taxicab Corp.* 396 S.C. 139, 719 S.E. 2d 703, 706 (Ct. App. 2011). The Defendant has set forth the timing of the Motion for Relief; the Defendant has proffered a meritorious defense and any prejudice to the Plaintiff is minimal.

In the facts at hand the Defendant has submitted an affidavit clearly setting forth the facts that no assault occurred and has further submitted an audio recording in this matter. The Defendant was thereafter served and sought coverage through his insurance carrier and his domestic attorney secured an extension of time.

The Defendant thereafter learned , at a time he was in a critical medical state that no coverage was being afforded and simultaneously the Plaintiff indicated to him that their marriage would be reconciled and that the case was being dismissed.

The Defendant was under an obligation to pay the Plaintiff the sum of \$2,500.00 Dollars per month and due to the reconciliation he had returned an automobile to her which was awarded to him in the Family Court proceeding and he had additionally provided funds by paying utility bills and other to the Plaintiff. The Defendant was without sufficient sums to retain an attorney

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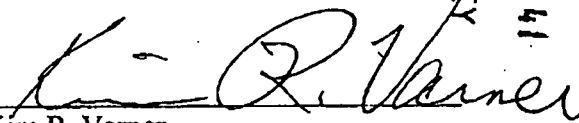
and was repeatedly assured by the Plaintiff in both words and actions that the lawsuit was either dismissed or was going to be dismissed.

The Plaintiff and Defendant have had sexual relations in the last month and have eaten out together and communication numerous times by texts in which the Plaintiff has told him that the parties will reconcile and that she was dismissing any and all pending actions so that the marriage could be reconciled. As late as Saturday, January 17, 2015 the Plaintiff advised the Defendant that she was not going to be present at the Motion for damages hearing on Wednesday and encouraged the Defendant not to attend same.

The Plaintiff has further requested that the Defendant allow the entry of default so that they can reconcile and file a claim against the Defendant's domestic counsel for neglectful representation and to receive certain monetary funds from him.

The Defendant therefore asserts that an Answer has now been filed and that the case is only a few months old and is timely. The Defendant furthermore asserts that he has a meritorious defense and that there is no prejudice to the Plaintiff whatsoever since the case is in its early stages. The Defendant furthermore asserts that excusable neglect occurred and was encouraged as an effort to defraud him on the Plaintiff's behalf and she has continued to encourage him to let this matter go and not take the necessary action to defend himself. Defendant therefore asserts that his Motion should be granted herein.

Respectfully submitted.


Kim R. Varner
Attorney for the Defendant
304 Pettigru Street
Greenville, South Carolina 29601
(864) 271-2232

January 19, 2015
Greenville, South Carolina

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M. ROPELACKLEY

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

AFFIDAVIT

PERSONALLY, appeared before me Kim R. Varner, who upon oath duly deposes and states as follows:

1. That I have been a member of the South Carolina Bar since 1980 and a member of the Georgia Bar since 1979.
2. I am an honors graduate of Furman University and graduated from Emory Law School.
3. My practice is limited to domestic litigation and criminal defense.
4. I was Mr. Homer Rose's domestic attorney and also his criminal attorney on the CDV charge.
5. In early October of 2014 Mr. Rose was served with a civil complaint for Assault and Battery.
6. Shortly thereafter he brought the papers to my office and they were immediately forwarded to John Stenzinger, his State Farm Agent in Seneca, South Carolina.
7. In late October Mr. Rose returned to my office and we contacted the insurance carrier for the status of the case. Dorothy at the agent's office stated that no action had been taken because Mr. Rose had not filed a claim. At that time Mr. Rose got on the phone at my office and formerly filed his claim.
8. I notified Doug Brannon that the papers had been forwarded to the insurance carrier and requested an extension of time which was granted.
9. The State Farm's claim office in Alabama advised my office in the middle of November that they would not offer coverage nor defend with a reservation of right.

10. Mr. Rose did not have the funds to retain my partner James Segura and he was confident that he and his wife were going to reconcile and that the case would be dropped.

11. Near Thanksgiving of 2014 Mr. Rose had a double hernia rupture and was placed in the hospital at Spartanburg Regional for approximately one week. Mr. Rose had extensive surgery and almost died.

12. Upon his release he subsequently advised me that he had a "coming to Jesus" moment and that he and his wife had reconciled.

13. Mr. Rose and I were both confident that the action was or would be dismissed.

14. I have seen numerous texts and had conversations with Mr. Rose in which the Plaintiff stated that she was dropping the lawsuit; that he did not need to be present at any hearing because she would not appear and she even wrote a suicide note blaming her lawyers.

15. At one point she concocted a scheme to encourage my client to blame me for the alleged default so that she could collect funds and it would not come from Mr. Rose.

16. I have personally viewed texts indicating same and Mr. Rose refused to cooperate in any type of scheme because he has integrity and he truly believed that his wife would ultimately do the right thing.

17. There is no question whatsoever that I did secure an extension of time in late October and I believe that Mr. Brannon has forgotten same.

FURTHER DEPONENT SAITH NAUGHT.


Kim R. Varner

SWORN to before me this
21 day of January, 2015.

Joseph R. Platte

Notary for South Carolina

My Commission Expires: 12-31-14

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

PAULA ROSE,)
PLAINTIFF,)

C.A. NO.: 2014-CP-42-3846

VS.)

AFFIDAVIT

CHARLES HOMER ROSE, III.,)

DEFENDANT.)

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 JAN 29 AM 8:42
M. HOPE BLACKLEY

PERSONALLY, appeared before me Charles Homer Rose, III., who upon oath duly
deposes and states as follows:

1. That I am seventy (70) years of age and have been with the South Carolina Highway Patrol for over forty years. I have never been arrested in my life until this most recent alleged incident with my wife.
2. My wife served divorce papers on me and attempted to get all the money that she could.
3. I am a partial recipient of the Rose Trust. My fore fathers have been in the food service industry for years and years and my great grandfather was credited with inventing the hotdog and the score card. My Father is the only non-player in the Baseball Hall of Fame.
4. Even though I am the partial recipient of the Trust I am not allowed to invade the Trust and I am only allowed to live off the interest which the Trust generates each year.
5. I met Paula Rose, my wife in the mid 1990's or late 1990's.
6. She was an employee of the Seneca Highway Department and it is my belief that she thought that I was a wealthy person.



7. During this period of time apparently she was giving a driving test to an individual and she was severely beaten and found later in a ditch.
8. I supported her and responded because I knew that she was on her own and that she was in the hospital and severely injured and was in the hospital to be the best of my recollection for several weeks.
9. She and I began a relationship but I have never asked her if she was sexually assault during this incident.
10. She began seeing Dr. Paige, a psychiatrist and was diagnosed with PTSD. She has continued to see Dr. Paige and taken extensive medication to the present.
11. We moved in together and were subsequently married approximately five years ago.
12. We do not have any children and I have seen through the years various incidents of very irrational conduct.
13. She has removed and/or stolen from me almost a half million dollars in assets by signing checks, transferring accounts, and putting them solely in her name or the name of her son.
14. I made the mistake of putting her name on joint accounts and discovered through the years that she has transferred vast sums of money and used them for her own benefit or secreted same.
15. I contacted the Sheriff's Office several years ago for prosecution but she persuaded me to dismiss the case to work out our marriage.
16. I have since discovered that she has a credit card reader and that she has been running our credit cards. There is no rational excuse for a homemaker to have a credit card

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 JAN 20 AM 8:42
J. HOPE BLACKBERRY

reader in which she can take money from credit card accounts. She has run up our credit card bills and used the money solely to her benefit.

17. I was served with a divorce Complaint in the fall of 2014.

18. I knew that something was amiss at our home because she had become withdrawn and distant and it was clear that we were heading for divorce Court.

19. On September 18, 2014 I left the home to go out to eat. Paula was incredibly nice and I knew that something was up.

20. On my way home I turned on my tape recorder and called Paula as instructed to tell her that I was close to the home. She had asked me to do this under the pretense that she would turn on the garage light and turn off the alarm. I left the tape running and as soon as I walked in the door she started screaming at the top of her lungs. I did not know what was going on and a few moments later her grown son Chaz came down with a video camera screaming what are you doing to my mother.

21. This mass confusion went on for about thirty seconds or more at which time I removed myself from the situation and went to the restroom. Shortly thereafter Greenville County arrived and my wife alleged that I had assaulted her with my police radio and that she had a mark on her head.

22. EMS came, checked her out, and left without any treatment or admission to the hospital.

23. It does not make any sense that if I was going to assault her that I would record it. In the recording you can hear my police radio going in my truck as I am coming home. She alleged that I hit her with my highway patrol radio but that does not make sense because I would

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CLERK OF COURT
SPARTANBURG COUNTY
2015 JAN 20 AM 8:42
M. HOPE GRACELEY

not have the radio with me since I already had one in my truck. I was not on duty and had no need for the radio and already had a scanner or police radio in my truck.

24. I was arrested and later served with a civil lawsuit for assault and battery. I thereafter contacted my domestic lawyer and he forwarded the Complaint to the insurance carrier.

25. Several weeks later I was at my domestic attorney's office and we checked up with the insurance company and they stated that I had not filed an official claim. At that time I used Mr. Varner's office to actually get the claim started. Mr. Varner as a courtesy got an extension from my wife's lawyer to respond to the Complaint.

26. I had until early December to take any affirmative action; however, I had a double hernia rupture and almost died shortly before or on Thanksgiving of 2014.

27. My wife learned of this episode and it totally changed my approach to life.

28. We had some heart to heart discussions and decided that we would save our marriage.

29. My wife even brought me home from the hospital and we have a picture of me

30. Throughout the next several weeks I contacted my lawyer and told him not to take any action because my wife had told me that she was dropping the lawsuit, dropping the criminal charges, and we would save our marriage.

31. We ate some meals together and even had sexual relations.

32. I even have texts from her stating that the lawsuit will be dropped and she has orally told me that she was going to her lawyer's office to drop the lawsuit.

33. On Saturday, January 17, 2015 she told me that she was not even going to the damages hearing and she further told me that there was no need to go there. On January 19,

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 JAN 20 AM 8:42
M. HOPE BLACKLEY

2015 I received a purported suicide letter from her in which she states that she never wanted to sue me, that she did not stand up to her lawyers, and that she would not go forward because she was ending her life.

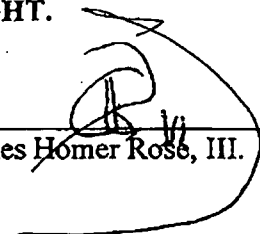
34. I know that my wife has been undergoing psychiatric treatment for approximately fifteen years and that she takes medication. I know that she may be unstable and substantially fear that because of the recent suicide note.

35. I also know that she is capable of being very mean spirited and destructive. A few years ago she even burned down my home and she has been convicted of four separate felonies which is attached to this affidavit.

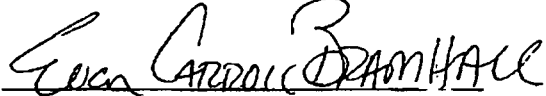
36. I supported her throughout this matter and paid for her criminal defense but she was nonetheless found guilty.

37. I continued to support her but I now can clearly see that she did in fact burn our home to collect insurance money and that she has furthermore stole numerous sums from me. I now fully recognize that she has done all of this in an effort to derive all of my funds even to the extent of concocting an alleged assault and battery.

FURTHER DEPONENT SAITH NAUGHT.


Charles Homer Rose, III.

SWORN to before me this
19th day of January, 2015.

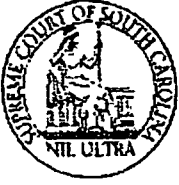

Notary Public for South Carolina
My Commission Expires: 12/13/23

CLERK OF COURT
SPARTANBURG COUNTY
2015 JAN 20 AM 8:42
M. HOPE BLACKLEY

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Greenville County 13th Judicial Circuit Public Index


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[Family Court Public Index](#)

Switch View

State of South Carolina vs Paula L Rose

Case Number:	2012A2330202125	Court Agency:	Greenville General Sessions	Filed Date:	09/17/2012
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Garrett, Charles R.	Disposition Judge:	McIntosh, R Lawton
Disposition:	Trial Guilty				
Disposition Date:	05/08/2014	Date Received:	09/14/2012	Arrest Date:	09/12/2012
Law Enf. Case:	12-109451	True Bill Date:	02/19/2013	No Bill Date:	
Prosecutor Case:		Indictment Number:	2013GS2300681	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Rose, Paula L	3435-Arson / Arson - Third Degree (effective 06-02-2010)	3435-Arson / Arson - Third Degree (effective 06-02-2010)	05/08/2014

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Greenville County 13th Judicial Circuit Public Index



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[Family Court Public Index](#)

Switch View

State of South Carolina vs Paula L Rose

Case Number:	2012A2330202126	Court Agency:	Greenville General Sessions	Filed Date:	09/17/2012
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Garrett, Charles R.	Disposition Judge:	McIntosh, R Lawton
Disposition:	Trial Guilty				
Disposition Date:	05/08/2014	Date Received:	09/14/2012	Arrest Date:	09/12/2012
Law Enf. Case:	12-109451	True Bill Date:	02/19/2013	No Bill Date:	
Prosecutor Case:		Indictment Number:	2013GS2300679	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds			
Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Rose, Paula L	0267-Arson / Burning personal property to defraud insurer	0267-Arson / Burning personal property to defraud insurer	05/08/2014

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ROA 30



Greenville County 13th Judicial Circuit Public Index


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[Family Court Public Index](#)

Switch View

State of South Carolina vs Paula L Rose

Case Number:	2012A2330202127	Court Agency:	Greenville General Sessions	Filed Date:	09/17/2012
Case Type:	Criminal-Clerk	Case Sub Type:			
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Disposition:	Trial Guilty				
Disposition Date:	05/08/2014	Date Received:	09/14/2012	Arrest Date:	09/12/2012
Law Enf. Case:	12-109451	True Bill Date:	02/19/2013	No Bill Date:	
Prosecutor Case:		Indictment Number:	2013GS2300678	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Rose, Paula L	0508-Arson / Making false insurance claim to obtain benefits for fire or explosion loss	0508-Arson / Making false insurance claim to obtain benefits for fire or explosion loss	05/08/2014

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Greenville County 13th Judicial Circuit Public Index



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[Family Court Public Index](#)

Switch View

State of South Carolina vs Paula L Rose					
Case Number:	2012A2330202128	Court Agency:	Greenville General Sessions	Filed Date:	09/17/2012
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Garrett, Charles R.	Disposition Judge:	McIntosh, R Lawton
Disposition:	Trial Guilty				
Disposition Date:	05/08/2014	Date Received:	09/14/2012	Arrest Date:	09/12/2012
Law Enf. Case:	12-109451	True Bill Date:	02/19/2013	No Bill Date:	
Prosecutor Case:		Indictment Number:	2013GS2300680	Waiver Date:	
Probation Case:					

Case Parties	Charges	Sentencing	Associated Cases	Actions	Financials	Bonds
Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date			
Rose, Paula L	2597-Report / Filing a false police report of a Felony violation	2597-Report / Filing a false police report of a Felony violation	05/08/2014			

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Tonya Plantec

From: C.Homer Rose III <chrose3@charter.net>
Sent: Monday, January 19, 2015 5:14 AM
To: Tonya Plantec
Subject: FW: My love,

-----Original Message-----

From: Paula Rose [mailto:paula_8@hotmail.com]
Sent: Monday, January 19, 2015 12:17 AM
To: C Homer III Rose
Subject: My love,

My love,

I find myself in a precarious situation. I have lost my will to live. It has become clear that I have too many battles to fight, and I don't have the strength to fight anymore, especially with you. I will not go into the ways you have hurt me because I have already told you all I want to say on that matter. I will tell you that I forgive you and acknowledge that all the wonderful things you did for me far outweighed any hurt you caused me. Chaz is very grateful, too.

When this war started between us I wanted to hurt you because you were doing so many spiteful, mean things to me. I allowed Doug to file a civil suit against you in retaliation. I really only wanted to shake you up and hopefully wake you up so you would stop filing false complaints against me.

You know that even this week I am still dealing with the fallout of false complaints. Now that a court date has been set for next Wednesday I find myself desperate. I don't want to sue you, but I am a coward. Every time I meet with my attorneys I give in to what they want. I can't blame them because I should have stood up to them. I went to see the psychologist Friday and one of the first things he asked me is if I was depressed. I told him that I was so depressed that I wanted to kill myself, but didn't have the strength to do it. I was hoping he would see how desperate I was, but he just moved on to his next question. I guess I wasn't worth saving. I was very broken when I left and that is why I asked you to come over. I really needed you. I slept for a couple of hours last night when it hit me that you would probably lose this house if we go to court on Wednesday. I know you told me that since your money was in trust they wouldn't be able to get it, but I'm worried they would come after your house and I can't be a part of that. Varner told you that I can't call this off, but if I'm dead I can't sue you. You have my power of attorney and you may need to call Todd Hyche to have it executed.

Now that you have teamed up with Varner, again, you have cut off contact with me and have told me to have Doug to "suit up" which means the war is about to start. I can't fight with you anymore and I have told you that I won't deal with Varner, ever. He terrifies me because he tells you to do illegal, immoral, and unethical things to me and you comply. I can't sit in this house worrying what the two of you are plotting to do next. Varner has misrepresented you in many ways, the worst being that he told you to say that I burned your house down in court which went on the record. Also, he failed to answer the complaint which is the whole reason we were scheduled for court on Wednesday. I wish you would hold him accountable, but it seems you would rather blame me. If it helps you to blame me then feel free to do so.

As far as dealing with my body, please have me cremated and give my ashes to Chaz. I do not want a funeral, but would appreciate a memorial service somewhere close to my family. I prefer it to be in Clemson instead of any place in Oconee County. I want Chaz to have access to my personal belongings.

Some of my things are from his childhood. Anything left should go to my niece or my mother.

APPENDIX PAGE 87

I hope that you will help Chaz get on his feet. He is a good, honest young man and will be devastated by my actions. I don't want to leave him on his own, but he has spent his whole life protecting me and I don't see that changing anytime soon. He needs to get back to school and finish up his degree. He only needs eighteen hours to finish. He will have to get a full time job and save some money first, but please help him. He has always loved you. He didn't like what you did, but he also told me not to file suit against you and was hopeful that the two of us could work things out. Please allow him to keep his car. We bought it for him and he, at least, deserves his car.

The animals will be glad your home. Please give them extra love because they will miss me. If Chaz moves please give him the option of taking Pandora.

She is young and would be able to adapt to a new home. You need to call the vet and check to see about vaccinations. I think Baron and Phoenix are due for vaccinations in February. Pandora needs to go as soon as possible. She had shots when I got her, but she needs her boosters.

Lastly, I ask that you remember the love we shared and the wonderful times we had whether we were sitting on the couch all day together or taking a massive road trip to Albuquerque. You will now be free to find your soulmate. The one you have been looking for the whole time we were together.

Please don't go back to PAL. You deserve someone who adores you like I adored you. Please take the time to go spend time with our grandchildren. I miss them terribly and remember whoever you take for a mistress or wife must be acceptable to be in their lives. I love you and hope you will spend the rest of your life happy and healthy.

All my love,
Paula Rose

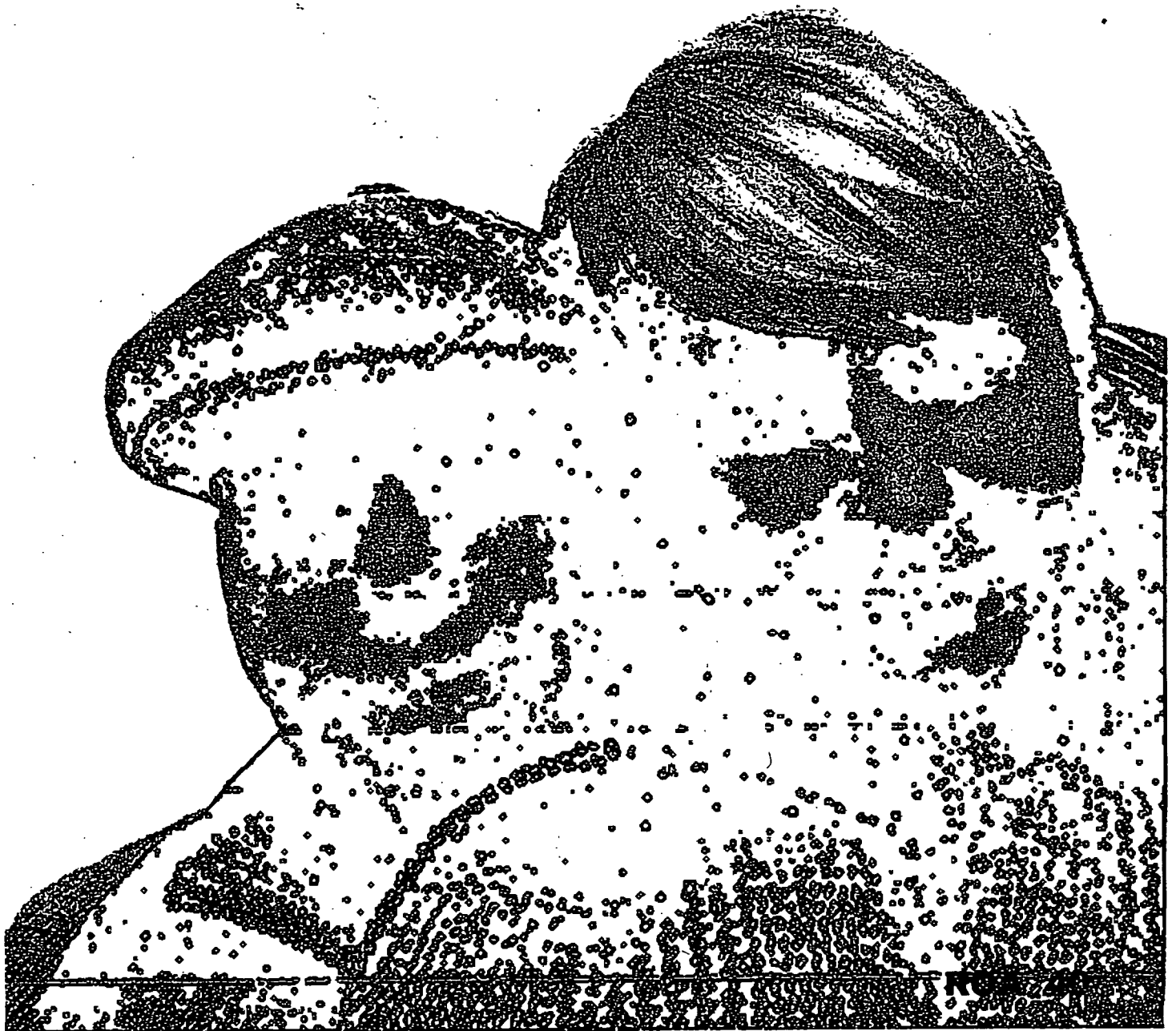
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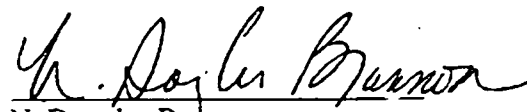


STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
Paula Rose,	)	C.A. NO. 2014-CP-42-3846
	)	
Plaintiff,	)	AFFIDAVIT OF
	)	N. DOUGLAS BRANNON
vs.	)	
	)	
Charles Homer Rose, III,	)	
	)	
<u>Defendant.</u>	)	

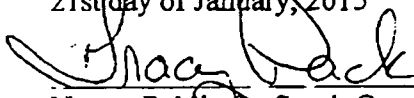
Personally appeared before me, N. Douglas Brannon, who being duly sworn, deposes and states:

1. That he is the attorney for the Plaintiff in the above action along with Charles J. Hodge, Christopher D. Kennedy, and T. Ryan Langley.
2. That he was admitted to the South Carolina Bar in 2000 and has been actively engaged in the private practice since that time.
3. That he is an active and good standing member of the Spartanburg County Bar and practices regularly in the Family Court and Court of General Sessions.
4. I am not the lead attorney on the case at bar.
5. I have not granted an extension of time to file responsive pleadings in the case at bar to any attorney.
6. I have had one conversation with Mr. Varner related to the case at bar. That conversation took place in the Family Court for Greenville County. In that conversation, Mr. Varner told me that Defendant Homer Rose had homeowner's insurance and that the pleadings in this matter would be turned over to the insurance provider for legal defense. There have been no other conversation between Mr. Varner and I related to this case.

7. I have never been asked for an extension of time to file responsive pleadings in the case at bar.
8. I am serving in the S.C. House of Representatives today and unable to attend this hearing, but am available by telephone at 864-680-3365 if the Court would like to take testimony by telephone.


N. Douglas Brannon

Sworn to before me this
21st day of January, 2015


Notary Public for South Carolina
My commission expires: 2-18-2017

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG) CASE NO.: 2014-CP-42-03846

Paula Rose)
) TRANSCRIPT OF RECORD
vs.)
) (DAY 1 - VOLUME I)
Charles Homer Rose)

JANUARY 21, 2015
SPARTANBURG, SOUTH CAROLINA

BEFORE THE HONORABLE R. KEITH KELLY

APPEARANCES:

RYAN LANGLEY, ESQUIRE
SPARTANBURG, SOUTH CAROLINA

CHRIS KENNEDY, ESQUIRE
SPARTANBURG, SOUTH CAROLINA

CHARLES HODGE, ESQUIRE
SPARTANBURG, SOUTH CAROLINA

ATTORNEYS FOR THE PLAINTIFF

KIM VARNER, ESQUIRE
GREENVILLE, SOUTH CAROLINA

JAMES SEGURA, ESQUIRE
GREENVILLE, SOUTH CAROLINA

ATTORNEYS FOR THE DEFENDANT

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

WITNESSES:	DIRECT	CROSS	RE-DIRECT	RE-CROSS
DR. TODD MARTIN				
By Mr. Hodge	24			
By Mr. Varner		44		
By Mr. Hodge			90	
BRADLEY CHAZ REED				
By Mr. Langley	94			
By Mr. Varner		101		
PAULA ROSE				
By Mr. Langley	114			
By MR. Varner		136		

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
P-1	Psychological Evaluation		29
P-2	Future expenses		42
P-3	Copies of photos (3)		99
P-4	Copies of photos (7)		122
P-5	List of texts		125
P-6	Copy of Facebook page		126
P-7	List of medicals		130
P-8	Notes (pages 14 & 15) from Bon Secours Health System (2 pages)		132
P-9	Account summary page		135
D-1	Doctor's notes		90
D-2	Medical assessment		90
D-3	January 15, 2015 letter to Dr. Morton from Hodge & Langley		90
C-1	Affidavit of Attorney's Fees	177	

1 THE COURT - Okay, for everyone's knowledge here
2 and edification we -- I've got a good handle on the case.
3 I had read some of the file but not all of it. I think
4 we're going to go in this order. I think, Mr. Varner,
5 we're going to hear your motion first, and then we'll go to
6 opposing counsel.

7 MR. VARNER - Your Honor, I have given opposing
8 counsel copies ---

9 COURT REPORTER - If he could identify himself ---

10 THE COURT - I'm sorry. I'm sorry. Let's do this
11 -- very first thing. I messed this up yesterday. I didn't
12 ask the lawyers to identify themselves and I got fussed at,
13 so -- Madam Court Reporter, get everybody's name.

14 MR. VARNER - My name is Kim R. Varner. I'm with
15 the law firm of Varner & Segura in Greenville, South
16 Carolina.

17 COURT REPORTER - For the plaintiff?

18 MR. VARNER - Defendant.

19 MR. SEGURA - James Segura for the defendant.

20 COURT REPORTER - I didn't get that name.

21 MR. SEGURA - James Segura, S-e-g-u-r-a.

22 COURT REPORTER - Thank you.

23 MR. LANGLEY - Ryan Langley for the plaintiff.

24 COURT REPORTER -- Thank you.

25 MR. HODGE - Charlie Hodge for the plaintiff.

1 MR. KENNEDY - I'm Chris Kennedy for the
2 plaintiff.

3 COURT REPORTER - Thank you.

4 MR. VARNER - Your Honor, may I approach?

5 THE COURT - Thank you. Yes.

6 MR. VARNER - Your Honor, to supplement for the
7 record I have several photographs of my client and the
8 plaintiff along with an additional text message and an
9 affidavit from myself.

10 (DOCUMENTS HANDED UP TO THE COURT)

11 MR. VARNER - Your Honor, just -- even though
12 we've had extensive conversation in chambers, I would like
13 to just briefly state for the record ---

14 MR. LANGLEY - Could you give me a copy of what
15 you handed up to the Court?

16 MR. VARNER - I did. I walked it over there to
17 you just a few minutes ago.

18 MR. LANGLEY - Oh, that's your affidavit?

19 (DISCUSSION IS HELD BETWEEN MR. LANGLEY AND MR.
20 VARNER WHICH WAS NOT REPORTED.)

21 MR. VARNER - Your Honor, for the record,
22 plaintiff and defendant are husband and wife. They've been
23 married approximately five years, give or take, and again
24 I'm not trying to argue. I'm just putting this on the
25 record, Your Honor. Mr. Rose's background with this lady

1 is that he met her in the late 1990's. She was a, I
2 believe, a highway examiner or a driving license examiner.
3 He was a trooper down there and he had been a trooper with
4 South Carolina Highway Patrol, had been for, approximately,
5 40 years. She was apparently, savagely accosted and beaten
6 and left in a ditch, was in the hospital for an extended
7 period of time. He did befriend her. Subsequent to that -
8 --

9 MR. LANGLEY - Your Honor, I don't think this
10 serves any purpose for the hearing, other than to purposely
11 agitate Ms. Rose. I don't think it's appropriate. His
12 background has nothing to do with why we're here today. It
13 was something that happened 20 some years ago.

14 THE COURT - Okay. I'm not familiar with that
15 anyway, Mr. Varner, so just get to the motions themselves.

16 MR. VARNER - All right, move to it, Your Honor.

17 THE COURT - Yes, sir.

18 MR. VARNER - Ms. Rose filed an action for a
19 divorce. On September the 18th there was an allegation that
20 Mr. Rose had committed an assault and battery on her.
21 Thereafter, on or about October the 2nd, an action was filed
22 here in Spartanburg, and, Your Honor, there is as part of
23 it -- in part of our answer, and I don't know if you're
24 going to address it at this stage or we'll do it later --
25 Mr. Rose always has lived in Greenville; he temporarily was

1 staying here because of a Family Court order, well, because
2 they couldn't be together on the CDV, but he has always
3 been a citizen and resident of Greenville County, so is his
4 wife, and that's where the incident location -- alleged
5 incident occurred, all in Greenville County at the
6 purported family home. In any event, Mr. Rose was accused
7 of a assault and battery, a criminal domestic violence.
8 What is handed up to the Court -- there is a CD that is a
9 audio recording by Mr. Rose of the entire incident or
10 alleged incident. I would ask the Court to review that as
11 part of its focus on this case. Thereafter, Mr. Rose was
12 served the complaint, I believe, October 6th, possibly
13 October 7th, I'll defer to plaintiff's counsel on that
14 particular date. At that point in time a copy was
15 forwarded to his insurance carrier. In late October or
16 possibly early November Mr. Rose returned to my office, at
17 which time I checked the status with his carrier, his
18 insurance agent, was informed they needed him to file a
19 formal notice. He did so immediately at that time. My
20 affidavit indicates that I spoke with Mr. Doug Brannon
21 whose name was on the claim and the attorney I've dealt
22 with throughout this matter and advised him that we were
23 waiting some response from the insurance carrier and
24 requested a 30 day extension. We were notified in mid to
25 late November by his insurance carrier that not only would

1 they not afford coverage, they would defend under
2 reservation of right. Thereafter, Mr. Rose was notified of
3 it within a few days thereafter. He suffered a double
4 hernia rupture, was admitted to the hospital for,
5 approximately, a week and almost passed away. During that
6 period of time his wife came to the hospital. There are
7 pictures submitted in the record. It is his position those
8 are pictures of him in the wheelchair being taken from the
9 hospital, him and his wife together. Furthermore, we have
10 submitted, and I don't know if it's made it to your file,
11 Your Honor -- if you'll bear with me just a moment, Your
12 Honor. Your Honor, I don't know if it's made it to the
13 record, but opposing counsel already has a copy of the
14 purported suicide note. I'll hand that up just in case it
15 didn't make it to the Court's file because of the holiday.

16 (WHEREUPON, DOCUMENT HANDED UP TO THE COURT.)

17 MR. VARNER - While Mr. Rose was in the hospital
18 and shortly thereto, he was informed both through text that
19 have been included and additionally through talks,
20 discussions and meetings he and his wife had, that this
21 lawsuit was dropped and/or would be dropped. There's not a
22 clear understanding on Mr. Rose's behalf of that. And I
23 understand Mr. Brannon has taken a contra position in
24 regard to the purported extension of time, but he was
25 released from the hospital if I understand it about a week

1 later, which would be approximately December 1st or
2 December 2nd. He was heavily medicated. I mean he has
3 surgical scars, two of them going from literally his
4 shoulder blades to his waistline. During this period of
5 time, his wife has told him repeatedly the lawsuit is
6 dropped, it was not going forward, even asserting that she
7 was not going to be here today, and there is a purported
8 suicide letter from this Monday in which she clearly states
9 in her own words she did not want to sue him, she did not
10 intend to and that it was her fault that she didn't stand
11 up to the lawyers; she had listened to the lawyers. Quite
12 obviously these people were trying to resume their
13 relationship during this period of time. This man is 71
14 years of age or soon to be. He has been very sick. He
15 had a life-altering illness and the standard under 55(C) is
16 good cause. It is the interest of justice, and that is a
17 brief summary of our position and what's in the file, Your
18 Honor.

19 THE COURT - Okay. Mr. Langley or Mr. Kennedy or
20 Mr. Hodge?

21 MR. LANGLEY - Yes, sir, Your Honor. If it please
22 the Court. We've been handed some other text messages
23 today. They go back and forth by confusion, and I -- some
24 even -- some offers back and forth from the parties on
25 resolution of this case, including an offer from Mr. Rose

1 to transfer a Mercedes to my client if she would drop the
2 case. The standard under 55(C) is, is there a reasonable
3 explanation, Your Honor, is there -- for the default and
4 why that the vacation of the default entry would serve the
5 interest of justice. This is not a case, Your Honor, where
6 Mr. Rose was in the hospital, gets out December 2nd, talks
7 to his attorney, files an answer December 9th, a week later,
8 or December 16th, two weeks later, or December 23rd, December
9 30th, January 7th, January 14th, January 21st. Eight weeks,
10 six weeks, that time period elapsed with no response until
11 yesterday. So it doesn't make a whole lot of sense to me,
12 Your Honor, the explanation that's provided, and I don't
13 think that you even get to the wham factors because this
14 explanation is not -- would not serve the interest of
15 justice. It does not serve the interest of justice to bend
16 the rules of procedure solely for Mr. Rose's benefit to Ms.
17 Rose's detriment. But let's say you get to those factors.
18 Okay, let's say somehow, some way the Court finds that
19 that's a satisfactory explanation was just given. The
20 factors that are considered are, one, the timing of the
21 motion for relief. It was filed yesterday, not December
22 2nd, not December 9th, not all the time that went past that
23 the motion could've been filed. And this assumes -- let me
24 bring forward the affidavit of Doug Brannon, and I've
25 provided a copy to defense, ---

1 (WHEREUPON, DOCUMENT HANDED UP TO THE COURT.)

2 MR. LANGLEY - Thank you, Your Honor.

3 THE COURT - Thank you.

4 MR. LANGLEY - --- where he explicitly denies ever
5 giving an extension of time. There's no e-mail; there's no
6 letter; there's no phone record, nothing other than two
7 adverse affidavits on this issue. One says one thing; one
8 says exactly the opposite. Now, Mr. Brannon couldn't be
9 here today, because he's in the legislature, but he's
10 provided his cell phone number for the Court to take
11 testimony from him through that means if the Court sees
12 fit. So even presuming that in the light most favorable to
13 the defense that this extension was granted, there still
14 was not a motion for relief until six weeks later, so the
15 timing of the motion for relief factor weighs in the
16 plaintiff's favor. Two, whether the defendant has a
17 meritorious defense. He does not have a meritorious
18 defense, Your Honor. The only explanation he gives for a
19 extremely emotional audio tape that you hear that's before
20 you is that this must've been some scheme cooked up by my
21 client and her son, her son who's here today to testify to
22 exactly the contrary. There are text messages from the
23 defendant about violence toward others, about specific
24 violence toward individuals that are friends of the
25 defendants. His Facebook page reflects a picture of --

1 following this incident -- (pause) -- with an image, Your
2 Honor, and if I might approach?

3 THE COURT - Yes, sir.

4 MR. VARNER - May I have a copy?

5 MR. LANGLEY - Sure.

6 (WHEREUPON, DOCUMENT HANDED UP TO THE COURT.)

7 MR. LANGLEY - If you'll look at the top left
8 corner, Your Honor, this was printed 12/29/14. The way
9 Facebook works is it shows you how long ago a post was
10 made, under Charles Helms which is that Facebook account
11 for the defendant. He posts an image, "I'm wondering just
12 how much jail time I would get for knocking the stupid out
13 of someone." And then he posts, "none... I tried" not long
14 after he struck my client with his police radio. So it
15 goes on, Your Honor -- pictures of her face from the
16 hospital admission. (Pause) She didn't make these pictures
17 up, Your Honor. She didn't make the hospital visit up.
18 There's consistent medical record testimony -- well,
19 medical record documentation rather -- with an identical
20 story that has never wavered that she was struck in the
21 side of her face by the police radio which you hear on the
22 recording, and that she required not only this physical
23 treatment but the psychological treatment you'll hear from
24 Dr. Morton on. You'll hear from Chaz, her son, who
25 witnessed this incident right after it took place. You

1 hear him on the radio -- or excuse me, -- on the recording
2 that comes through. You'll hear from her son that in the
3 pictures that have been provided to counsel -- and I'll
4 provide to the Court now ---

5 (WHEREUPON, DOCUMENTS HANDED UP TO THE COURT.)

6 MR. LANGLEY - --- that given Mr. Rose's 40 year
7 experience as a trooper and experience with crime scenes,
8 that he was able to clean himself up and discard his bloody
9 shirt from the incident. And that's a picture of his bag,
10 including the materials that he used to clean himself up.
11 So, Your Honor, there's not a meritorious defense. And
12 then finally, the final factor, the degree of prejudice to
13 the plaintiff if relief is granted. The only thing that
14 they have said is, well, it's just not fair, that he
15 shouldn't be able to not present his case on the merits.
16 Well, there's a purpose for the rules, Your Honor. It
17 would never be fair. There's always the set of
18 circumstances that exists. The defendant will always say,
19 it's not fair, it's not fair. Well, it's not fair to her
20 to have to wait months and months and to allow somebody to
21 disobey the rules and then just say, whoops, well, I
22 thought something different was taking place, particularly
23 even though a lay person is held to the same standard as an
24 attorney when complying with the rules, particularly where
25 you've got an individual that's so familiar with the

1 justice system as a 40-year state trooper. Now, he may not
2 be a civil litigant every single day, but he's certainly a
3 criminal litigant. He certainly knows about service of
4 process, if he hasn't participated directly in service of
5 process himself. So, Your Honor, there's no sufficient
6 explanation of good cause to even get to the factors in
7 this case, but if you get to the factors, they all weigh in
8 favor of the plaintiff and that's why default should not be
9 set aside.

10 MR. VARNER - May I briefly reply, Your Honor.

11 THE COURT - Yes, sir.

12 MR. VARNER - Your Honor, 55(C) requires mere good
13 cause. Even defense -- excuse me -- plaintiff's counsel
14 himself says great deal of confusion. It goes to the
15 timing for the motion for relief. I was notified of this
16 on Thursday orally by my client. I immediately did contact
17 opposing counsel, because I could not get in touch with
18 Doug Brannon. I was actually given notice on Friday.
19 Copies of this were provided to his office on Monday. They
20 could not be filed with the Court, because Monday was
21 Martin Luther King Day. They were filed first thing
22 Tuesday morning, but opposing counsel did get these
23 literally from a Friday when I got notice til Monday they
24 received it. So the Court does look at the timing. The
25 Court has to also consider my client's medical condition,

1 the representations of his wife and the verification of
2 that and their acts and pictures taken together, and this
3 does not appear to be -- and if you just look at the
4 pictures of the two of them, he's smiling. That is not a
5 litigant. She is smiling. This is a couple reconciling
6 their marriage. To go as to whether or not the defendant
7 has a meritorious defense, I'm going to go to that in just
8 a moment, but I'm going to skip that for just momentarily,
9 but the degree of prejudice, he just says it's not fair.
10 What is the prejudice by going -- if it was due as he
11 asserted on December the 7th, what is the prejudice for two
12 weeks ---

13 MR. LANGLEY - I want to be clear. That was not
14 my assertion. Not due December 7th -- November 6th.

15 MR. VARNER - All right, November the 6th taking
16 his position, December the 7th that there is an extension.
17 We've have two weeks of the holidays in which basically
18 people were not around, people weren't working, but this
19 gentleman was heavily medicated; he had serious surgery,
20 and this is just now little past the middle of January.
21 There is no prejudice whatsoever. It does not hurt her
22 defense; he does not hurt her ability to present her case;
23 it does not hurt the gathering of evidence. As a matter of
24 fact, it may, in fact, be a benefit to her if there is
25 discovery so that everyone knows her full position, and, in

1 fact, will serve the ends of justice, because it will be a
2 fair and full litigation on the merits, but to go back to
3 whether or not the defendant has a meritorious defense,
4 they have shown these pictures, and there is a bruise on
5 the cheek and what appears to be a cut on the arm, but what
6 they have asserted is, here's all the stuff he used to
7 clean himself up with and his shirt wadded up. Your Honor,
8 he is a law enforcement officer. When he was aware that
9 the police were coming, he took his shirt off and was
10 standing in his t-shirt. He also made sure he didn't have
11 a gun anywhere, nor any gun reachable to him. He stood
12 before the police, because he knew when they were coming,
13 don't reach into your clothes, go ahead and take your shirt
14 off. He was in his t-shirt to show the officers he had
15 nothing to threaten them. This picture of this stuff he
16 used to clean, that is from the back of his patrol car. He
17 was not -- you know, that's not something you have; that's
18 something you take out of your patrol car and you put in
19 the garage area of your home. That is always there when
20 he's not on duty. That is just part and parcel. That's
21 not a clean-up thing. If you'll look at the bottle, which
22 is -- I assume a sterile bottle -- it's not even opened, so
23 you can't argue he used that to clean up. The gloves are
24 no (sic) discarded or gloves with any blood on them. I'm
25 quite sure the police would've investigated that. This is

1 his medic bag that all troopers carry in the back of their
2 car with a sealed sterile water container. It's not
3 evidence of any crime. And, again, going to the
4 meritorious defense, Your Honor, this is what I wanted to
5 go into as to her history. He said it was inflammatory,
6 but I think I have a right to respond to it. He supported
7 her when she was injured. She filed a total disability
8 workman's compensation claim. She got that. She got
9 social security for PTSD, full disability. She has
10 subsequently been convicted of four felony counts -- you
11 have the record -- of burning his home.

12 MR. LANGLEY - Your Honor, this has nothing to do
13 with his failure to answer after all this took place.

14 MR. VARNER - Your Honor, it goes to a meritorious
15 defense what her character is and he said she wouldn't have
16 just made this up. If he can say that, then I can respond
17 to that I think is appropriate. He supported for her, even
18 paid for a large portion, if not all, of her criminal
19 defense. And to take the position that he's not entitled
20 to believe in her because she's this nefarious character,
21 we're not saying that. We're saying this man listened to
22 his wife; he wanted to save his marriage. The text
23 indicated -- a man has a right -- and it is recognized
24 under South Carolina law -- to trust his spouse and to
25 believe his spouse. She has repeatedly assured him, and

1 you've got the evidence of that, I am not your adversary;
2 I'm not your plaintiff; I'm your wife; we're going to work
3 this out; besides the evidence of a scheme to come after
4 me, Your Honor. There is nothing in there -- and just to
5 beg the question, why would a trooper who's got 40 years of
6 experience have a tape recorder going while he committed a
7 criminal act. That just doesn't make sense. No one is
8 that foolish, Your Honor. And I ask that you do please
9 listen to that recording. It is very important, Your
10 Honor.

11 THE COURT - All right. Okay.

12 MR. LANGLEY - Plaintiff call it's first witness?

13 THE COURT - Yes, sir.

14 MR. LANGLEY - Your Honor, just so we're clear, do
15 you want to take testimony on the motion that they filed or
16 are you already moving on to the damages component of our
17 motion?

18 THE COURT - Well, I'll let you put anything on
19 the record you want to put. I'm not shutting you down on
20 that now. If you want to put up some testimony about the
21 motion itself, but I have the affidavits, and I don't know
22 that it's going to be anything other than what's in the
23 affidavit.

24 MR. LANGLEY - Well, I just -- I guess I
25 misunderstood, Your Honor. I thought that there would be

1 testimony specific to the -- to the default motion, so I
2 didn't introduce the text messages that I made reference
3 to, so I'd like to do that if the Court would allow.

4 MR. VARNER - I would like a chance to look at
5 them.

6 MR. LANGLEY - Okay.

7 MR. VARNER - And I would also reserve a right now
8 that I've looked at to possibly to reply to it. I don't
9 know what it's going to show, Your Honor. And I'm sorry
10 for not standing up.

11 THE COURT - No, you're fine. But I need -- I
12 mean if you want to put the testimony up, you can,
13 otherwise, I think the affidavits speak for themselves.
14 I'm versed with what the allegations are by both sides.

15 MR. LANGLEY - All right. And while I'm handing
16 this out, Your Honor, I'd like to direct the Court's
17 attention to Dickson vs. Besco, B-e-s-co, Engineering, 320
18 SC 174, and the Court of Appeals in 1995 held that the
19 defendant failed to establish sufficient cause for relief
20 from an entry of default where the defendant mistakenly
21 believed that plaintiff's counsel had given him an
22 extension of time to respond to the complaint, and he
23 failed to retain counsel until, approximately, two months
24 after the extended deadline had past, almost identical to
25 the set of facts before you today.

1 MR. VARNER - Your Honor, just for the Court's
2 edification, I do have additional copies of McClurg vs.
3 Deaton and New Prime along with the Sundown Operating
4 Company case which is cited and the Ricks Weinrauch case.
5 If the Court needs them I'll go ahead and hand them up.

6 THE COURT - Okay.

7 (WHEREUPON, DOCUMENTS HANDED UP TO THE COURT.)

8 MR. VARNER - Thank you, Your Honor.

9 MR. LANGLEY - Your Honor, this is the first text
10 message where Mr. Rose makes a comment -- and it's on the
11 second page with the discussion with one of Mr. and Ms.
12 Rose's friends -- or at least Ms. Rose's friend -- says,
13 "Swell, why don't you do that; if I kick the shut (sic) out
14 of her, I want to know why, want her to know why" and then
15 Ms. Rose responds, "no violence." Another text message,
16 "And the TV, I'll kick her GD ass; you thought she was your
17 friend, swell" is from the defendant.

18 MR. VARNER - Your Honor, maybe I didn't hear it.
19 Who is that supposedly making those comments?

20 MR. LANGLEY - The defendant. And then another
21 one from the defendant, "I'll put the Benz in your name for
22 doing this; just don't tell anyone." This is an offer to
23 resolve this case showing a lack of meritorious defense.
24 And then Mr. Varner suggested that there was some type of
25 scheme to sue him that was the doing of my client. This is

1 a text message from the defendant, says, "Do you think I
2 can sue Kim for poor representation?", so to the extent of
3 any allegation and let me make it clear, based on what we
4 understand, I don't see any allegation against Mr. Varner
5 for negligence if he didn't even retain -- wasn't even
6 retained by Mr. Rose until just the past couple of days,
7 which also doesn't make a whole lot of sense why an
8 attorney who was not retrained by a client would obtain an
9 extension for a particular client. And this is the divorce
10 decree that I made reference to where the defendant was
11 previously found in default on allegations of physical
12 cruelty.

13 MR. VARNER - Your Honor, that has no relevance
14 whatsoever.

15 MR. LANGLEY - Absolute it does, Your Honor. He's
16 claimed that he is a saint, that he has done all these
17 wonderful things for my client, and this shows just to the
18 contrary.

19 MR. VARNER - Your Honor, I would like the Court
20 to address that rather than opposing counsel. Apparently,
21 this is a divorce action in -- and again, I -- I haven't
22 had a chance to look at it. It's a divorce. There's no
23 such thing as default in Family Courts except as to the
24 issue of a divorce, so you can't use that as evidence, and
25 besides it's not -- mine's not dated and who knows how many

1 years -- I don't see how that has any bearing or relevance
2 whatsoever. Also, in regard to these comments of, number
3 one, there's no telephone number they came from as opposed
4 to ours. They show the telephone number hers and his. I
5 don't know if this a conversation allegedly between my
6 client and another person, whether he's the one saying "no
7 violence". "I told her you are upset with me." There's no
8 identification, so I don't know what weight or bearing that
9 has, because -- and he knows what we printed out. It has
10 telephone numbers on it showing who it was from or who it
11 was to, but there is no way of authenticating this or
12 giving it anything. In the divorce degree they -- at the
13 front of it does show January of 1975. The fact that
14 somebody didn't contest the issue of a divorce in January
15 of 1975 has no bearing today.

16 THE COURT - Well, I don't know if you could go in
17 default or not in Family Court in 1975. I don't know. But
18 nonetheless ---

19 MR. LANGLEY - We can call Mr. Rose to the stand
20 if you'd like, Your Honor.

21 THE COURT - I guess -- I guess in the words of
22 now dearly departed Judge Epps, we'll take it for what it's
23 worth.

24 MR. LANGLEY - Thank you, Your Honor. And just a
25 couple of comments on the case that's handed up -- we were

1 just now provided those -- the Ricks case that wrong
2 standard was applied, the Rule 60 standard which we're not
3 alleging should apply. That was the basis for the
4 reversal. Same issue in the Weinrauch case and then in the
5 -- in the Sundown case, this case -- I'm thankful for Mr.
6 Varner bringing it to your attention, because the
7 petitioner actually received an entry of default and that
8 entry of default was upheld by the South Carolina Supreme
9 Court, and then the McClurg case is in opposite on the fact
10 basis, but even in that case the default was upheld against
11 the party that was seeking to withdraw the default.

12 MR. SEGURA - Your Honor, if I could just -- I
13 just want to respond quickly on that. On the Ricks case,
14 which I think is real important in this case, because if
15 you look at the last paragraph, this lady left the suit
16 papers in her car, and what the Court said, look, that's
17 not enough in itself, but taking the totality of the
18 circumstances, holding all the factors, then the showing's
19 been made, and that's what you've got in this case, Judge.
20 You don't have one single thing. You've got these disputes
21 between lawyers. You've got people telling it's settled
22 and it's not settled, we were going to get a Mercedes, then
23 we got the guy going to hospital and almost died. It's a
24 totality of the circumstances case, which is why this man
25 should not be held in default.

1 THE COURT - Okay. Anything else on that motion?

2 (NO RESPONSE)

3 THE COURT - All right.

4 MR. VARNER - Nothing further, Your Honor.

5 THE COURT - All right. Thank you. Mr. Langley.

6 MR. HODGE - Your Honor, proceeding on the damages
7 aspect ---

8 THE COURT - Yes, sir.

9 MR. HODGE - --- we'd call Dr. Todd Morton.

10 THE COURT - Doctor, come forward, please.

11 DR. TODD MORTON, AFTER BEING FIRST DULY SWORN,

12 TESTIFIES AS FOLLOWS -

13 THE COURT - Thank you, doctor. Please be seated
14 and when you're comfortable there, please tell my court
15 reporter your full name, please.

16 DR. MORTON - Todd Morton.

17 THE COURT - All right, thank you. Yes, sir.

18 DIRECT EXAMINATION

19 BY MR. HODGE -

20 Q Dr. Morton, what is your occupation?

21 A I'm a clinical psychologist.

22 Q How long have you been a clinical psychologist?

23 A I've been licensed since 1999.

24 MR. VARNER - Your Honor, my client's unable to
25 hear. If he could speak up or get the mic closer.

1 THE COURT - All right.

2 Q Where'd you receive your undergraduate education?

3 A At University of North Carolina at Chapel Hill.

4 Q What year did you graduate?

5 A Undergraduate I graduated in 1987.

6 Q What was your major in?

7 A Psychology.

8 Q Following graduation from the University of North
9 Carolina, what did you do?

10 A I enrolled in PHD in clinical psychology program at
11 University of North Carolina Chapel Hill.

12 Q And received your PHD in clinical psychology in what
13 year?

14 A In 1994.

15 Q And following that did you do an additional
16 educational work?

17 A None since then, no.

18 Q But do you have to have a certain number of continuing
19 psychological courses like we do in the law?

20 A Yes, I've done continuing education as required for
21 licenser, yes.

22 Q Okay. Have you been practicing clinical psychology
23 since 1994?

24 A Yes, I have.

1 Q Okay. And to practice clinical psychology you have to
2 get certain licenses?

3 A You have to be licensed as a clinical psychologist or
4 supervised by a licensed psychologist.

5 Q Did you go through that process?

6 A Yes, I did.

7 Q Do you have licenses to practice clinical psychology?

8 A Yes.

9 Q In what state?

10 A In North Carolina and South Carolina.

11 Q And are those licenses currently active?

12 A Yes, they are.

13 Q Now, just tell us kind of what you do as a clinical
14 psychologist?

15 A My primary practice is performing evaluations - may --
16 and I perform evaluations of primarily to assess how a
17 person's mental health functioning affects various aspects
18 in their lives, so family functioning, ability to parent,
19 ability to work, those kinds of things.

20 Q Have you appeared in courts before?

21 A Yes, I have.

22 Q Been qualified as an expert before?

23 A Yes.

24 Q Have your qualifications as an expert ever been turned
25 down?

1 A No.

2 Q Okay. Did you perform a clinical evaluation in this
3 case?

4 A Yes, I did.

5 Q And did you -- did you reach certain opinions based
6 upon your evaluation?

7 A Yes, I did.

8 MR. HODGE - Your Honor, at this time I would
9 offer Dr. Todd Morton as an expert in the field of clinical
10 psychology.

11 THE COURT - Anything, Mr. Varner?

12 MR. VARNER - No objection, Your Honor.

13 THE COURT - Be so qualified.

14 Q Dr. Morton, tell us what you did with Paula Rose?

15 A With Ms. Rose I met and had an extended interview of
16 about two and a half hours and also had her complete a
17 psychological test called the Minnesota Multiphasic
18 Personality Inventory.

19 Q What is a Minnesota Multiphasic Personality Inventory?

20 A It is a measure that assesses a broad range of
21 psychological functioning from normal personality straits
22 to assessing for, you know, the presence of mental health
23 issues such as depression, psychosis, anxiety, those kinds
24 of things.

1 Q Now, as a result of your evaluation, did you prepare a
2 report?

3 A Yes, I did.

4 Q Okay. Would assist you in referencing in the report
5 as we're having this discussion?

6 A Yes, it would.

7 (WHEREUPON, DOCUMENT HANDED TO THE WITNESS)

8 Q And, doctor, do you have this report in your file?

9 A Yes, I do.

10 Q All right.

11 MR. HODGE - I'm going to hand the Court one and
12 hand one to defense counsel so we can kind of follow along.

13 (WHEREUPON, DOCUMENT HANDED TO THE COURT AND
14 DEFENSE COUNSEL)

15 MR. HODGE - And, Your Honor, we offer this as
16 Plaintiff's Exhibit 1.

17 THE COURT - Any objection?

18 (NO RESPONSE)

19 THE COURT - Mr. Varner, any objection?

20 MR. VARNER - Your Honor, if I could have a chance
21 to look at it.

22 MR. HODGE - I could examine and then you can make
23 a decision later on in admissibility. Does that suit?

24 MR. VARNER - Your Honor, I would prefer I get the
25 opportunity to look at it. I can't do both.

1 MR. HODGE - All right.

2 THE COURT - Take your time.

3 (BRIEF PAUSE)

4 THE COURT - Mr. Varner, any objection to the
5 report?

6 MR. VARNER - And if I -- I'm trying to move as
7 fast as I can, but this is single-spaced. It's a lot of
8 material. I'm trying to get through it as quick as I can.

9 (BRIEF PAUSE)

10 MR. VARNER - No objection, Your Honor.

11 THE COURT - Thank you. It's admitted without
12 objection. You want me to put mine in?

13 MR. HODGE - That'll be fine, Judge.

14 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
15 PLAINTIFF'S EXHIBIT NUMBER 1.)

16 Q Dr. Morton, in your report there's a section that --

17 MR. HODGE - I'm sorry. Do I need to start over?
18 I'm sorry.

19 COURT REPORTER - If you'd speak up a little bit,
20 too. You're kind of soft spoken.

21 MR. HODGE - Okay.

22 Q Dr. Morton, there's a section in your report,
23 observations and mental status functioning. What's all
24 that about?

1 A That's a section where you generally report any --
2 particularly any unusual aspects of a person's
3 presentation, address, any evidence that there's confusion,
4 intellectual disability, description of their emotional
5 state and -- and just any sort of things that you see that
6 might affect your interpretations later.

7 Q What was your feeling about that part of the
8 examination?

9 A Ms. Rose presented as average intelligence, coherent.
10 There's no problems with her thinking in those terms. She
11 was -- despite somewhat unstable emotions and that she
12 would get very upset and cry and appear distressed in
13 talking about certain subjects, but generally she was
14 organized and coherent and respond again was cooperative.

15 Q All right, and did she appear to be responding
16 appropriately to your questions?

17 A Yes.

18 Q You next have a topic entitled Current Circumstances.
19 Would that be similar to present history?

20 A Yeah, this -- in that section I describe kind of the
21 circumstance of the assaults by Mr. Rose and just summarize
22 some of the records that I had with regard to that
23 incident.

24 Q Tell us how it was described to you.

1 A How it was described to me by Ms. Rose or in the
2 information that I -- because I got some medical records
3 and police reports and ---

4 Q Just -- why don't you summarize your interpretation of
5 what you got in the medical records, and by the way, those
6 are records you generally rely on in the course of your
7 business?

8 A Yes, that's typical practice, is to look at
9 documentation, background documentation.

10 Q All right, so what background documentation did you
11 review?

12 A I reviewed the Greenville County Sheriff's office
13 incident report and supplemental report. There were a
14 couple of medical reports describing the injury to her face
15 and her ear and there were the medical notes from her
16 psychiatrist.

17 Q All right. And then you had her description of what
18 occurred.

19 A Yes.

20 Q Did you find that her description was consistent with
21 the other descriptions?

22 A Yes, I did.

23 Q All right, and just kind of summarize for us what
24 happened to her?

1 A My summary would be that she and her husband had been
2 having difficulties. He had gone out, apparently, with
3 another woman and when he came home, she was upset and
4 confronted him about it, and he hit her in the head with --
5 apparently, with a police radio several times.

6 Q Okay. And based on your review of the records, did
7 she suffer physical injury?

8 A It appears -- the records suggested she suffered a
9 bruise and a laceration to her ear, yes.

10 Q All right. Were you made privy to any pictures that
11 depicted that?

12 A Yes.

13 Q Did they corroborate what was disclosed to you about
14 her injuries?

15 A I'm not a medical doctor, but on the surface they
16 seemed to be consistent.

17 Q Okay. Did you at some point take a social history?

18 A Yes, I did.

19 Q Now, from a clinical psychology standpoint, why is it
20 important to take a social history?

21 A A social history gives you an idea of the kind of
22 stresses they've gone through in their life, events in
23 their life that might shape their personality;
24 understanding prior relationships helps you understand a

1 little bit of what's going on and maybe going on in current
2 relationships and their adjustment.

3 Q With regard to Paula Rose's social history, what, if
4 anything, did you find significant?

5 A She went through a number of traumas in childhood.
6 Her father died of a heart attack, and she found him, and
7 she was sexually abused for a period of time, generally had
8 positive relationships with -- relationship with her mother
9 and moved out of the home and married at a relatively young
10 age.

11 Q And thereafter, in her professional life, did anything
12 significant occur prior to her relationship with the
13 defendant?

14 A She was -- she reported that she was working at the
15 DMV and took a man out for a driver's examination and he
16 became angry and assaulted her, hitting her and choking her
17 until she was unconscious.

18 Q Did she describe difficulties with that particular
19 situation?

20 A She indicated that she, as a result of that, started -
21 - sought and received mental health treatment. She had
22 fairly severe symptoms of post traumatic stress disorder.

23 Q So can we fairly say that to a reasonable degree of
24 medical certainty, more likely than not, she had PTSD
25 before this defendant struck her?

1 A She had -- she had experienced PTSD and been diagnosed
2 with it before Mr. Rose struck her on two separate
3 occasions. Post traumatic stress disorder is not
4 necessarily a permanent disorder. She had experienced
5 symptoms of post traumatic stress disorder after the
6 incident at the DMV. Several year -- she went through
7 treatment, saw significant improvement and most of those
8 symptoms had been removed. She then went through an
9 experience in which she was physically abused by her first
10 husband and that saw the reemergence of symptoms of post
11 traumatic stress disorder.

12 Q And did those resolve and she resumed a fairly normal
13 life with regard to the relationship with this defendant
14 prior to this physical altercation?

15 A Yes, she described that over the course of years her
16 symptoms of post traumatic stress disorder essentially went
17 away and did not recur until this incident.

18 Q Okay. Tell me for -- the Court probably knows more
19 about it than I do, but what -- how would you define post
20 traumatic stress disorder from a psychological standpoint?

21 A Post traumatic stress disorder is a disorder that
22 happens after you've been through some sort of traumatic
23 experience where your life is -- your life -- you're
24 threatened with death or a serious injury and what happens
25 is the mind kind of adjusts and you're always on edge.

1 expecting another -- on guard, so as a result, you're very
2 anxious and tense all the time, very alert to any sort of
3 threats in your environment, easily startled. Typically
4 there's a withdrawal from relationships, irritability,
5 depressed mood often goes along with that.

6 Q But you can treat that and people can sort of go in
7 remission. Is that fair?

8 A Yes.

9 Q And that appears to be what happened ---

10 MR. VARNER - Objection, Your Honor, to the
11 leading.

12 MR. HODGE - All right, I'll rephrase.

13 Q On the two occasions she previously had PTSD, did it
14 appear she went into remission?

15 MR. VARNER - Again, that's still leading, Your
16 Honor.

17 THE COURT - Re-phrase it, Mr. Hodge.

18 MR. HODGE - Okay.

19 Q How did it appear she reacted to the PTSD after the
20 second treatment?

21 A It appears that the symptoms of post traumatic stress
22 disorder were essentially eliminated.

23 Q Okay. Now, we hear a lot about soldiers going
24 overseas encountering one, two, three tours of duty. Is

1 there a cumulative effect of PTSD when you have multiple
2 traumas?

3 A There is an effect in which the experience of a prior
4 trauma increases your risk of developing post traumatic
5 stress disorder, whether or not that first trauma actually
6 does cause a post traumatic stress disorder, so if you go
7 through a traumatic stressful event, you may not develop
8 any symptoms, but at a later point when you go through
9 another traumatic event, that's when the post traumatic
10 stress disorder comes out.

11 Q Doctor, did you also obtain a work history?

12 A Yes, I did.

13 Q Why is this important in terms of a clinical
14 evaluation?

15 A In general terms just getting to know the person also
16 can suggest, you know, what their capabilities are and have
17 been in the past. It can suggest any sort of limitations
18 that they have, and often getting the work history can tell
19 you about difficult traumatic stresses and those kinds of
20 things.

21 Q Okay. And you obtained such a history. Is that
22 correct?

23 A Yes.

24 Q Then there's a phrase called psycho pathology in your
25 report. What does that mean ---

1 A That's a section in which I described the presence of
2 any mental health symptoms, her history of symptoms, both
3 in the past and at the time of the evaluation.

4 Q And summarize that finding for us with regard to Ms.
5 Rose.

6 A Okay. As I've already noted, she appears to have gone
7 through two bouts of post-traumatic stress disorder prior
8 to Mr. Rose assaulting her and then that resulted in the
9 recurrence of symptoms of post-traumatic stress disorder.
10 In addition, she also has a history of experiencing
11 symptoms of depression, and these have been somewhat
12 sporadic throughout her life. She's had -- in addition to
13 the traumas, she's had other stressful experiences,
14 relationship issues with criminal charges that have seemed
15 to result in increases in symptoms of depression.

16 Q Doctor, after you concluded the psycho pathology
17 assessment, did you -- did you conduct a clinical
18 functional assessment?

19 A Yes.

20 Q What is that about?

21 A That's actually a summary of the other sections. This
22 is kind of a section that says, this is -- this is where
23 she's at, these are the main points, whereas in the other
24 sections I've gone through a lot of social history, you

1 know, a lot of detail on the psycho pathologist; this is my
2 summary of what's going on right now.

3 Q Doctor, did you believe that before this event
4 occurred, Ms. Rose had suffered from the pre-existing
5 condition of post-traumatic stress disorder?

6 A I believe that from her report and from the records
7 that I had, that she had in the past suffered post-
8 traumatic stress disorder. It appeared that prior to this
9 incident she was not experiencing symptoms of post-
10 traumatic stress disorder but was experiencing some
11 symptoms of -- moderate symptoms of depression and anxiety.

12 Q So did you believe that she had on-going pre-existing
13 depression prior to this injury?

14 A Yes.

15 Q All right. Now, subsequent to your evaluation, have
16 you formed an opinion to a reasonable degree of clinical
17 psychology whether most probably Paula Rose's post-
18 traumatic stress disorder that she experiences now was
19 either caused by or exacerbated, accelerated and aggravated
20 by the actions of the defendant?

21 A Yes.

22 Q And what is your opinion?

23 A I believe that her current symptoms of post-traumatic
24 stress disorder were caused by her being assaulted by Mr.
25 Rose.

1 Q And the same question for the clinical depression. Do
2 you believe she had depression that was pre-existing this
3 injury?

4 A Yes, I do.

5 Q And do you believe to a reasonable degree of medical
6 certainty that most probably the incident with the husband
7 aggravated, accelerated and exacerbated the pre-existing
8 depression?

9 A I believe that the -- her assault by Mr. Rose
10 aggravated the pre-existing depression.

11 Q Okay. Now, in real world terms, just kind of -- I'm a
12 fifth grader -- okay -- tell me what that means? What's in
13 it for Paula for the future?

14 A What that means, there's a -- there's a couple of
15 things. She has a history of on-going depression that
16 sometimes she needs treatment for and sometimes she
17 doesn't, and that's likely -- likely to continue. I think
18 particularly the recurrence of the post-traumatic stress
19 disorder is going to be something that impacts her
20 particularly social functioning but also potential for
21 work, particularly -- each time you go through this process
22 of traumatization and then recovery, you recovery, but it's
23 not complete, and so given her multiple experiences, her --
24 she's likely to have fairly prolonged symptoms of post-
25 traumatic stress disorder, which would involve tending to

1 be tense and anxious a lot, tending to withdraw from
2 intimate relationships, tending to irritable and short-
3 tempered and those kinds of things which makes inter-
4 personal relationships difficult. She's also likely to be
5 easily overlong by stresses; situations that remind her of
6 her traumas are likely to cause intense anxiety, so
7 situations that, you know, interactions -- for example,
8 she's likely to be particularly uncomfortable with men in
9 closer relationships for a period of time. Also, if she's
10 -- ever goes through a traumatic experience in the future,
11 she would be at increased risk to see the development of
12 post-traumatic stress disorder even if she's gotten --
13 successfully been treated for it.

14 Q You've treated people with PTSD. Is that correct?

15 A I have treated some people with PTSD. I don't have
16 extensive PTSD treatment experience.

17 Q You've evaluated many people with PTSD.

18 A Yes, I have.

19 Q And when it comes to evaluating, do you also have to
20 make a determination whether or not more likely than not
21 they need future treatment?

22 A Generally, yes.

23 Q Have you made that determination in this case?

24 A Yes.

1 Q And I hand up to you the summary of future medical
2 expenses. I've got one for counsel and one for you and put
3 it into evidence. Is this a summary that sets forth a
4 recommended treatment for Paula Rose?

5 A Yes, it looks like it sets forth expected treatment
6 cost.

7 Q And do you believe more likely than not she needs this
8 because of what her husband did to her?

9 A Let me be clear that when you're predicting future
10 treatment needs, that's an inexact science. If I were
11 making a recommendation about what treatment I think Ms.
12 Rose needs, I would recommend that she participate in
13 individual counseling on a roughly weekly basis for at
14 least a year, as well as being seen by a psychiatric for
15 psychotropic medications. She may need treatment on a
16 less-frequent basis after that. So this is -- looks like
17 an estimate of the expenses that would be expected in the
18 year -- in the immediate year following.

19 Q And is that because of what happened to her with her
20 husband?

21 A Yes, I believe that would be a result of the assault.

22 Q All right. And you've got a note on here that any
23 relapse would increase this amount?

24 A Certainty.

1 MR. VARNER - I don't see any note on there saying
2 that, not on my copy. Yes, we haven't seen this. If I
3 could look at this. I haven't seen this til now.

4 (WHEREUPON, DISCUSSION IS HELD BETWEEN COUNSEL,
5 WHICH WAS NOT REPORTED.)

6 MR. VARNER - We have it now, Your Honor. No
7 objection.

8 THE COURT - Okay, without objection.

9 MR. HODGE - Plaintiff's Exhibit 2.

10 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
11 PLAINTIFF'S EXHIBIT 2.)

12 Q When a football player gets a -- one concussion,
13 that's one thing. If he gets two or three, it has a
14 cumulative effect and he gets worse and worse. Is that
15 right?

16 A My medical knowledge is limited, but that's my
17 understanding.

18 Q Is that the analogy to this future relapse that's
19 maybe required for more treatment?

20 A Um, I'm not sure it's an exact analogy in that I'm not
21 sure that her current symptoms of post-traumatic stress
22 disorder are cumulative in that way. I guess if we're
23 going to a medical analogy, I would do it this way. Let's
24 say you have a history of knee injuries, football injury,
25 work injury, motor vehicle accident and each time ---

1 MR. VARNER - Your Honor, I'm going to object.
2 He's already testified he has no medical knowledge, and
3 he's not an MD, and we're veering off into a territory that
4 he's not qualified to testify or give any conjecture or
5 hypothesis on.

6 THE COURT - Mr. Hodge?

7 MR. HODGE - Your Honor, it's not super important.
8 I just wanted an analogy. That's it, Your Honor.

9 THE COURT - All right, he withdraws the question.
10 Anything further, Mr. Hodge?

11 MR. HODGE - No, Your Honor.

12 THE COURT - Okay. Mr. Varner or Mr. Segura?

13 MR. VARNER - All right, sir.

14 THE COURT - Let me do this before we start. Are
15 you going to be more than about 15 minutes, because our
16 staff's been going for ---

17 MR. VARNER - Oh, yes.

18 THE COURT - Okay. Well, let's take -- let's take
19 about 10, 12, 15 minutes here, because my staff -- my court
20 reporter and my law clerk have been here since 2:00
21 o'clock, so ---

22 MR. VARNER - Your Honor, before we break, he's
23 used documents up there. Can we have -- that's in the
24 file. Can we have those and so we can look at them during
25 the break so that we can cross examine him?

1 THE COURT - I don't know why -- any objection?

2 MR. HODGE - I'd have to look at them. I doubt
3 we'd have any objection.

4 THE COURT - Okay. Are those his file or ---

5 MR. VARNER - It's his file.

6 DR. MORTON - These are my clinical files.

7 MR. VARNER - Well, Your Honor, I'm -- he brought
8 them to the witness stand. I'm entitled to look at them.

9 THE COURT - Any problem with that, Mr. Hodge?

10 MR. HODGE - I don't think there's going to be,
11 but it's fair, because he did reference them, so ---

12 THE COURT - Y'all talk about it over the break
13 here.

14 (WHEREUPON, RECESS TAKEN)

15 THE COURT - All right, Mr. Varner?

16 CROSS EXAMINATION

17 BY MR. VARNER -

18 Q All right, sir, I believe you have a doctorate in --
19 is it psychology or what was it?

20 A Clinical psychology.

21 Q Clinical psychology. All right. And part and parcel
22 of what you do is you get a history from the patient
23 themselves. Correct?

24 A Correct.

25 Q And her history she gave to you, took it as correct.

1 A I took it as correct?

2 Q Being truthful.

3 A I took it as her history. Generally there are -- in
4 any individual's history there are variety of inaccuracies
5 and biases when a person is telling their own story.

6 Q Okay. Well, did you find her to be credible,
7 believable and intelligent?

8 A In general, yes.

9 Q Okay. So you would not find it unusual her husband
10 would believe things that she told him, or anyone else for
11 that matter?

12 A In general, yes.

13 Q Okay, sir, now one of the things you talked about was
14 you met with her. How did you first come in contact with
15 her?

16 A She was referred for a psychological evaluation.

17 Q Referred by whom?

18 A By her attorneys.

19 Q Okay, so her attorneys hired you.

20 A Correct.

21 Q When was that?

22 A It was recently, within the last couple of weeks I
23 would say. I don't know the date.

24 Q Do you have an engagement contract with them?

25 A No.

1 Q All right, well, you have a cover letter from the law
2 firm in there. And I believe you previously testified that
3 you referred certain pertinent medical records and stuff.
4 Is that correct?

5 A Correct.

6 Q Where'd you get those medical records?

7 A Her attorneys provided them for me.

8 Q Okay. So on January the 15th you got that letter. If
9 you would, read that letter to the Court, sir.

10 A It says: Dear Dr. Morton, Ms. Rose is scheduled to see
11 you on Friday, January 15, 2015 at 10:00 a.m. for a
12 psychological evaluation. Ms. Rose has a pending civil
13 case in which she was assaulted and struck in the head, and
14 I am enclosing to you at this time a copy of relevant
15 medical records from our file. I would appreciate your
16 addressing the psychological matter and rendering your
17 opinion regarding her psychological condition as well as
18 completing the enclosed medical assessment of abilities to
19 do work-related activities, parenthesis, mental,
20 parenthesis, form. If you have any questions or concerns,
21 please do not hesitate to contact me. Thank you for your
22 attention in this matter, Very Truly Yours, Tracy Pack,
23 Paralegal to Charles Hodge.

1 Q All right, so you didn't review her medical records;
2 you reviewed her relevant medical records as edited or
3 given to you by her lawyer.

4 A I reviewed the records provided by her lawyer.
5 Correct.

6 Q Okay. And it says in here -- it didn't say these are
7 her medical records; it says these are her relevant medical
8 records. Correct?

9 A That's what it says. Correct.

10 Q It clearly -- that's not all of her medical records.
11 That's the ones they want you to see. Correct? Isn't that
12 what relevant means?

13 A I assume that it was not all of her medical records.
14 Correct.

15 Q Okay. But it was the ones her lawyers wanted you to
16 see.

17 A It was the ones they selected. Correct.

18 Q Okay, sir. And you made mention of her ability to
19 work. Do you ever testify at social security hearings?

20 A I have not.

21 Q Okay. Have you ever testified to anybody's inability
22 to work at a workmen's comp hearing?

23 A No, I have not.

24 Q Okay. How many times have you testified for any of
25 the members of this law firm?

1 A I believe that I have testified for them on one prior
2 occasion.

3 Q Okay. Now, approximately, how many times have you
4 testified in Court?

5 A I couldn't tell you for sure, but it's more than 25.

6 Q Okay. And is it generally for plaintiff's law firms?

7 A No.

8 Q Okay. So you'll switch; you'll go for defense.

9 A I -- generally, I'm hired as an independent expert,
10 most often by the State, but -- and I offer my opinions.
11 Sometimes the defendant subpoenas me; sometimes the
12 plaintiff subpoenas me, depending on who wants me to
13 testify.

14 Q Where is your office?

15 A I have offices in Gaffney and in Waynesville, North
16 Carolina.

17 Q Okay. And where was it that Ms. Rose saw you?

18 A I saw her at Mr. Hodge's office in Spartanburg.

19 Q You mean to tell me you did an evaluation of her at
20 her lawyer's office?

21 A Correct.

22 Q And how long were you there?

23 A I would esti -- it was over two hours I know, two to
24 three hours.

1 Q And is that the only time you've ever met with Ms.
2 Rose to talk with her?

3 A That is the only time I've met with her, yes.

4 Q So in two and a half hours of talking with her,
5 talking to lawyers or whatever, you formed all of this
6 opinion based on that.

7 A Correct.

8 Q Okay, sir. Did anybody tell you that she's been on
9 social security disability for PTSD for some 15 to 17
10 years?

11 A Not -- I wasn't told of the time-frame that she'd been
12 receiving disability benefits for.

13 Q Well, wouldn't that be an important factor to you in
14 any diagnosis or any prognosis for her future, how long she
15 had PS -- PTSD? You don't even know that?

16 A I was aware that she has post-traumatic stress
17 disorder ---

18 Q I didn't ask you if you knew that. How long she had
19 had it is not a factor you would consider?

20 A It is a factor I would consider, yes.

21 Q Okay. Do you dispute whatsoever she's been on
22 disability for -- or applied for it some 1997, '98,
23 whatever, for some 15 years?

24 A I have no knowledge of her applications for
25 disability.

1 Q Okay. Well, did she tell you that after she was
2 attacked down in Seneca that she subsequently has been on
3 social disability, getting a check?

4 A She indicated that she has not been in employed since
5 that time.

6 Q Okay. Well, did she tell you she was getting a check
7 for total disability for PTSD from the government?

8 A She did not say that, no.

9 Q Okay. Are you aware that the government as a part of
10 social security re-evaluates you every three years ---

11 A Yes, I am

12 Q --- to see if you still have PTSD? Are you aware of
13 that?

14 A I'm aware that they re-evaluate. It's not always
15 every three years, but I'm aware of the re-evaluation
16 process.

17 Q All right, sir, well, you testified she's had post-
18 traumatic stress twice but she has recovered. During what
19 periods of time did she recover?

20 A It appears that she had a brief period of recovery ---

21 Q When?

22 A --- from -- in -- I would estimate around 2000 to
23 2003, and then that subsequent to roughly 2009/2010.

24 Q And did you ask her, did you still get that social
25 security check every single month even though you weren't

1 even disabled, you were defrauding the government? Did you
2 ask her that?

3 A No, I did not ask her that question, no.

4 Q Would that have some bearing on her credibility and
5 the fact -- of the factors she told you and the way she
6 told you that, that she has continued to do that?

7 A You're asking me -- I'm sorry, you need to clarify
8 what is it you're asking me.

9 Q I'll withdraw that question. Did anybody tell you
10 she's been seeing Dr. Page since about 2000 or before?

11 A Yes, she did.

12 Q Okay. If you would, just leave that there for just a
13 moment, sir. And in 15 years of seeing a psychiatrist --
14 and I'll let you look at that file -- do you see any other
15 notes from Dr. Page in there?

16 A No, I believe there are only notes from the last year
17 or so, year or two.

18 Q Two pages of notes in 15 years of medical history is
19 what you reviewed?

20 A No, I reviewed medical notes for the past year.

21 Q Okay. Two pages of one year of treatment from her
22 treating psychiatrist.

23 A That is the information that I reviewed from her
24 treating psychiatrist.

1 Q Okay. Did you pick up the phone and talk to her
2 treating psychiatrist from the last 15 years?

3 A No, I did not.

4 Q Is he here today? Do you see him? Have you talked to
5 him?

6 A I would not know him. I haven't spoken with him.

7 Q All right, sir, I'm not real good at reading doctor's
8 reports, but this is what you relied on. If you would,
9 read the date and what those records say from Dr. Page.
10 Start with the first and read them out loud, please, sir.

11 A Okay. Now, you want me to read them from the earliest
12 date to the most recent, because if ---

13 Q Yes, sir, the way you've got them in ---

14 A You want me to read them just like this, because the
15 way doctor's notes are set up, these are the -- this is of
16 the earliest and these are the most recent.

17 Q I think it would be most logical and probably for --
18 easier for you and me -- read it in chronological order ---

19 A Okay.

20 Q --- from earliest to the most present. And if you
21 would, give the date as you read it.

22 A Right. There's a note from October 17, 2013, that
23 says, patient seen, reports charges pending for arson of
24 her own home, on Prozac, 20 milligrams -- some of it's

1 eligible -- and Ativan to take in the evening, and it's his
2 signature. February 26th ---

3 Q All right, hold on here just a moment.

4 A Okay.

5 Q I know you're not a medical doctor, but you are a
6 clinician (sic) -- excuse me for messing that word up --
7 what is Prozac? What is that?

8 A Prozac is an anti-depressant medication.

9 Q Okay. So we know as of that date she was suffering
10 from depression. Correct?

11 A She was being treated for depression. Correct.

12 Q Okay. And what date again was that?

13 A October, 2013, October 17, 2013.

14 Q All right. What was the other medication she was on?

15 A That was Ativan.

16 Q And what is Ativan? Is that a mood stabilizer or
17 what?

18 A It is an anti-anxiety medication.

19 Q Anti-anxiety. And so we know she was having
20 depression and anxiety at that stage.

21 A Correct.

22 Q And those are some of the symptoms of PTSD.

23 A Those are separate but overlapping categories of ---

24 Q Okay. So a person with PTSD can very well have those
25 symptoms some year before this alleged incident.

1 A Correct. As I testified, she had pre-existing
2 symptoms of depression prior to this assault.

3 Q Okay. Well, I know that, but you don't have his
4 medical records. You don't know how many years she's been
5 taking Prozac, Ativan, psycho-tropic PTSD medication or for
6 how many years or whether she ever came off of it or
7 whether she had years of recovery. You don't know, do you?

8 A I have her report. Correct.

9 Q Okay. So let's continue. We know as of that date
10 she's having anxiety and depression, which are some of the
11 symptoms of PTSD.

12 A I understand -- what we know is that she's being
13 treated for anxiety and depression. It's not at all
14 uncommon, for example, to be treated for depression and yet
15 not be experiencing any symptoms of depression. If the
16 treatment is successful you will continue to take the
17 Prozac even though you're not experiencing symptoms of
18 depression.

19 Q Well, you don't know that unless you look at all the
20 medicals and you actually talk to the psychiatrist that's
21 been meeting with her and thought her condition was strong
22 enough to give her medications and write her prescriptions
23 for the last 15 years. You don't know that. You're
24 guessing, aren't you?

1 A What I -- what I know is what he's saying her
2 functioning is at that time.

3 Q Okay. You don't know why she was taking the
4 medication. It could be for that, but you didn't bother to
5 find out, did you?

6 A She was being treated -- he diagnosis her with post-
7 traumatic stress disorder.

8 Q What did you do to find out why she was taking that
9 medication?

10 A I reviewed his records and spoke with her.

11 Q Okay. So back to -- you never talked to her
12 psychiatrist; you never looked at her past records; you
13 don't know why she was being given that medication.

14 MR. HODGES - Objection, Your Honor, this is --
15 this is not proper questioning. He's just going on a rant.
16 He's badgering the witness. This witness has not been
17 hostile.

18 MR. VARNER - Your Honor, this is cross-
19 examination. If he would just answer my question
20 correctly, I would ---

21 MR. HODGES - Cross is -- cross is one thing.
22 Run-on statements and doing a closing argument in front of
23 a Judge is quite another.

24 (WHEREUPON, BENCH CONFERENCE WAS HELD WHICH WAS
25 NOT REPORTED.)

1 Q All right, so let's go to the next entry.

2 A February 26th, 2014, patient seen, open quotes, being
3 reviewed for disability, close quotes. I start shaking
4 when I start thinking about working again. That's a quote.
5 Patient scheduled to face trial May 5, 2014 for arson,
6 etcetera, prescribed Lunesta and continued Prozac.

7 Q Lunesta, that's a sleep medication. Correct?

8 A That's a sleep medication. Correct.

9 Q So at that time, evidently, she couldn't even sleep;
10 she's shaking.

11 A That's what it says. Correct.

12 Q Okay. And that is apparently a stressor caused by --
13 she's being reviewed for social security disability, and
14 she's getting ready to go to trial on criminal charges.
15 Correct?

16 MR. HODGES - Judge, he -- misleading question,
17 Your Honor. No evidence in the record that she was being
18 reviewed for social security at that point in time.

19 MR. VARNER - That's what it says.

20 Q Read it again, sir, so there's no question.

21 A Okay. February 26th, 2014, patient seen, quotes, being
22 reviewed for disability, close quotes.

23 Q Thank you, sir.

24 MR. VARNER - Your Honor, I would assume that
25 objection's overruled. That is exactly what he said.

1 THE COURT - Yes, sir.

2 Q All right, sir, now at that point in time she can't
3 sleep, and she's shaking, and she's given anti-depressants
4 or mood -- whatever they are -- psycho-tropic medication.
5 Correct?

6 A Correct.

7 Q And you don't -- you would conjecture that a doctor
8 would be -- a person who is licensed to write those
9 prescriptions would be doing that if there wasn't real good
10 cause for that. Correct?

11 A I would -- I have no reason to believe that he wasn't
12 properly treating her.

13 Q All right, sir. What's the next entry, the date and
14 what does it say?

15 A April 22, 2014, it says patient seen; her trial is
16 scheduled to start in 13 days, increased anxiety and
17 stress. Plan, dash, prescribe Ativan, and it gives the
18 dosage, to take as needed for anxiety, continue Prozac, and
19 something that's eligible, and then Lunesta.

20 Q All right, sir. And you do know from the history you
21 gave, the trial she's talking about is the criminal trial.
22 Correct?

23 A Correct.

1 Q All right, and it is a fair statement, people can have
2 post-traumatic stress disorder for a variety of reasons. It's
3 different for different people. Correct?

4 A You're asking the causes are different or the symptoms
5 are different for different people?

6 Q Causes are different.

7 A Cause is always a traumatic event.

8 Q Okay. But again, a perspective of what may be
9 traumatic to me may not be traumatic to you. Correct?

10 A Actually, that's not correct. For a diagnosis from
11 the DSM, which is official diagnostic manual of the
12 American Psychiatric Association, a trauma must be an
13 incident in which one's life, in which one reasonably feels
14 their life is threatened or they're in danger of serious
15 physical bodily harm or in which they're exposed to another
16 person being that way, so in this case and I'll -- for
17 example, going to trial is a stressor; it is not a trauma.

18 Q Okay. I -- maybe I asked my question wrong. Not to
19 cause PTSD but to trigger or re-trigger, I guess, is the
20 better term, to make the symptoms get worse or re-appear.
21 That could be stressors. Correct?

22 A Stressors make mental health symptoms in general
23 increase? Is that what you're asking?

24 Q I guess. That's probably an accurate statement. All
25 right, let me give you a hypothetical. A young woman is

1 repeatedly sexually assaulted as a minor, it can be any
2 individual, but this person wore Old Spice cologne; this
3 person does suffer from PTSD, but over the years with
4 medication, psychiatric treatment, this person is
5 functioning just fine. They walk by me; I happen to be
6 wearing Old Spice; it can retrigger and bring on another
7 on-set of symptoms, because it makes them relive that past
8 experience. Is that correct?

9 A That kind of experience could cause intense anxiety.
10 Correct.

11 Q All right, sir. Go ahead -- and intense ---

12 A It's ---

13 Q I'm sorry?

14 A It's not likely -- if they've been successfully
15 treated, it's not likely that a non-threatening situation
16 will cause a re-emergence of post-traumatic stress
17 disorder. It may cause intense anxiety, although they
18 would suggest that the treatment hasn't been fully
19 successful.

20 Q Would it be as a layman for me to say it would
21 retrigger it so-to-speak?

22 A It depends on what you mean. I mean if you mean it
23 might cause her significant intense anxiety, correct. If
24 you mean it would retrigger the entire post-traumatic
25 stress syndrome, not likely to be correct.

1 Q But you certainly couldn't sue me for wearing Old
2 Spice, could you?

3 A Correct.

4 Q All right, sir, what's the next entry?

5 A 6/4/14, patient seen, reports she was found guilty of
6 arson, filing false something, something else that's
7 unintelligible and police report. Patient says she ---

8 Q All right, hold just a moment. I'll help you with
9 that ---

10 A False insurance claim and police report.

11 Q Does it show she was convicted -- she was convicted of
12 arson? Does it show that in the notes?

13 A It says -- I'll read it -- I'm just pointing out the
14 unintelligible part.

15 Q All right, sir.

16 A It says: she was found guilty of arson, filing false
17 insurance claim and police report. Patient says she and
18 attorney were shocked. We -- quotes -- we thought that
19 such a weak case, we didn't even offer a defense, end
20 quotes. Patient given five years house arrest and
21 probation. Patient tearful and upset, says ---

22 Q Excuse me. Did you say cheerful or tearful?

23 A Tearful.

24 Q All right, sir.

1 A Patient notes that -- or patient says, open quotes, as
2 low as I've ever been, close quotes. Patient notes
3 thoughts of suicide, no plan and patient says, family slash
4 religious inhibitions. The plan was to increase dosage of
5 Prozac and continue Lunesta.

6 Q All right, sir.

7 A On the ---

8 Q I'm sorry. Didn't mean to interrupt.

9 A Okay. Out on the side in the margin it says facing
10 restitution of about three hundred and thirty thousand
11 dollars, insomnia, agrees to return for counseling.

12 Q And, again, what was that date?

13 A June 4, 2014.

14 Q And at that time she is contemplating suicide?

15 A She has -- let me see. She had thoughts of suicide.

16 Q Are thoughts of suicide one of the things you would
17 look for in PTSD?

18 A There's a slightly elevated risk of suicide, but it's
19 not one of the main criteria. This is more related to
20 symptoms of depression.

21 Q All right, so we know as of June of 2014 she can't
22 sleep; she is shaking; she has anxiety; she has depression,
23 and she can't sleep and she's even thinking of suicide.

24 Correct?

25 A That seems relatively consistent with what I read.

1 Q Okay, sir. Well, during that period of time, was she
2 out of the PTSD according to your diagnosis, what you
3 previously testified to? She wasn't suffering from PTSD
4 until September the 18th of 2014.

5 A Correct.

6 Q Okay, so at that point in time she doesn't have PTSD
7 according to you?

8 A I believe there's not evidence for that. Would you
9 like me to explain?

10 MR. HODGE - You're entitled to explain. Go
11 ahead.

12 A Okay.

13 THE COURT - Yes, sir.

14 Q Did you meet with her during that period of time ---

15 MR. HODGE - Judge, ---

16 A I'm going to respond to your previous question.

17 Q I'm sorry.

18 THE COURT - Go ahead, Doctor.

19 A A psychological -- post-traumatic stress disorder is a
20 particular syndrome of symptoms. Okay? Depression is a
21 different syndrome of symptoms. Generalized anxiety is a
22 different syndrome of symptoms. They do overlap some.
23 However, the primary symptoms are quite different. It
24 appears at this time the stress that she was undergoing
25 with the trial resulted in the exacerbation of symptoms of

1 depression, suicide, crying, those kinds of things. That's
2 not unexpected. There's no mention of exacerbation of
3 symptoms of post-traumatic stress disorder, which is a very
4 different syndrome. There's no mention of recurrence of
5 intrusive recollections of trauma. There's no mention of
6 occurrence of hypervigilance. There's no mention of a
7 recurrence or presence of an exaggerated startle response;
8 there's no indication of increased irritability; there's no
9 indication of increased isolation from social
10 relationships. So what he's provided here is a description
11 of depression. Okay? Which I believe I testified she had
12 on-going symptoms of depression prior to the assault, but
13 it does not appear to be on-going present symptoms of post-
14 traumatic stress disorder based on her psychiatrist's
15 notes.

16 Q Well, do you see anything in the notes that says she
17 no longer has PTSD? Up to that date, do you see that
18 anywhere?

19 A There's nothing in there that says she no longer has
20 PTSD.

21 Q All right, he classified -- I believe those things say
22 she has moderate depression. Is that correct?

23 A You're referring to my report?

24 Q What you were reading. Oh, your reports?

25 A My report?

1 Q (Indicating yes)

2 A I diagnosed her -- yes, I indicated I believe in the
3 functional assessment that she was experiencing moderate
4 symptoms of depression.

5 Q Okay. Is thoughts of suicide or telling your
6 psychiatrist you're contemplating or thinking suicide, is
7 that a sign of moderate depression?

8 A It depends on -- one of the things you have to
9 distinguish between is between the syndrome of depression
10 and being down or upset at a particular moment in time.
11 You've just been found guilty of a felony, therefore, you
12 may respond even if you have no history of clinical
13 depression, you -- and you think -- you may respond in very
14 exaggerated emotional responses. Okay, ---

15 Q So that would be what -- I'm sorry ---

16 A And so -- so in order to distinguish between moderate,
17 severe, mild levels of depression, you look at the total
18 clinical picture, which includes sleep patterns, which
19 includes appetite patterns, which includes level of energy,
20 brief thoughts of suicide. You're not necessarily --
21 severe depression. Plans for suicide might be more
22 characteristics of severe depression. The question is do
23 these continue or is this an immediate response to being
24 found guilty of a felony.

1 Q Okay, you don't know how long her thoughts of suicide
2 were. It doesn't say the notes, does it? And you didn't
3 talk with the psychiatrist.

4 A There are no further mentions of suicide ---

5 Q And you didn't talk to the psychiatrist.

6 A No, I did not talk to the psychiatrist.

7 Q And in that regard you say that could be just what a
8 layman would call situational depression, it passes.

9 A Could be situational, emotional upset, yes.

10 Q Okay. But it also could be clinical depression she's
11 still suffering from as of that time.

12 A It would be, if you'll allow me to infer, that she has
13 a history of experiencing symptoms of depression and her
14 conviction exacerbated that.

15 Q And you agree that is long before this incident with
16 her husband.

17 A Correct, she -- there's -- yes. Correct.

18 Q What's the next entry, sir?

19 A July 7, 2014, patient seen, reports on house arrest
20 and awaiting upcoming Court trial. Patient request
21 statement, read her past and current psychiatric treatment,
22 continue Prozac and Ativan, -- let's see -- PRN for
23 anxiety. That means to take as needed for anxiety.
24 Patient has continued to see a counselor, looks like,
25 Lindon (sic) Morton.

1 Q Well, I'll go ahead -- I've got to ask the question.

2 Did you talk to her counselor ever?

3 A No, I did not.

4 Q Did you get any notes from her counselor?

5 A No.

6 Q Did you even know she had a counselor prior to January
7 the 15th?

8 A She informed that she'd been in counseling on and off
9 for a number of years.

10 Q Okay. But she -- you haven't talked to her prior to
11 January 15th.

12 A Talk to Ms. Rose prior to January 15th?

13 Q Yes.

14 A No.

15 Q Okay. All right, sir, so you have no idea how long
16 she's been going to a counselor.

17 A I have her report that it's been at least 15 years on
18 and off.

19 Q Okay. And you have no idea what she has been
20 reporting to her counselor.

21 A No, I don't.

22 Q Wouldn't that be a very important factor in making any
23 kind of diagnosis on the 15th of January of 2015?

24 A A diagnosis based primarily on their current
25 functioning.

1 Q Well, then what purpose does a counselor do? Don't
2 counselors usually forward their notes to a psychiatrist so
3 the psychiatrist or the psychologist knows what's going on?

4 A Often counselors -- if they're in -- it depends on the
5 situation. If they're in practice with the psychiatrist,
6 they'll review each other's notes. If they're not, then --
7 often times they don't, but there may be some communication
8 there.

9 Q Well, I'm a layman. I want to make sure I understand
10 this, because everybody watches TV, you see the
11 psychiatrist couch and people go in and talk to their
12 psychiatrist for an hour about their problems. That's not
13 really what happens in a psychiatrist's office, is it?

14 A There is by a psychiatrist, but primarily it is true
15 that in most cases psychiatrist are responsible for
16 prescribing medication rather than for extended frequent
17 counseling.

18 Q They regulate the medication, and what they rely on is
19 what the counselors input or notes show to them.

20 A There is ---

21 Q They don't do therapy, do they?

22 A It varies. They're qualified to do therapy. Some of
23 them do therapy. I would agree that the majority of them
24 don't do intensive, you know, therapy.

25 Q Are you familiar with Dr. Page?

1 A I am not.

2 Q Okay. So you don't know if he does therapy or not.

3 A I don't know.

4 Q Okay, sir. Let's go to the next entry, sir.

5 A Okay. September 2, 2014, patient seen, she reports in
6 detail her reported discovery of her husband's planned
7 infidelity. Says she and husband are sleeping apart, and
8 patient says she wants a divorce. Increased anxiety, is
9 relatively calm concerning circumstances, no suicidal
10 ideation, no homicidal ideation, no auditory or visual
11 hallucinations. Diagnosis, chronic post-traumatic stress
12 disorder, insomnia ---

13 Q Excuse me. What date was that he diagnosed her with
14 chronic post-traumatic stress disorder?

15 A That's September 2, 2014.

16 Q Before she ever dealt with Mr. Rose on this alleged
17 incident or this incident.

18 A Correct. As I said before, often with mental health
19 disorders -- for example, you may have depression, you go
20 to your psychiatrist, he gives you medications, and if it's
21 successful, you no longer have symptoms of depression, but
22 you continue to have -- but then the psychiatrist generally
23 does not stop, discontinue the anti-depressant medication
24 because you no longer have symptoms. You continue to be
25 treated ---

1 Q Sir, that's not responsive. I didn't ask you about --

2 -

3 THE COURT - Wait a minute.

4 A Okay. I'm giving you an analogy.

5 THE COURT - Wait just a minute, Mr. Varner.

6 Y'all can continue.

7 A Okay. The same thing can be true of post-traumatic
8 stress order. So you can be treated with psycho-tropic
9 medications for post-traumatic stress disorder. Because
10 you have no symptoms, they may still have a diagnosis of
11 chronic post-traumatic stress disorder even though you're
12 exhibiting no symptoms. Just because the symptoms are gone
13 doesn't mean you're discontinued treatment.

14 MR. VARNER - Your Honor, I'd ask that be stricken
15 from the record. I didn't ask him why he was prescribing
16 medication. He wanted to tell me why they prescribe
17 medication. That was not responsive to my question at all.

18 THE COURT - I think it was.

19 MR. VARNER - Okay, sir.

20 Q All right. You're not a psychiatrist.

21 A Correct..

22 Q What is your knowledge of what it takes for someone to
23 be certified as a psychiatrist?

24 A A psychiatrist?

25 Q Yes.

1 A I know that it requires a medical degree and then
2 appropriate residency. I don't know the details required
3 for it.

4 Q Okay. So they have to graduate from medical school
5 and they have to do a specialty training ---

6 A Correct, sir.

7 Q --- for some period of time. Can I see those notes
8 where you show me where you were reading, sir?

9 A This note right here.

10 Q I'm sorry. I can't read his writing. Where is the
11 thing about the post-traumatic stress ---

12 A Diagnosis, chronic post-traumatic stress disorder.

13 Q Okay. You are not asserting to this Court that you
14 are qualified to dispute the diagnosis of chronic post-
15 traumatic stress disorder on September the 2nd, 2014.

16 A I'm not -- I'm not disputing that diagnosis. I don't
17 see indication that she was experiencing -- actively
18 experiencing symptoms of post-traumatic stress disorder.
19 You'll note right above that diagnosis it says that despite
20 -- or that she is relatively calm at the current time,
21 which would suggest minimal emotional and psychological
22 distress at that time.

23 Q I'm not trying to be confrontational, but you said
24 you're not qualified to dispute it, but then you went on to
25 dispute.

1 A Well, let me clarify that. What I said is I don't
2 dispute the diagnosis of post-traumatic disorder. As I was
3 indicating before, treatment of a mental health disorder
4 could continue even when there are no active symptoms. His
5 note here in which he notes that she's relatively calm
6 considering the circumstance suggest that she's not
7 experiencing any sort of intense symptoms of post-traumatic
8 stress disorder even though that diagnosis still holds.
9 That's what he's diagnosing as chronic. That's on-going,
10 and yet there are no symptoms reported in his notes.

11 Q All right, sir, and if I heard you wrong, please feel
12 free to correct me, but didn't you testify on direct
13 examination that Mr. Rose's attack of her started her after
14 she had been in remission of post-traumatic stress
15 syndrome, but yet her own psychiatrist prior to any attack
16 September the 2nd, said she had chronic post-traumatic
17 stress syndrome. That was his -- to use your word, his
18 word -- that was his diagnosis, wasn't it?

19 A That was his diagnosis. Let me clarify again that you
20 can be diagnosed with a mental health disorder while not
21 experiencing any symptoms. You can be diagnosed with
22 depression in remission, in which case treatment continues
23 but you are not experiencing any active symptoms at that of
24 that.

1 Q Okay. Bottom line is, you don't dispute his diagnosis
2 or his qualifications, do you?

3 A No.

4 Q And he's not here to testify, is he?

5 A Not to my knowledge.

6 Q And you don't have anything except relevant medical
7 records to see what backs that up or doesn't back that up
8 since they were edited by the law firm before they sent it
9 to you.

10 MR. HODGE - Object to the form.

11 Q They were determined what was relevant or not relevant
12 by the law firm. Correct?

13 A I think I've already specified that I have reviewed
14 the records provided by her attorney.

15 Q Okay. Well, that's what we're going through right
16 now. These are the records you actually reviewed.
17 Correct?

18 A Correct.

19 Q All right. Read the next entry, sir.

20 A October 16, 2014, patient seen, son here with patient
21 with her. Patient says estranged husband assaulted her.
22 Patient was seen in ER, something from Eastside. Question
23 of -- question mark, concussion. Patient complains of
24 decreased concentration slash thinking, question mark, PTSD

1 symptoms or post concussion, continue meds, refer to
2 Greenville Neurology it looks like.

3 Q All right, so after this attack her diagnosis went
4 from chronic post-traumatic stress syndrome to just plain-
5 old post-traumatic stress syndrome. In other words, those
6 notes indicate she actually was better, don't they?

7 A No.

8 Q What does chronic mean?

9 A Chronic means that it's been present for a long time.

10 Let me clarify the notes here as I've read out. Dr. Page
11 is not very formal in that he doesn't assign a DSM
12 diagnosis and number it for each one. He kind of
13 informally writes chronic PTSD here. He notes PTSD
14 symptoms. He doesn't ever actually give a diagnosis.
15 Okay? What he notes is that she's having difficulty with
16 her concentration and her thinking, which is typical of
17 post-traumatic stress disorder. There was some confusion,
18 some dissociative almost symptoms that are typical of post-
19 traumatic stress disorder, which I can give you more detail
20 on, that were present there. So what I see here in these
21 notes, as a clinician when I reads these notes, I see --
22 now I see indication of a change in functioning and
23 possible symptoms of post-traumatic stress disorder.

24 Q But you don't know whether he did those other criteria
25 you pointed out or if you didn't see all of his records.

1 You have no idea what was taken out of these before you got
2 them, do you?

3 A Those are the records that I've reviewed. Correct.

4 Q Answer my question, sir. You have no idea whether he
5 did that or not unless you have the complete records. That
6 is correct, sir.

7 A Whether he did what?

8 Q Whether he did those things you testified to, of doing
9 the grafts and everything. You don't know whether he did
10 it or not.

11 A I'm confused. Doing the grafts?

12 Q You said he just makes notes, he doesn't follow and I
13 -- what were your words? What did he (sic) supposed to do?

14 A In the notes -- he doesn't give a formal detailed
15 diagnosis each time. Okay? Sometimes he'll note chronic
16 post-traumatic stress disorder. The next note has no
17 mention of diagnosis. So he's not giving a formal
18 diagnosis here, but what I'm saying is that as a clinician,
19 when I read that last note, what I see there -- what pops
20 out at me is symptoms of post-traumatic stress disorder.
21 What popped out as a clinician, as a licensed psychologist,
22 what's popped out in the earlier notes were presence of
23 depression, generalized anxiety, and I believe that's what
24 I testified to earlier.

1 Q Okay. Well, then I'll ask you the same question. You
2 don't know whether Dr. Page did that or not if you don't
3 see all of his notes.

4 A Whether he ---

5 Q That just may be -- excuse me -- that just may have
6 been a summary. Correct?

7 A I don't know whether -- you're saying you don't -- I
8 don't know whether he gave a formal diagnosis elsewhere?

9 Q Yes, sir, how he arrived at it. What you've got are
10 his notes she requested.

11 A Correct.

12 Q Well, you read in there she was requesting her notes
13 or -- not notes, but a summary or something. Do you recall
14 what date that was?

15 A Earlier, yes. That would've been July 7th, 2014 in
16 which she requested a statement regarding her past and
17 current psycho-tropic treatment.

18 Q July the 14th (sic) Is that what you said? Okay, July
19 7th. I'm sorry.

20 A I'm sorry.

21 Q So did you see those notes that he apparently prepared
22 at her request or what they said or didn't say?

23 A The records ---

24 Q Yes, sir.

1 A --- that I've already described are the ones that I
2 reviewed.

3 Q Okay. I have a document here called medical
4 assessment of ability to do work-related activities. It's
5 got a whole bunch of questions on it. Is that your form?

6 A No, that was provided by her attorney.

7 Q It's blank.

8 A Correct. I didn't complete it.

9 Q Okay. Did she indicate to you how long this physical
10 attack occurred?

11 A She didn't give me a time estimate, and I would infer
12 from her description that it was relatively brief.

13 Q Okay. Would the length of this assault have a bearing
14 on how it would affect her or your diagnosis?

15 A It would not affect the diagnosis, no.

16 Q Do you know what this medication is, sir, and what I'm
17 handing you is this family practice note, that medication
18 there.

19 A Looks like Ketorolac and I do not know what it is.

20 Q All right, sir. Thank you.. All right, these notes
21 from Bonds Secure -- do you know what Bonds Secure Health
22 System is?

23 A I believe it's a local health system in the area. I
24 don't know that much about it.

1 Q Is it a outpatient place, what we would call a
2 hospital? Is it a clinic or like an ER doctor, or do you
3 know?

4 A I think it's a health system, so I imagine it has a
5 lot of different facilities and places, but I have no
6 specific information about it, no, sir.

7 Q And on 9/19 they've got her psychiatric disorder.
8 What do they classify it as?

9 A It says past medical history, other ill-defined
10 conditions, depression, states lung damage after smoke
11 inhalation, psychiatric disorder, depression slash PTSD.

12 Q Okay, that's what I was asking. Even then she's still
13 being classified as having depression and PTSD.

14 A No, I would correct that. The heading clearly there
15 is past medical history, which means she has suffered from
16 those disorders at some time in the past, doesn't really
17 speak to whether she's currently suffering them.

18 Q But generally speaking, the emergency room doesn't
19 make those kind of diagnosis either, do they?

20 A Generally speaking, no.

21 Q And that's because they don't spend enough time with
22 the patient.

23 A That's because most of them are not licensed clinical
24 psychologist or psychiatrist.

1 Q Okay. You don't think the time factor has anything to
2 do with it?

3 A I've never worked in an emergency room; I don't know.

4 Q Have you ever been to the emergency room?

5 A I imagine I have.

6 Q Have you ever been to the emergency room for less than
7 two and a half hours, the time she spent with you?

8 MR. HODGE - Objection to relevance.

9 MR. VARNER - I'll withdraw it.

10 THE COURT - Withdrawn.

11 Q Have you ever seen these pictures before?

12 A No, I have not.

13 Q And do you recognize any of the people in those two
14 pictures?

15 MR. HODGE - Could we see the pictures, Your
16 Honor. I ---

17 MR. VARNER - Those are the same pictures been
18 handed up of him and her in the hospital. I'll hand you a
19 copy.

20 MR. HODGE - Yes.

21 MR. VARNER - You've got a copy.

22 (WHEREUPON, DISCUSSION IS HELD BETWEEN COUNSEL
23 WHICH WAS NOT REPORTED.)

24 A It appears that these are pictures of Ms. Rose and ---

25 Q Okay. Describe -- I'm sorry ---

1 A Go ahead.

2 Q Describe as best you can, how does she appear there?

3 A In each picture she seems to have a smile.

4 Q Okay. Well, have you looked at all of them?

5 A I have.

6 Q Does she appear to be a happy person at that moment?

7 A She's smiling.

8 Q Okay. And did you gather when she met with you -- did
9 she tell you about going to the hospital in November or
10 late November with her husband?

11 A She indicated that after he became ill, she was
12 worried about him. She felt an obligation to him, and she
13 had been involved with helping to take care of him, do for
14 him. She wasn't specific about what she actually did, yes.

15 Q Okay. Would you find it to be unusual a person who
16 has post-traumatic stress syndrome, has all these potential
17 expenses in their life and the future, would go right back
18 to the person who was allegedly the cause of her mental
19 problems and have pictures taken smiling with them? Does
20 that make sense?

21 A It would not be surprising to me at all. I've done a
22 number of evaluations of families, of spouses. It is very
23 common for victims of abuse to try to reunite with their
24 spouse because they have feelings for them, because they

1 feel an obligation towards them for a variety of reasons,
2 so that would not surprise me.

3 Q Okay. So to a certain extent, she was happy at the
4 moment, but that's not a permanent thing.

5 A She's smiling in those pictures which may indicate
6 that she was happy. It may indicate -- you know, a lot of
7 people, when you go to take a picture, you know, they
8 smile, whether they're happy or not.

9 Q Okay. So it could be she's faking it.

10 A Could be she's happy, could be she's faking it.

11 Correct.

12 Q Okay. Same thing with the symptoms presented to you.
13 She can present it to a certain extent any way she wants.

14 A I ---

15 Q She can tell you she's depressed or she's happy. It's
16 a subjective thing, isn't it?

17 A She -- she can provide the description that she wants.
18 My training as a clinical psychologist is to be able to
19 look to how they report it, the ways they report it and to
20 be able to make some conclusions about the extent to which
21 they're suffering from the disorder that they may or may
22 not be reporting.

23 Q All right, sir. You testified I believe -- and if I
24 was correct, correct me. She's had two episodes of PTSD

1 and she had recovered from both of those until this
2 episode. Correct?

3 A That's my assessment, yes.

4 Q So you don't know whether this PTSD -- if it was
5 caused by this, whether she's going to recover again, and,
6 if so, when or for how long.

7 A I don't know with certainty. As I said, when you're
8 estimating treatment times and those kinds of things,
9 you're giving an educated guess.

10 Q All right, sir. Just to go through, this is a woman
11 who was, apparently, sexually abused by a step-father's
12 nephew for several years?

13 A That's correct.

14 Q Expressed some anger toward her mother because her
15 mother should've known about it, and her mother didn't
16 protect her. Correct?

17 A That's -- that's correct.

18 Q She got involved with a man at the age 14. Correct?

19 A With her first husband, yes, who was five years older
20 than her.

21 Q Thank you. If a lady presents as being sexually
22 abused by her step-father, mad at her mother for not
23 protecting her, then it's a fair statement she met her
24 husband at 14, because she wanted to get out of that place.

25 A That's a possibility, yes.

1 Q Okay. On top of that, she marries this man, he drinks
2 and he beats her. Correct?

3 A At various times. Correct.

4 Q Not only that, she's working at a job and she is
5 beaten to the point she was unconscious, left in a ditch.

6 A Correct.

7 Q And do you know how long she was hospitalized with
8 that?

9 A I don't know off hand, no.

10 Q And not only that, she was accused of criminal
11 activity and had to go to trial with that. Won that one.
12 Correct?

13 A I -- yes, I believe there was a case that she was
14 found not guilty.

15 Q Okay. So she's been accused of crimes years ago, then
16 she collected total disability under workmen's comp, being
17 totally disabled at that stage.

18 A That's what you've indicated.

19 Q Okay. And she's been on social security disability
20 for PTSD now for 15 plus years. Correct?

21 A I don't have direct knowledge of that.

22 Q Okay. And she's going to continue to collect those
23 checks even though your testimony today is she's not had it
24 for at least two episodes of several years. Correct?

1 A Might I -- post traumatic stress disorder while she
2 was experiencing on-going symptoms of anxiety and
3 depression.

4 Q And she also gets accused of burning her own house
5 down. Or do you know what she was accused of burning?

6 A Yes, I'm aware of what she was accused of burning.

7 Q She was also accused of burning her own house down.
8 Correct?

9 A I understand that to be true, yes.

10 Q Well, not only that, she went through a stressor,
11 trauma, whatever name you want to call it, she gets
12 convicted of arson -- arson, burning property to defraud an
13 insurer, making false insurance claim to obtain benefits
14 for herself and filing a false police report. She's
15 convicted of all of those. Correct?

16 A I don't have those records, but that sounds like
17 roughly my understanding.

18 Q And she's on house arrest to boot. Correct?
19 You have to speak up, sir.

20 A Well, you didn't ask me a question, but, yes, that's
21 my understanding.

22 Q Okay, well, I'm sorry, I did it rhetorically. My
23 apologies. And she was additionally convicted and placed
24 on house arrest. Is that correct?

25 A That's my understanding.

1 Q And then she discovers that her husband is allegedly
2 committing adultery. Correct? Isn't that what the notes
3 indicate, sir?

4 A That's my -- that's my understanding.

5 Q And just shortly before that she was thinking of
6 suicide.

7 A She was -- you're referring to the medical note?

8 Q Yes, sir, back in July she's ---

9 A She had ---

10 Q -- thinking of suicide. Correct?

11 A She had thoughts of suicide in -- doctor's note says
12 in June.

13 Q June. Excuse me. A month before. And she has a
14 Family Court hearing that she has to deal with thereafter.
15 Correct?

16 A A Family Court -- I'm sorry -- I'm not ---

17 Q Divorce -- pending divorce with her husband. Do you
18 know anything about that? If you don't know you can ---

19 A I knew that she had filed for divorce, no, -- you
20 know, so that's obviously a stressor.

21 Q Well, everything I've brought up are obviously
22 stressors ---

23 A Stressors ---

24 Q --- to say the least.

25 A --- rather than traumas. Correct.

1 Q You don't think it's traumatic to someone to have four
2 felony convictions and run the risk of going to jail and
3 being confined to your house for the next five years?

4 That's not traumatic to a person?

5 A Again, I'll refer to the definitions of the American
6 Psychiatric Association Diagnostic Manual. Traumas -- the
7 kinds of things that cause post traumatic stress disorder
8 are traumas in which one's life -- one is in danger of
9 losing one's life or in danger of serious physical injury,
10 so therefore, a Court trial and being found guilty of
11 multiple felonies would be a stressor, not a trauma. It
12 would not be something that would result in post traumatic
13 stress disorder. Would it result in increased symptoms of
14 depression or anxiety? Possibly. We need to keep those --
15 two things are separate things, and I've testified
16 differently about the course of each of those disorders.

17 Q All right, but if a person is convicted of a crime and
18 could go to jail, people view that as losing their life or
19 their right to have their life.

20 A Again, it is not the type of traumatic trauma that
21 causes post traumatic stress disorder. It is a stressor
22 can cause (sic) symptoms of depression and anxiety, but,
23 no, it is not trauma. I understand that in general usage
24 we may call it traumatic, but in psychiatric, psychological

1 terms and for consideration of the syndrome of post
2 traumatic stress disorder, it is not a trauma.

3 Q Okay. But if she already had been diagnosed for years
4 and years and years with PTSD, all of these would be
5 stressors that would aggravate it, re-trigger it, whatever
6 name you want. It would make it worse. Correct?

7 A Oh, your terminology makes a difference. Those are
8 all things which would increase symptoms of depression and
9 anxiety. Again, the things that are likely to cause her to
10 again have the post traumatic stress syndrome are traumas.

11 Q Okay.

12 A Okay. Not stressors.

13 Q Okay, so those things didn't cause this; her getting
14 hit by the radio in the face, in which she didn't even go
15 in to the hospital, is the -- is the one thing out of those
16 50 things that's just destroying her life.

17 A I'm going to try to be a little bit more specific.
18 That is the thing that caused her to re-experience symptoms
19 of post traumatic stress disorder is being hit, and it may
20 seem that that's a relatively minor event, and here I'm
21 going to -- since you're questioning me, I'm going to pull
22 out the analogy I was going -- you didn't want me to use
23 before, but I like this, so I'm going to use it now. Okay?
24 Imagine that you have a bad knee. Okay?

25 MR. VARNER - Your Honor ---

1 THE COURT - I'm going to allow it. Go ahead.

2 A Imagine that you have a bad knee; you've had a
3 football injury; you've had a motor vehicle wreck; you've
4 had a work injury. Each time the doctor goes in and fixes
5 up your knee, it's good until the next injury. Okay. So
6 after those three injuries, you -- your knee is good to go.
7 Okay? It's good for the rest of your life; you know, in
8 the courtroom standing up you're good. Okay. Now, if I
9 come over there and kick you in the knee and your knee
10 falls apart and you have to go have surgery, my kicking you
11 in the knee is responsible for your injury and your
12 surgery. Now, it is true that if your knee was fully
13 healthy and I kicked you in the knee, you'd get a bruise
14 and it wouldn't be a good deal, but because you have those
15 pre-existing injuries, what was a perfectly healthy knee, is
16 now suddenly injured and I'm responsible for that. I would
17 also add that it probably makes a little bit of a
18 difference whether I'm aware of your bad knee. If I'm
19 aware of your bad knee and I go kick you in your knee, that
20 suggests a little bit of malicious intent ---

21 MR. VARNER - Oh, Your Honor, that is not
22 responsive. That should be stricken.

23 MR. HODGE - Well, Your Honor, he opened the door.
24 He ---

1 MR. VARNER - No, Your Honor, I didn't open that
2 door at all.

3 THE COURT - I think the door is open. Go ahead,
4 sir.

5 MR. VARNER - As to maliciousness, Your Honor?

6 THE COURT - Take it for what it's worth, Mr.
7 Varner. We don't have a jury here.

8 Q Go ahead.

9 A Okay. So in that way -- and what I'm trying to
10 explain, the purpose of that analogy is to explain how
11 something that seems minor might cause a serious injury in
12 somebody that has predisposing injuries, so, yes, in most
13 cases a woman getting hit in the side of the face with a
14 police radio would not cause post traumatic stress
15 disorder. If she had not had pre-existing traumas that had
16 been repaired, she would not have probably gotten post
17 traumatic stress disorder. Okay. However, had he not hit
18 her, it is my professional opinion that had he not hit her
19 in the side of the face and injured her, putting her at
20 fear for her life, she would not have developed symptoms of
21 post traumatic stress disorder again. As I said, she has
22 had some on-going moderate symptoms of anxiety and
23 depression, but the symptoms of post traumatic stress
24 disorder would not have developed without that trauma.

1 Q You talked about maliciousness. Have you ever talked
2 to Homer Rose?

3 A No, I have not.

4 Q Have you ever read anything about this medical
5 history, his criminal history, his 40 years as a highway
6 patrolman? Do you know anything about that?

7 A I know very little about him, and what I know came
8 from Ms. Rose.

9 Q So you have no idea about any malicious nature
10 whatsoever by Homer Rose.

11 A Correct.

12 Q All right, sir. And this episode occurred on what
13 date?

14 A It looks like September 18, 2014.

15 Q And if this is made so bad, can you tell me why you
16 haven't looked at anything except one visit with Dr. Page
17 since that date in six months, five months, however long
18 it's been? She's been back to a psychiatrist, according to
19 those notes, how many times?

20 A I have one note subsequent to that injury.

21 Q And how are you getting paid here today?

22 A I will be paid by Ms. Rose's attorneys.

23 Q Okay. Are you -- do you qualify for insurance?

24 A I'm not on any insurance boards currently.

1 Q Well, I mean does insurance normally cover you? Are
2 you certified for that?

3 A I'm licensed, so I would be eligible to be reimbursed
4 by most insurance companies. Correct.

5 Q Okay. Has anybody instructed you to file a claim on
6 the insurance that Mr. Rose carries on his wife?

7 A No.

8 Q Okay. Are you aware he carries insurance that covers
9 all of these medical bills too?

10 A I'm not aware of his insurance situation, no.

11 MR. VARNER - Okay. Your Honor, I would like to
12 introduce some evidence. He was previously identified
13 (sic) the cover letter from the Hodge law firm, this
14 medical assessment and also the notes he reviewed of Dr.
15 Page.

16 MR. HODGE - No objection.

17 THE COURT - No objection. Without objection.

18 (WHEREUPON, DOCUMENTS MARKED INTO EVIDENCE AS
19 DEFENDANT'S EXHIBIT 1, 2 AND 3.)

20 THE COURT - See the lawyers at the bench real
21 quick.

22 (WHEREUPON, BENCH CONFERENCE WAS HELD WHICH WAS
23 NOT REPORTED.)

24 THE COURT - Anything further, Mr. Varner?

25 MR. VARNER - Nothing further, Your Honor.

1 THE COURT - Okay. Gentlemen, briefly.

2 RE-DIRECT EXAMINATION

3 BY MR. HODGE -

4 Q If I had a history of getting assaulted and ended up
5 getting treated for PTSD and later I get hit across the
6 head by a radio by someone who's out to hurt me, would I be
7 more able to deal with PTSD or less able to deal with it?

8 A Because of the prior trauma? It would mean that it
9 would -- you would be less able to deal with it. You would
10 need more treatment in order to deal with that.

11 Q Mr. Varner asked you a question and you seemed to be
12 surprised that Ms. Rose might reach out to her perpetrator,
13 the assaulter. Is there a term called The Stockholm
14 Syndrome?

15 A I have heard of the Stockholm Syndrome.

16 Q Where the person who's kidnapped identifies who the
17 kidnapper is.

18 A Yes, I believe that's my understanding.

19 MR. HODGE - Thank you. That's all.

20 THE COURT - Thank you. Anything on that?

21 MR. VARNER - Nothing further.

22 THE COURT - Okay, thank you, gentlemen.

23 MR. VARNER - Your Honor, I assume that concludes
24 their case, too. We're done.

1 THE COURT - I don't know. Let's see. Sir, you
2 may step down. Please be careful.

3 MR. HODGE - Ask that Dr. Morton be excused.

4 THE COURT - Any objection to Dr. Morton being
5 excused?

6 MR. VARNER - If this case is not being ended, I
7 would like to keep him for any further hearing, because I
8 may need to recall him.

9 MR. HODGE - Well, you know, that's fine, and
10 we'll try to make him available; he'll have to pay him for
11 his time, though, if he's going to do that.

12 MR. VARNER - Your Honor, my question was this. I
13 thought that was their case.

14 THE COURT - I don't know. I'm going to ask real
15 quick. How many more witnesses?

16 MR. LANGLEY - It's not. At least two.

17 MR. VARNER - Okay. It'll help me as to whether
18 he stays or not. Are your two going to be those two
19 people?

20 MR. LANGLEY - Chaz, Ms. Rose and probably Mr.
21 Rose.

22 MR. VARNER - Then I don't object to him being
23 released. I didn't know if they were going to have any
24 other experts or anything. If that's the case ---

1 THE COURT - So you do or -- you want him released
2 or not?

3 MR. VARNER - I want him released. I have no
4 objection to it.

5 THE COURT - Okay, no objection. Sir, you are
6 released. Thank you.

7 DR. MORTON - Thank you.

8 THE COURT - Okay, we'll convene in the morning at
9 9:00.

10 MR. LANGLEY - Thank you, Your Honor.

11 THE COURT - 9:00 o'clock.

12 (WHEREUPON, COURT IN RECESS FOR THE DAY AT 4:44
13 P.M.)

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG) CASE NO.: 2014-CP-42-03846

Paula Rose)
)
vs.) TRANSCRIPT OF RECORD
)
) (DAY 2 - VOLUME II)
Charles Homer Rose, II)

JANUARY 22, 2015
SPARTANBURG, SOUTH CAROLINA

BEFORE THE HONORABLE R. KEITH KELLY

APPEARANCES:

RYAN LANGLEY, ESQUIRE
SPARTANBURG, SOUTH CAROLINA

CHRIS KENNEDY, ESQUIRE
SPARTANBURG, SOUTH CAROLINA

CHARLES HODGE, ESQUIRE
SPARTANBURG, SOUTH CAROLINA

ATTORNEYS FOR THE PLAINTIFF

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JAMES SEGURA, ESQUIRE
GREENVILLE, SOUTH CAROLINA

ATTORNEY FOR THE DEFENDANT

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

WITNESSES:	DIRECT	CROSS	RE-DIRECT	RE-CROSS
DR. TODD MARTIN				
By Mr. Hodge	24			
By Mr. Varner		44		
By Mr. Hodge			90	
BRADLEY CHAZ REED				
By Mr. Langley	94			
By Mr. Varner		101		
PAULA ROSE				
By Mr. Langley	114			
By MR. Varner		136		

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
P-1	Psychological Evaluation		29
P-2	Future expenses		42
P-3	Copies of photos (3)		99
P-4	Copies of photos (7)		122
P-5	List of texts		125
P-6	Copy of Facebook page		126
P-7	List of medicals		130
P-8	Notes (pages 14 & 15) from Bon Secours Health System (2 pages)		132
P-9	Account summary page		135
D-1	Doctor's notes		90
D-2	Medical assessment		90
D-3	January 15, 2015 letter to Dr. Morton from Hodge & Langley		90
C-1	Affidavit of Attorney's Fees	177	

1 (WHEREUPON, COURT RESUMES JANUARY 22, 2015 AT
2 9:30 AM.)

3 THE COURT - Okay, gentlemen, we're back on the
4 record in the Rose matter, and please remember we're here
5 on the issue of damages, only the issue of damages. All
6 right.

7 MR. LANGLEY - Yes, Your Honor. We'd call Chaz
8 Reed to the stand.

9 THE COURT - All right. Sir, if you'd come up and
10 be sworn.

11 BRADLEY CHAZ REED, AFTER BEING FIRST DULY SWORN,
12 TESTIFIES AS FOLLOWS -

13 THE COURT - Thank you. Please be seated and as
14 soon as you are situated, please tell my court reporter
15 your full name.

16 MR. REED Bradley Chaz Reed.

17 THE COURT - Thank you.

18 DIRECT EXAMINATION

19 BY MR. LANGLEY -

20 Q Mr. Reed, tell the Court your relationship to these
21 parties?

22 A Paula Rose is mother, and Homer Rose is my step-
23 father.

24 Q Okay. And how long have you known Homer Rose?

25 A Um ---

1 Q Approximately.

2 A --- approximately, since about 2004, so about ten
3 years.

4 Q All right, and on the date of the incident we've been
5 discussing for the past two days, I believe September 18th
6 of 2014, were you at your mother's home?

7 A Yes.

8 Q And were you a partial witness to the events that took
9 place that day?

10 A Yes, sir.

11 MR. VARNER - If I may, my client's unable to
12 hear. I would ask everybody to speak up, because he can't
13 hear.

14 THE COURT - Okay. If you'd speak a little
15 louder.

16 MR. REED - Yes, sir.

17 THE COURT - Thank you.

18 MR. LANGLEY - There's a little microphone if you
19 want to pull a little closer.

20 MR. REED - Yes. Sounds a little loud when I
21 talk into it.

22 Q Tell the Court what you witnessed on September 18th,
23 2014.

24 A I came -- well, I was upstairs in my bedroom, and I
25 was playing X-Box, and I heard my mother scream, at which

1 point I came downstairs and saw her. She was staggering.
2 I wasn't sure if she was trying to get up after she had
3 fallen or if she was in the process of falling and trying
4 to catch herself; I couldn't really tell. And I saw blood
5 covering the left side of her face, and at that point I was
6 asking her what was wrong, what happened, and I believe she
7 said he hit me, and at that point I got in -- I saw my
8 step-father coming towards her, and I got in between them
9 and I pushed her towards the bedroom and called 9-1-1.

10 Q All right, when your step-father was coming towards
11 her and you got between them, was it your belief he was
12 going to hit her again?

13 A I can't be sure, but I mean it seemed to be an
14 aggressive manner.

15 MR. LANGLEY - All right. Your Honor, we've got
16 an audio recording of that event. With the Court's
17 permission, I'd like to play it. It's just a couple of
18 minutes.

19 MR. VARNER - Your Honor, if that's the same audio
20 recording that's already been submitted, I have no
21 objection. I think it needs to be put in the record. It's
22 only about three and a half minutes.

23 THE COURT - Okay.

24 (WHEREUPON, AUDIO RECORDING IS PLAYED.)

1 MR. LANGLEY - The disk I believe is in the
2 record, Your Honor. It's admitted already.

3 Q Now, the voices that you hear on the CD, Chaz, yours,
4 your mother's and defendant's?

5 A Yes, sir.

6 Q And you recognize the -- what you said to the
7 defendant on the tape that you heard?

8 A I told him to stay the hell away from her.

9 Q All right. Did you see blood on his person at the
10 time that you came down the steps?

11 A It all happened so fast; I believe that there was some
12 on his shirt.

13 Q Okay.

14 MR. VARNER - Again, Your Honor, my client is
15 unable to hear both the attorney and the witness.

16 MR. REED - I'll try to talk into this microphone.

17 THE COURT - Use your outside voice.

18 MR. REED - Yes, sir.

19 Q At some point did you see the defendant take the
20 clothing that he was wearing out and try to clean it up or
21 throw it away?

22 A I did see him -- where I was at, I was in the bedroom,
23 and from the bedroom you can see straight down the hallway,
24 out the glass -- well, it's a partial glass door into the
25 garage where he went afterwards, and I could see him

1 removing his shirt, and I didn't know at the time what he
2 did with it, but when I -- when the police came later, one
3 of the deputies and I -- I was showing him where I had saw
4 him taking off the shirt, and we found it wadded up in a
5 blanket.

6 Q All right. And do these pictures reflect the area
7 near where the shirt was found?

8 A This picture right here is what I believe they've
9 determined is his clean-up kit. This large water bottle
10 here looks like -- he keeps a lot of water bottles in the
11 garage. That looks like that, but above this there is a
12 shelf, and that's where there was some hand sanitizer that
13 I did see him using to clean his hands off.

14 Q Okay.

15 A And the second picture is on the other side of the
16 garage, and you can see a blanket, and that's the blanket
17 that deputy and I found the shirt wadded up in. And the
18 third picture is the shelf I was referring to; you can see
19 the hand sanitizer there.

20 Q All right. So when the police arrived, Mr. -- or the
21 defendant was wearing a different shirt than he was when
22 the altercation took place?

23 A He was wearing only -- well, he changed and he had an
24 undershirt on for a while, and then he came inside and
25 grabbed a sweatshirt, I believe, and put it on.

1 Q All right. And he had taken the shirt he was wearing
2 at the time that the altercation took place and hid it
3 somewhere in the garage?

4 A Yes.

5 Q And do those pictures reflect the area in the garage
6 near where the shirt was hidden and ultimately found by the
7 detectives at the scene?

8 A Yes, sir.

9 MR. LANGLEY - We'd like to offer these into
10 evidence, Your Honor.

11 THE COURT - Any objection?

12 MR. VARNER - No objection, Your Honor.

13 THE COURT - Without objection.

14 (WHEREUPON, DOCUMENTS MARKED INTO EVIDENCE AS
15 PLAINTIFF'S EXHIBIT 3.)

16 Q I'll show you now a group of pictures that we put into
17 evidence yesterday. Take a moment and flip through these
18 pictures.

19 A (Witness complies)

20 Q Do these pictures accurately depict the bruising, the
21 stitches to your mother and the cut on her ear and the
22 other injuries to her head?

23 A It reflects what you can see. I don't know what her
24 hair covered up.

1 Q I understand. And are these injuries consistent with
2 what you saw just moments after you came downstairs and saw
3 the confrontation between the defendant and your mother?

4 MR. VARNER - Objection, fleeting (sic). He's
5 already testified he didn't see the confrontation. He came
6 down afterwards, Your Honor.

7 MR. LANGLEY - That's what I said; after he came
8 down the steps.

9 MR. VARNER - Well, he said after you saw the
10 confrontation. I object to the wording. It's leading,
11 too.

12 MR. LANGLEY - I'll rephrase.

13 Q Do these pictures accurately depict the condition of
14 your mother after you walked down the steps?

15 MR. VARNER - Asked and answered, Your Honor.

16 THE COURT - No, I don't think so; go ahead.

17 A They're not exactly what I saw when I came down the
18 stairs. What I saw when I came down the stairs was a lot
19 of blood, and I do recall telling the dispatcher when I
20 called 9-1-1 that there was a significant amount of blood.
21 It wasn't like a life-threatening amount, but the way it
22 looked to me when I walked down the stairs and took her
23 into the bedroom is that I honestly thought her ear was
24 torn apart, there was so much blood.

1 Q So were these pictures taken, I guess, some days after
2 the actual incident, as far as you know?

3 A As far as I know, yes, because there's stitches in her
4 ear.

5 Q All right. So, if anything, the actual scene that you
6 saw, would it have been more blood or less blood than
7 what's evidenced in these pictures?

8 A A lot more blood.

9 MR. LANGLEY - No further questions, Your Honor.

10 THE COURT - All right, thank you. Mr. Varner.

11 CROSS EXAMINATION

12 BY MR. VARNER -

13 Q Chaz, make sure I understand, you said you were
14 upstairs and you were playing a video game or something or
15 what?

16 A Yeah, I was playing Madden NFL Football.

17 Q Okay. And roughly what time of evening was this?

18 A Honestly, I couldn't tell you. It was later. It
19 would've been around 9:00 or later maybe. I can't recall
20 now.

21 Q Do you recall what the weather was like that night?
22 Was it a little chilly, hot, rainy or anything like that,
23 September the 18th?

24 A I can't really say I recall what the weather was then.

1 Q All right, sir. And you didn't -- you didn't hear any
2 yelling downstairs prior to Mr. Rose getting there, did
3 you?

4 A Not that I can recall.

5 Q Okay. All right, so -- so if the Court understands,
6 what you hear on that video -- excuse me -- that audio, you
7 hear some ruffling of cloths; you hear what sounds like
8 tire noise; you hear a police scanner going off in the
9 background; you hear some clicking; you hear a turn signal.
10 Correct?

11 A If that's your interpretation, then ---

12 Q Okay. Well, who made this video?

13 MR. LANGLEY - Your Honor, I don't think he was
14 done answering the question.

15 MR. VARNER -- Okay.

16 Q I'm sorry.

17 A If that's your interpretation of it, I mean I guess
18 you could say that. It's not a visual, so I can't say for
19 certain that that's what you're hearing.

20 Q Okay. Well, you do know that Mr. Rose is the one that
21 made this audio recording. Correct?

22 A That's what I've been told by you.

23 Q Okay. Well, do you hear a car driving up in the
24 video, according to your interpretation of it?

25 A It sounds what seems to be a car pulling up.

1 Q Okay. Well, was Mr. Rose gone that evening?

2 A Yes, I believe he was out with his girlfriend.

3 Q That's not what I asked you.

4 MR. VARNER - It's not response. I asked that it
5 be stricken from the record, Your Honor.

6 MR. LANGLEY - Your Honor, that's ridiculous. He
7 asked a question about was he gone.

8 MR. VARNER - Was he gone. That's a yes or no
9 question, Your Honor.

10 MR. LANGLEY - He's entitled to answer.

11 THE COURT - Okay. Move along; he can explain,
12 but that's okay, but, sir, just please answer the
13 questions.

14 MR. REED - Yes, sir.

15 Q All right. And you hear what sounds like a car door
16 closing?

17 A I believe so.

18 Q Okay. And then you hear footprints. In other words -

19 --

20 A I don't think you can hear footprints.

21 Q --- foot -- feet going across the driveway.

22 A Like I said, it's not a visual, so I couldn't say
23 that's what it is, but sounds like footsteps.

24 Q Well, Mr. Rose that night, you saw what he was
25 driving. He was driving his pickup truck. Yes?

1 A Yes.

2 Q And he does have a police scanner in his pickup truck.

3 Correct?

4 A I ---

5 Q Sir?

6 A Well, let me explain. He has multiple police
7 scanners, probably about eight of them. Is there one
8 that's kept in the truck? No; he keeps them everywhere; he
9 brings them in, charges them. There's not one specifically
10 that's kept in the truck; no.

11 Q All right, well, do you hear a police scanner at the
12 beginning of the video?

13 A It sounds like police radio chatter, yes.

14 Q Okay. All right. And after you hear the footprints
15 and the rustling after the car door closes, there's a
16 little creaking noise; is that the backdoor opening that
17 goes to the garage?

18 A I would assume it is, considering that's the area the
19 assault happened in, so I would assume it would be that
20 door, but again, without a visual I can say for certain
21 that it was that door.

22 Q Okay. Well, based on where Mr. Rose pulled his truck
23 in, that would be the closest door; that'd be the door he
24 came in.

25 A Yes.

1 Q And within seconds you hear Mr. Rose yelling, get off
2 me, what's going on, get off me, get off me, he says it
3 many, many times and then you hear your mother saying, you
4 get off of me. Correct?

5 A Incorrect. Actually, what I heard him say was, get
6 away from me.

7 Q Okay, get away from me. I'm sorry. All right. So
8 there are no words exchanged; there's no heated passion;
9 within seconds he's yelling get away from me or get off me,
10 whatever it was; it speaks for itself; and your mother
11 yells you get off of me. Correct?

12 A That's what it sounds like.

13 Q Okay. And they're actually -- you can hear your voice
14 where you're coming down the stairs saying what's happening
15 or what's going on or words to that effect. Is that
16 correct?

17 A Yes.

18 Q All right. Did you have a video camera when you came
19 down the stairs?

20 A Absolutely not.

21 Q Okay. Is there a security camera system in that home
22 that video-tapes people coming in the door and such?

23 A No. There is a security system in the house that has
24 cameras, yes, but it does not record any doors except the
25 front door, which it was dark at the time, so unless there

1 was a light on, it wouldn't have recorded that, and the
2 only camera in the house records the living room, which is
3 not where this occurred.

4 Q Okay. And this radio that you're talking about that
5 your mother was hit with, that's what's called a highway
6 patrol, big five to eight pound radio. It's a big radio.
7 Correct?

8 A Yes.

9 Q Where was it when you came downstairs?

10 A Um, honestly I don't know. I didn't see it
11 immediately when I came downstairs that I can recall.

12 Q But you came downstairs almost simultaneous with all
13 this happened. You came down within seconds; correct?

14 A I came down at the point you heard my voice on the
15 audio recording.

16 Q Okay. And your testimony is you never saw the police
17 radio?

18 MR. LANGLEY - Your Honor, this seems to be going
19 to liability, which is already, for the purpose of this
20 hearing, been established by the default. It's nothing
21 about the extent of the injury, the problems that related
22 to the injury, so that's -- I mean we've let him go on for
23 ten minutes now thinking maybe that he would get to
24 damages, but there's no damages questions.

1 MR. VARNER - Your Honor, he introduced the tape.
2 It is my right to cross examine this witness that he
3 introduced this evidence with about the evidence.

4 THE COURT - Well, I understand that. Okay, let's
5 be clear, for everybody in the whole courtroom -- I said
6 this privately -- I'm here about damages; I' not here about
7 liability. This is a damages hearing, and quite frankly,
8 Mr. -- well, I let you go on a little bit there, too, so
9 I'm going to let you go just a little bit, but we're not
10 going far with this. For anybody else that testifies, I
11 want to know about damages.

12 MR. LANGLEY - Yes, Your Honor.

13 THE COURT - That's the only issue before the
14 Court.

15 MR. VARNER - All right, I'm going to wrap this
16 up.

17 THE COURT - Okay.

18 Q On the video -- well, the kitchen -- or kitchen area -
19 - is that where this happened?

20 A Yes.

21 Q All right. And what kind of floor is there? A wooden
22 floor, carpet ---

23 A Hardwood.

1 Q Hardwood. Okay. Did you ever hear or see on the
2 audio or with your eyes that five to eight pound camera hit
3 a floor?

4 A What five to eight pound camera?

5 Q The radio. Not camera; I'm sorry; my apologies. The
6 highway patrol radio.

7 A I don't know. I didn't see it.

8 Q All right. And so that the Court knows the rest of
9 it, what'd you hear afterwards is you hear Mr. Rose going
10 to the bathroom for lack of a better term.

11 A I guess. I don't know.

12 Q Okay. Well, did you see him go into the bathroom and
13 -- on the video -- what -- the sound you hear, that's the
14 toilet flushing.

15 A He may have. I was on the phone with 9-1-1 at the
16 time, and I was trying to tend to my mother's bleeding ear.

17 Q All right. And out in that garage -- is it a fair
18 statement Mr. Rose is sort of a germaphobe; he has hand
19 sanitizer everywhere; correct?

20 A I wouldn't say that he has hand sanitizer everywhere,
21 no, and my mom also likes to keep hand sanitizer around.

22 Q Okay. Well, in this picture there's hand sanitizer on
23 the work bench; is that correct?

24 A Yes.

1 Q Do you know what that stuff down there is, the other
2 clear bottle that's a spray bottle?

3 A No, I don't see a label.

4 Q Now, this what appears to be -- looks kind of like a
5 paramedic bag. Is that the bag that Mr. Rose keeps in the
6 back of his patrol car all the time?

7 A I'm not sure whether he keeps it in the back of the
8 patrol car or not.

9 Q Well, have you seen it before?

10 A Yes.

11 Q Okay. Isn't it standard procedure when he comes in,
12 he takes the stuff out of the trunk of his patrol car -- as
13 a matter it says state trooper over here -- he puts his
14 rubber gloves, I guess his medic bag and this bottle of --
15 or looks like a gallon of ---

16 A The bottle is ---

17 Q I mean does he normally keep that in the garage?

18 A The bottle of water, yes; there's plenty of bottles of
19 water around there. He takes stuff in and out of the car
20 all the time, including his shotgun and his AR15 in the
21 trunk.

22 Q Okay. And as the police were coming, he took his
23 shirt off; correct?

24 A Yes.

1 Q And after the police arrived and were talking, he went
2 and put a sweatshirt, because he was in a t-shirt; correct?

3 A No, he put the sweatshirt on before the police
4 arrived.

5 Q All right, sir. How long have you lived in that home?

6 A Little over a year now.

7 Q Okay, and do you work?

8 A Not currently.

9 Q Okay. When's the last time you had a job?

10 MR. LANGLEY - Judge, what are we doing?

11 THE COURT - Where we going with that?

12 MR. VARNER - Your Honor, if he could testify to
13 his mother's state -- I mean we just had an expert talk
14 about changes in her behavior. I want to know if he's at
15 home, how often he has to observe her and what he's
16 observed.

17 THE COURT - Okay, well ---

18 MR. LANGLEY - This is not the expert.

19 THE COURT - Overruled; go ahead.

20 Q So how long have you been at home, not working?

21 A Since I moved here over a year ago at the request of
22 Homer Rose who asked me not to have a job to help my mother
23 with her criminal case and around the house.

24 Q Okay. All right. Does your mother have trouble
25 sleeping?

1 A Yes, I believe so.

2 Q How long has that been going on?

3 A I honestly don't know; I haven't lived with her since
4 I was about 18.

5 Q Okay, well, in the year or so that you've been living
6 there -- well, let me back up. Since you're not working,
7 are you there most of the day with your mom?

8 A Currently, yes.

9 Q Okay, and your mom is there, because she's on house
10 arrest; both of you are in the house all day; correct?

11 A We're not both in the house all day, no, but I do stay
12 there.

13 Q Okay. Well, that's what I'm confining it to, the year
14 or so that you've been there has she had trouble sleeping?

15 A Yes.

16 Q And she takes medication?

17 A Yes.

18 Q Has she had any problems with alcohol?

19 A No.

20 Q Irritability?

21 A Well, I'm not an expert; I wouldn't say that she's had
22 a problem with irritability, no.

23 Q She on guard? In other words, skittish might me a
24 better work for it.

1 MR. LANGLEY - Is he talking about before or after
2 this incident.

3 MR. VARNER - Talking about during the whole year,
4 any time during that year.

5 MR. LANGLEY - Well, if the relevance of this is
6 because of the injury supposedly, then I think it needs to
7 be confined to before or after.

8 MR. VARNER - Your Honor, ---

9 THE COURT - Well, let's -- yes, go ahead. Yes,
10 sir.

11 Q Do you remember the question, please?

12 MR. VARNER - I'm sorry, could I -- could you play
13 it back real quick?

14 (WHEREUPON, COURT REPORTER SEARCHERS FOR
15 QUESTION)

16 MR. VARNER - You can go forward. I can pick up.
17 I know what it was.

18 Q What I was asking you, sir, with -- is she like on-
19 guard or skittish might be a better term for it?

20 A I would deem -- yes, she is more of a guarded person,
21 but she's been through a lot, and I would say she's
22 definitely been more guarded and more skittish since the
23 incident.

1 Q In the year you've been living there, have you ever
2 noticed your mother having any problems concentrating,
3 staying focused, anything of that nature?

4 A Absolutely. After the incident, she -- her mind --
5 she would just get lost sometimes and not know where she
6 was at, what was going on. I was highly concerned for her.

7 Q Well, back in June, prior to this happening, were you
8 aware she was suicidal at that time?

9 A I wasn't aware of it, no.

10 Q Okay.

11 MR. VARNER - That's all the questions I have.

12 THE COURT - Okay, anything?

13 MR. LANGLEY - No, sir, Your Honor.

14 THE COURT - Thank you. Sir, you may step down.

15 Please be careful.

16 MR. REED - Thank you.

17 MR. LANGLEY - We'll call the plaintiff, Your
18 Honor.

19 THE COURT - All right. Ma'am, come around.

20 PAULA ROSE, AFTER BEING FIRST DULY SWORN,

21 TESTIFIES AS FOLLOWS -

22 THE COURT - Ma'am, you have a very soft voice.
23 Now, I'm going to ask you to speak up. Okay?

24 MS. ROSE - Well, if he gets going on me, I
25 probably will, but ---

1 THE COURT - Well, ---

2 MS. ROSE - --- I will. I'm going to speak up.

3 THE COURT - Okay. Tell us your full name, please
4 for my court reporter.

5 MS. ROSE - My name is Paula L. Rose.

6 THE COURT - Okay, Mr. Langley.

7 MR. LANGLEY - Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. LANGLEY -

10 Q Ms. Rose, you've heard the testimony of your son and
11 the testimony of Dr. Morton describing in some detail,
12 particularly with Dr. Morton, the effect that this incident
13 with your husband striking you with the radio has had on
14 your life; correct? You've been listening.

15 A Yes, sir.

16 Q Do you agree with what he said about the effect on
17 your life in terms of how you -- the problems that you've
18 had subsequent to the incident versus your condition prior
19 to it?

20 A Yes, sir.

21 MR. VARNER - Your Honor, I object. He's asking
22 her to confirm other people's testimony. That's not
23 proper.

24 THE COURT - Okay, well, he asked if she heard the
25 testimony. Go ahead.

1 MR. LANGLEY - Thank you, Your Honor.

2 Q These pictures that your son testified to about the
3 condition of your face and ear following this incident, do
4 these accurately reflect some of the injuries that you
5 incurred at the hands of the defendant in this case?

6 A I don't think they accurately look like what initially
7 happened, because the ---

8 Q I understand.

9 A --- but I think it's me on the heal -- on the mend,
10 I'm healing, and yes, at that point in time when these were
11 taken they -- they're accurate.

12 Q These were taken some time after the initial strike?

13 A Yes, sir.

14 Q And tell the Court just briefly, in your complaint
15 you've outlined some specificity the incident that took
16 place with your husband and that he intended to harm you
17 when he struck you on September 18th with force and violence
18 ---

19 MR. VARNER - Your Honor ---

20 Q --- and bodily harm ---

21 MR. VARNER - --- that's not a question. He's
22 testifying at this stage.

23 MR. LANGLEY - If he hadn't interrupted me, I was
24 going to ask a question.

25 THE COURT - Okay.

1 A --- at -- where it says defendant unlawfully struck
2 you repeatedly in the head with a hand-held police radio,
3 and that he intended to commit these acts with the intent
4 to bring about you -- your harm in a -- what it says --
5 rude, insolent or revengeful way. Is that accurate?

6 A Yes, sir.

7 Q And it says these acts caused you substantial,
8 physical and emotional damages. Will you tell the Court
9 some of those in terms of the injury that you've incurred?

10 A Well, I guess at first there was -- as far as the
11 physical, there was a lot of -- a lot of pain. Initially,
12 I honestly thought that he had torn my ear -- I thought it
13 was off. It -- I couldn't feel it. As far as -- I mean it
14 was throbbing; it didn't feel like my ear was even there; I
15 could just -- I had blood; I was covered in blood, and as
16 far as that, I had to get, I think, six stitches; the
17 cartilage was torn out. There's a place there still that
18 the cartilage hangs out the back. It feels like almost a
19 paper cut if something hits it. I was bruised here, but
20 not only bruised, the radio had a microphone hooked to it,
21 and it had a big latch, I think, where he would latch it on
22 his person, on his uniform, and as he was striking me with
23 it, that microphone and the metal latch swung around and
24 that's what hit me here that caused the bruising and the
25 scrape.

1 Q And for the record, you're pointing to the left side
2 of your face. Is that right?

3 A (Indicating yes)

4 Q You have to say yes, also.

5 A Yes, sir, I'm sorry. That, of course, took some time
6 to heal. I do have like a really dark patch here is all
7 I've got left from that. Physically, my brain -- I have
8 terrible headaches now. I had been -- prior to this I had
9 went to the chiropractor for some headaches, but initially
10 -- or -- or at that time that this happened, I wasn't
11 having to go to the chiropractor because of headaches. I
12 have had to start going back and do -- go when I can. I
13 had severe memory loss. I was confused. I couldn't keep
14 track of what day it was. I was emotionally just torn and
15 terrified, terrified that -- that he was going to come back
16 at some point and do it again, and especially since he was
17 arrested, you know, I knew he was going to be angry, even
18 more angry than he was and ---

19 Q So you filed charges against him with the police based
20 on this incident?

21 A I didn't file charges; they filed charges against him.
22 I didn't -- that I know of. I mean I gave them a
23 statement, but I didn't -- in fact, I honestly -- at that
24 time I asked that maybe they not take him to jail, because
25 I knew that he'd been a trooper for 43 years, and I knew

1 that he would probably -- probably it would -- he would
2 lose his job and he would be put on TV and was, but I um --
3 I started having flashbacks in the house just being there,
4 and of course I'm there a lot, and I had to start keeping
5 my drapes shut, and every time the dog barked, I thought
6 somebody's out there, it's going to be him, it's going to
7 be somebody he sends. I started having nightmares. I was
8 severely depressed, because my life was falling apart.

9 Q Now, I don't want to go too much into what's already
10 been testified to before, but have you had some issues with
11 depression in the past?

12 A Yes, sir, I have.

13 Q Distinguish for the Court, if you can, the
14 psychological issues that you've had subsequent to being
15 struck by the defendant from the issues that you've had
16 prior to that event.

17 A In 1997 I worked for the DMV in Seneca, and I was an
18 examiner. I was the first female examiner in Oconee
19 County. I was doing a road test -- do you want me to just
20 tell you ---

21 Q No, I -- you don't need to go back through that
22 certainly again. I just want you to explain the
23 psychological issues that you were having ---

24 A Okay, well ---

1 Q --- and how you were dealing with those before
2 September 18th, 2014, versus psychological issues that
3 you've had subsequent to being struck by the defendant.

4 A Okay. I -- well, I've already talked about the '97 I
5 was assaulted during a road test and went back to work and
6 was in the hospital for a day, but I was at work six weeks,
7 went back, worked 18 months for the DMV. My doctor sent me
8 back thinking I wouldn't have to do road test anymore and I
9 was put back -- I was assistant manager at that point and I
10 was put back doing road test, because we were missing
11 examiners, and it led to me getting PTSD, which built up
12 over about 18 months, and in January of 1999 I just ended
13 up having to leave the DMV, had depression and PTSD.
14 That's when I went on disability and subsequently got
15 better from the PTSD, still suffered from depression, had
16 another bout of PTSD. When I went through a divorce from
17 my first husband in 2003, because in 2002 he started
18 abusing me and ---

19 Q Physically?

20 A Physically. Yes, he had prior to that, but we went
21 through counseling, he stopped for many years, and he
22 started back in 2002; Mother's Day of 2002 he assaulted me
23 physically, and that led back to the trauma of PTSD and
24 fear and depression. Then I met Homer in 2004 and got
25 stable with him, because he protected me and provided for

1 me and my son, and the PTSD, you know, got better and still
2 suffered from depression, also suffered from Lyme disease
3 that I contracted in 2002, which is part of the disability,
4 and ---

5 Q So your PTSD from 2006 up until this event had -- what
6 -- there may have been some treatment for it. Had -- was
7 it essentially in remission?

8 A Yes, from -- from shortly probably after the time I
9 met Homer about 2004 I got settled down and felt protected
10 and control -- I have to control where I go, what times I
11 go places; I can't be in big crowds; I have to feel safe,
12 and if I feel safe, I don't have, you know, the triggers or
13 the problems, and I did feel safe at home with Homer until
14 this incident occurred.

15 Q All right. So when you say you have to feel safe in
16 order for the PTSD not to come into play, is that sort of
17 the trigger, if you're -- feel physical danger, is that
18 what causes the PTSD to come onto you?

19 A Yes.

20 MR. VARNER - Objection, it's leading, Your Honor.

21 Q What causes the PTSD to trigger for you?

22 MR. VARNER - Your Honor, I'm going to -- he will
23 say this; I will object. He's prepping his witness, and I
24 would ask he confine his questions to yes or no or

1 appropriate questions that don't have the answer carried in
2 it. And this is getting to be a pattern, Your Honor.

3 THE COURT - Okay. Ask the question, Mr. Langley.

4 Q What causes your PTSD trigger?

5 A I guess for the best words you can use is fear.

6 Q And how is that different from sadness or depression
7 that you feel?

8 A I have to feel threatened by usually a -- usually --
9 maybe if I kind of catch somebody in peripheral vision
10 that's moving fast at me or somebody -- if I'm out jogging
11 and somebody comes up, runs around me or something and I
12 don't see them coming and I don't prepare myself or any
13 time I feel physically threatened.

14 Q As a result of this incident with Mr. Rose, did you
15 think about killing yourself?

16 A Unfortunately, I did.

17 Q Did you write a note, an e-mail related to suicide?

18 A I did, and I'd like to explain why I did that.

19 MR. VARNER - Your Honor, if they can speak up, my
20 client has difficulty hearing, Your Honor.

21 A Okay.

22 THE COURT - Go ahead.

23 Q You can explain.

1 A (Pause) I wrote the suicide letter, because I was torn
2 between -- I don't know how to -- I don't know how to say
3 what I'm trying to say.

4 Q Did you actually take medication in an attempt to kill
5 yourself?

6 A I'm sorry to say that I did.

7 Q And what did you take or attempt to take?

8 A I don't -- I don't take any narcotics right now, but
9 I'm prescribed something for sleep which is actually an
10 antidepressant called Seroquel and ---

11 Q How many of those pills did you take?

12 A The whole bottle, 30.

13 Q All right, and was that at or near the time that you
14 wrote this suicide note?

15 A Yes, sir, it was.

16 Q Has Mr. Rose threatened violence toward you and others
17 previously?

18 A Yes, sir, he has.

19 MR. LANGLEY - First, while I'm thinking about it,
20 we'll mark this as Exhibit 4, Plaintiff's Exhibit 4,
21 pictures.

22 MR. VARNER - No objection as to that, Your Honor.

23 THE COURT - It's admitted without objection.

24 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
25 PLAINTIFF'S EXHIBIT NUMBER 4.)

1 Q I've handed you a document that reflects
2 correspondence back and forth from a number 864-313-2425
3 and 864-449-9858. Do you recognize those two numbers?

4 A Yes, sir, I do.

5 Q Okay. Whose number is 313-2425?

6 A That's mine.

7 Q And whose number is 449-9858?

8 A That's Homer's cell phone number.

9 Q And Homer, you mean the defendant?

10 A Yes, sir.

11 Q Okay. Read for the Court the message at the top of
12 the page, who it's from and what it says.

13 A The first message?

14 Q Correct.

15 A That message came from me to -- I was messaging Homer,
16 "Don't get into a fuss with her; just get your stuff back
17 and let her fill up the litter box; it's too heavy for you
18 to lift."

19 Q Okay, and what was the response?

20 A The response from Homer was, "and the TV; I'll kick
21 her God damn ass, and you thought she was your friend,
22 swell."

23 Q All right. And who are you talking about here when
24 you say her? Or who is he talking about? Do you know?

1 A We're talking about my friend, Amy Hearn, who I sent
2 to help Homer. She initially picked him up from the
3 hospital the day he was released, and she'd been helping
4 him since then for me.

5 Q All right. If you'll go down to -- closer to the
6 bottom of the page on 12/11/14 where it starts, "Have you
7 told her about this?" Do you see that message?

8 A Yes, sir.

9 Q All right, and that -- it's coming in from Homer. Is
10 that right?

11 A Yes, sir.

12 Q On the form there it says in and out. Does in mean
13 that it's coming from Homer and out means that it's going
14 from you to Homer?

15 A Yes, sir.

16 Q All right. Read that sequence of text there down to
17 your response no violence.

18 A Homer says, "Have you told her about this," and I
19 response, "I told her you are upset with me." Homer says,
20 "Swell, why did you do that?" Then he says, "If I kick
21 the" -- it says "shut (sic) out of her, I want her to know
22 why" and I say, "no violence."

23 Q All right, and again, are y'all talking about Amy?

24 A Yes, sir.

25 Q Same person as from before?

1 A Yes, sir.

2 MR. LANGLEY - All right, Your Honor, I'd offer
3 this as Plaintiff's Exhibit 5?

4 THE COURT - Any objection?

5 MR. VARNER - If I could look at the rest of it;
6 I've never seen this. (Pause) No objection.

7 THE COURT - Without objection; it's admitted.

8 MR. LANGLEY - Thank you.

9 THE COURT - You want to get it marked, Mr.
10 Langley?

11 MR. LANGLEY - Yes, sir. Plaintiff's Exhibit 5?
12 Is that right?

13 COURT REPORTER - Yes.

14 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
15 PLAINTIFF'S EXHIBIT NUMBER 5.)

16 Q Describe for the Court the document that I just handed
17 to you, Ms. Rose?

18 A It's a copy of Homer's Facebook timeline of events of
19 a post that supposedly a friend of his that I don't know,
20 but someone he's a friend with posted this on his Facebook
21 page.

22 Q All right, and what does it say?

23 A It says, "I'm wondering just how much jail time I
24 would get for knocking the stupid out of someone."

1 Q And what does Mr. Rose say down at the bottom on the
2 comment?

3 A "None, I tried it."

4 Q And how did you become aware of this Facebook post?

5 A Homer's son, Chuck Rose, contacted me because he saw
6 it.

7 Q Okay.

8 MR. LANGLEY - Your Honor, I'd offer this as
9 Plaintiff's Exhibit 6.

10 THE COURT - Any objection.

11 MR. VARNER - Your Honor, I have a question; maybe
12 opposing counsel can help me. She says something about he
13 responds, "None, I've tried it."

14 THE COURT - I had to get some help with that
15 myself; I'm not a Facebook person, Mr. Varner.

16 MR. VARNER - Okay, I see that. Okay, no
17 objection.

18 THE COURT - It's admitted.

19 MR. VARNER - I'm sorry; I just couldn't find it.

20 THE COURT - Me either.

21 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
22 PLAINTIFF'S EXHIBIT NUMBER 6.)

23 Q Did you understand from Mr. Rose's son that Homer Rose
24 had -- was essentially bragging about striking you?

1 MR. VARNER - Objection, Your Honor. She --
2 that's pure speculation; he's not here. We don't know what
3 anybody interprets. It speaks for itself.

4 THE COURT - Mr. Langley?

5 MR. LANGLEY - I'll move on, Your Honor.

6 THE COURT - Okay, sir.

7 Q As a result of being struck by Mr. Rose, did you incur
8 certain medical bills?

9 A Yes, sir, I did.

10 Q And is the document that I've handed you a summary of
11 those medical bills, at least from the St. Francis Eastside
12 Hospital?

13 A You want me to go over them?

14 Q Well, I just want you to confirm for me that this
15 summary is accurate.

16 A Yes, sir, I believe it is.

17 Q And do all of these charges relate to the injury you
18 incurred at the hands of the defendant?

19 A Yes, sir.

20 Q And in the medical records, this is the -- you were
21 admitted it looks like on September 18th, 2014. Is that the
22 same day that you've made the allegations against Mr. Rose
23 for striking you?

24 A Yes, sir.

1 Q And in the comments to the medical records where it
2 says assault victim, can you read under assault victim
3 there, the second page?

4 A Yes, sir. This is a new problem ---

5 MR. VARNER - Your Honor, I'm going to object. I
6 have no problems putting in the medical diagnosis, medical
7 bills, but narratives without the person here, that can't
8 be admitted and I'm going to object to that part of it.

9 THE COURT - Who wrote the narrative?

10 MR. LANGLEY - Who wrote the narrative? This is
11 the doctor from the hospital, so there's hearsay exception
12 for medical diagnosis.

13 MR. VARNER - That is not -- reciting facts as
14 placed by her is not part of a medical diagnosis.

15 THE COURT - The diagnosis is -- whether -- is an
16 exception.

17 MR. VARNER - I agree with that; I have no problem
18 with that, but when they get into hearsay-type stuff or
19 somebody's summary of what they did not see, that's
20 hearsay; that is to be stricken from this document and
21 can't -- is not proper before the Court.

22 THE COURT - Okay. Do y'all want a minute to
23 redact it? Do y'all want to ---

24 MR. LANGLEY - Your Honor, I don't think there's
25 any portion that needs to be redacted. She's being

1 diagnosed with a particular injury, and there's a
2 description about how the injury took place. Let me see if
3 I can rephrase the question.

4 THE COURT - Okay.

5 Q Did you report when you went to the hospital the
6 injury?

7 A Yes, sir, I did.

8 Q All right. And how did you describe the injury to the
9 hospital staff?

10 A What did I tell the hospital staff?

11 Q Right. What did you say to them when got to the
12 hospital on the day this took place?

13 A At first I didn't say anything; they -- first thing
14 they asked me if the police had been called and um ---

15 Q I'm talking about when you're describing your injury,
16 what did you say to them about how it happened?

17 A I told them that my husband hit me over the head three
18 times and caused the damages that they were seeing.

19 Q All right. And is that consistent with what appears
20 in these medical records?

21 A Yes, sir.

22 Q Is that consistent with what appears in your complaint
23 that's been filed with this Court?

24 A It is. He also -- well, he didn't -- when he was
25 hitting me, I raised my hand up to protect myself, and I

1 thought that he had hit -- broke my wrist. I had a big
2 knot on it. I didn't really think -- I don't know if I
3 thought it was broken, but it really, really hurt, but that
4 was another injury that I haven't talked about.

5 Q All right, this may already been in evidence, and
6 there's no objection from opposing counsel, but is this a
7 summary of the medical bills that we have to date, current
8 and past medical bills that you incurred as a result of
9 this injury?

10 A Yes, sir.

11 MR. LANGLEY - All right, we'll mark that as 6.

12 Are we on 6 or 7?

13 COURT REPORTER - No, 7.

14 MR. LANGLEY - Plaintiff's Exhibit 7.

15 (WHEREUPON DOCUMENT MARKED AS PLAINTIFF'S EXHIBIT
16 NUMBER 7.)

17 Q If you'll flip over to page 4 of the medical records.

18 A (WITNESS COMPLIES) Okay.

19 (WHEREUPON, DISCUSSION IS HELD BETWEEN COUNSEL
20 WHICH WAS NOT REPORTED.)

21 Q The diagnosis is ecchymosis to the left parietal scalp
22 area with tenderness, no bony step off, laceration to the
23 left ear, three centimeters with cartilage exposure. Do
24 you see that?

25 A Yes, sir.

1 Q Is that consistent with what you told the Court about
2 the cut to your ear?

3 A Yes, sir.

4 Q And you flip over to the next page -- it's page 5 in
5 this packet, but it's listed as page 15 at the bottom. At
6 the top of that page, the diagnosis is laceration left ear,
7 superficial scratches left cheek, head trauma, CT head
8 normal, left arm contusion. You see that?

9 A Yes, sir.

10 Q Was that the diagnosis that was given to you at the
11 hospital?

12 A Yes, sir.

13 MR. LANGLEY - Your Honor, I'd offer these as --
14 together as one exhibit, I guess, number 8, these two
15 pages.

16 (WHEREUPON, DISCUSSION IS HELD BETWEEN COUNSEL
17 WHICH WAS NOT REPORTED.)

18 MR. VARNER - I have no objection to page --
19 numbered at the bottom, page 14 and 15.

20 THE COURT - Okay, without objection.

21 MR. LANGLEY - Mark these together as 8. Is that
22 right?

23 COURT REPORTER - That's right.

24 MR. LANGLEY - Plaintiff's Exhibit 8.

1 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
2 PLAINTIFF'S EXHIBIT NUMBER 8.)

3 Q Are you aware of Mr. Rose's trust that his attorney
4 testified to earlier?

5 A Yes, sir.

6 MR. VARNER - Your Honor, I haven't testified.

7 MR. LANGLEY - Forgive me then.

8 Q He spoke about earlier?

9 A Yes, sir.

10 Q Does this document here reflect some of those trust
11 accounts?

12 A Yes, sir.

13 Q And is there a list of four total accounts on this
14 page at the top?

15 A Yes, sir.

16 Q And it says trust account 64816, trust account 64816,
17 and then it has another account that does not say trust
18 next to it; isn't that correct?

19 A Yes, sir.

20 Q And what's the amount of money in that non-trust
21 account?

22 A One million fifty-three thousand seventy-seven dollars
23 and one cent.

24 Q All right, and what's the amount of money in the two
25 trust accounts?

1 A The first one, 64816 is one million and eight hundred
2 thousand forty-eight dollars, six hundred and twenty -- let
3 me go back -- one million eight hundred and forty-eight
4 thousand six hundred and twenty-six dollars forty three
5 cents, and the trust 64818 is nine hundred and fifty-eight
6 thousand four hundred and forty-five dollars and twelve
7 cents.

8 MR. LANGLEY - All right, Your Honor, I'd move to
9 introduce this as Plaintiff's Exhibit 9, this one page.

10 THE COURT - Yes, sir.

11 MR. VARNER - Your Honor, my first -- I mean we
12 just saw this. I'd like to know where this came from and
13 how she got it. This may be illegally obtained
14 information, and certainly she -- she shouldn't have any
15 knowledge of it. I'd like to know -- I'd like for her to
16 authenticate it, where she found it, how she got it.

17 THE COURT - You can ask her on cross examination
18 where she got, Mr. Varner, but she's offering this. Do you
19 have an objection to the exhibit?

20 MR. VARNER - If I could, because we just looked
21 at it. (Pause) Okay. Your Honor, I have something to
22 proffer on the record. My client indicates to me and I ---

23 MR. LANGLEY - Your Honor, this is not an
24 objection. Does he have an objection or not?

1 MR. VARNER - Well, it is part of an objection,
2 Your Honor.

3 THE COURT - Okay, go ahead.

4 MR. VARNER - He does not receive these documents.
5 These are part of a trust account of which he is a partial
6 recipient. He has never seen those. The only way this
7 could be obtained is -- some of them have to have a
8 password or a code word. In other words, it is his
9 position -- he's not even entitled to this. This had to be
10 stolen, and I would object to illegally obtained evidence
11 for it being admitted in Court, particularly if it is a
12 stolen document or something that has been obtained through
13 fraud or misrepresentation through computer manipulation,
14 because part of this, as I understand it, pertains to
15 another member of the family of which he has no knowledge;
16 he doesn't even have access to these accounts.

17 THE COURT - I have no evidence that it's been
18 stolen, Mr. Varner. You can ask her all that on cross
19 examination. Do we have an objection to the document
20 itself, other than you don't know how she got it?

21 MR. VARNER - Well, my objection is to a certain
22 extent -- I mean in a criminal -- it's fruit of the
23 poisonous tree. This is something that was improperly or
24 illegally obtained; it is therefore not admissible in a
25 courtroom proceeding.

1 THE COURT - It's admitted over your objection. I
2 don't know of a single case, I don't know of a Court rule
3 and I don't know of an evidence rule, and I've got both
4 books if anybody wants to look at them. It's admitted over
5 the objection. Yes, sir.

6 MR. LANGLEY - Thank you, Your Honor.

7 Q Down at the bottom, is there one more account listed?

8 COURT REPORTER - You want to mark it?

9 MR. LANGLEY - Yes, let's marked it as an exhibit.
10 What number are we on?

11 COURT REPORTER - 9.

12 MR. LANGLEY - 9. Sorry, I can't keep up with
13 that.

14 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
15 PLAINTIFF'S EXHIBIT 9.)

16 Q So Plaintiff's Exhibit 9, down at the bottom is there
17 another account listed?

18 A Yes, sir. It's 75379 joint or JT AC with Paula, which
19 I think means joint account with Paula and it's ---

20 Q What's your name?

21 A Paula.

22 MR. LANGLEY - No further questions.

23 THE COURT - Okay. I tell you what we're going to
24 do, we've been going over an hour and a half now; let's
25 take about 15 minutes. Ma'am, we're going to take a break

1 here for about 15 minutes. We had another docket, as you
2 know, before we started on this case again. While we're on
3 the break, you may leave the witness chair, but you cannot
4 talk with your lawyers or anyone else about your case. Do
5 you understand that?

6 MS. ROSE - Yes, sir.

7 THE COURT - Okay. Don't talk to your lawyers or
8 anyone else about your case. Okay? All right, let's take
9 15 minutes.

10 (WHEREUPON, RECESS TAKEN)

11 THE COURT - Okay. I believe you have completed
12 your examination, Mr. Langley.

13 MR. LANGLEY - Yes, sir, Your Honor.

14 THE COURT - Okay. Mr. Varner.

15 MR. VARNER - May it please the Court.

16 THE COURT - Yes, sir.

17 CROSS EXAMINATION

18 BY MR. VARNER -

19 Q Ms. Rose, I guess I'm going to start with the last
20 thing. How did you obtain this document? And I'm
21 referring to the same document -- if I can look at the
22 Court Exhibits I can give it by number, ma'am. It's
23 Plaintiff's Exhibit Number 9.

24 A Well, this is just one document that was a part of a
25 whole pack, I believe.

1 Q Ma'am, I don't know.

2 A Okay. Well, this is -- was part of a pack, but it
3 looks like on September 12th, 2014 that I made an account
4 summary of this for some reason, because -- for what I
5 don't know.

6 Q Okay, well, let's start with this; you say it's part
7 of a pack. Would you read what it says up at the top on
8 the right-hand corner?

9 A Page 1 of 1.

10 Q Page 1 of 1, so that indicates to you that's not a
11 pack; that was not part of a pack.

12 A Yes, sir, I'm saying that it was part of a pack of
13 documents that I had about our trust accounts.

14 Q Our trust accounts. What trust accounts do you have?

15 A I was part of that account. I had -- part of that
16 pack showed that I had a million dollars, not that form,
17 but part of the pack.

18 Q Are you referring to a document you used at Family
19 Court back on October 21st where it shows three accounts of
20 which your name is on part of it, and it shows over one
21 point three million -- or other a million dollars in
22 accounts?

23 A No, sir, I'm talking about what I was initially handed
24 before that I was looking through that that was part of,
25 and that was many different statements; some came in the

1 mail to me and Homer; some came just to Homer; one came to
2 our house, a new account that Homer had opened after he was
3 arrested and we separated. There was a whole pack of
4 things, and ---

5 Q All right, well, let me ask you this. Have you ever
6 seen a pack of documents from a bank or anything? When it
7 says a pack, it'll say page 1 of 14 or page 1 of 20, rather
8 than page 1 of 1?

9 A I don't think we're on the same page.

10 Q Okay. Well, that's what this document says; it's page
11 1 of 1 document. Correct?

12 A And I told you where I got it.

13 Q Well, let me be clear. You say it came in the mail?

14 A No, sir. I told you that you can read where that came
15 from on-line.

16 Q Okay. So you accessed this on-line.

17 A And if you looked at that whole pack, if you would
18 care to do that instead of what you're doing, you would see
19 that I had access to that; I was given the codes to do that
20 with.

21 Q Who gave you those codes?

22 A The bank.

23 Q Well, your name is not on any of these trust accounts.

24 There is one account that has your name on it that has a

1 zero balance. That's a checking account you and Homer had
2 together. Correct?

3 A Those accounts have been altered. I had money in some
4 of those accounts or at least one of those accounts.

5 Q Do you have any documentation of that, ma'am?

6 A In that pack I do.

7 Q Okay. You want to get that pack?

8 A If you would so like. (Pause) Do you want me to do
9 it myself?

10 Q If you have access to it, sure, ma'am.

11 A You're closer to it than me.

12 Q Ma'am, I can't go -- I'm sorry, I can't go get stuff
13 off your lawyer's desk.

14 A Thank you. Can you sit in your seat, because you
15 scare me.

16 Q Be glad to.

17 MR. VARNER - Please sit, Mr. Varner. Go get your

18 ---

19 MS. ROSE - I know he's acting better today, but
20 he terrified me yesterday ---

21 THE COURT - It's okay, ma'am.

22 MR. VARNER - Your Honor, I'd ask that be stricken
23 from the record. That's ---

24 THE COURT - That's okay. I got it. All right,
25 ma'am.

1 Q All right, ma'am, do you want to look at those first
2 before I ask you questions on it?

3 A Sure, if you would allow me so.

4 Q Go ahead, ma'am.

5 A (Witness reviews documents)

6 MR. LANGLEY - Your Honor, may we approach?

7 THE COURT - Sure.

8 (WHEREUPON, BENCH CONFERENCE WAS HELD WHICH WAS
9 NOT REPORTED.)

10 A Okay, I'm ready.

11 Q Okay, may I look at it, ma'am?

12 A If you're going to ask me questions, I'm going to need
13 it as to answer.

14 Q Well, I have to look at it to ask questions first.

15 A Thank you.

16 Q All right, the first part of what you purport to be
17 the packet, that is from UBS. Is that correct?

18 A It's page 1 of 2 from a ---

19 Q I'm not trying to -- but the bank up there up at the
20 top is UBS. Is that correct, ma'am?

21 A Yes, sir, and it's mated (sic) to me, Paula L. Rose,
22 with my address.

23 Q Okay. If I can have that, please. All right. So
24 this was mailed to you. Correct?

1 A Yes, sir. Would you like me to read you the date that
2 it was mailed to me?

3 Q (No response)

4 A It was mailed June 30th of 2012.

5 Q Okay, ma'am. All right, and this is information about
6 an account that has your name on it. Correct? And it's
7 addressed to you.

8 A Yes, sir.

9 Q And that is 1 of 2 pages, and you have both pages
10 here. Correct?

11 A Yes, sir.

12 Q All right, the next document was mailed to both you
13 and your husband from UBS, and this is also on that joint
14 tenant account for one that shows the zero balance, and
15 I'll let you compare the two exhibits, the joint tenant
16 account, 75379; this is on 75379; that's the account that
17 has both your husband's name on it and your name on it.

18 Correct?

19 A If you'll let me look at it, I'll be able to tell you.

20 Q All right, ma'am. I'm sorry.

21 A Yes, sir, and this is where I gained access to check
22 our things on-line, our accounts on-line.

23 Q All right, well, what this -- what this says is that
24 you have a pin number to access that account which is the
25 joint account with your's and Homer's name on it, and

1 that's -- that's what that document is, dated 7/21 of 10.

2 Is that correct? Of 2010.

3 A All of these are joint; when you pull them up, from
4 what you see on -- what we're talking about initially, that
5 when you pull that up, that account, they're all listed.

6 That's where this came from.

7 Q Okay. All right. The next one is again mailed to
8 both you and your husband, and I'm referring to the first,
9 second, third, fourth page, and again, it's the account
10 summary mailed to you and your husband and it is page 1 of
11 8 pages. Is that correct? Is it showing a million and
12 ninety-six thousand dollars account? Correct?

13 A (Indicating yes)

14 Q Okay. Isn't that the same document you introduced in
15 Family Court back on October 21st?

16 A My -- I get my attorney ---

17 MR. LANGLEY - We'll stipulate it is. Your Honor,
18 we'll stipulate it is, along with an entire packet,
19 including the document that we provided today was provided
20 to counsel in Family Court.

21 MR. VARNER - All right, sir.

22 Q And that is page 1 of how many?

23 A 1 of 8 and this is the account I'm talking about where
24 my name is on this account with a million ninety-eight
25 thousand dollars eight hundred and six -- one million

1 ninety-eight thousand eight hundred and sixty-two dollars
2 and fifty-four cents.

3 Q Okay. All right. And that's page 1 and it shows
4 total assets, liabilities and total of the portfolio, in
5 other words, the total of the accounts. Correct?

6 A Are you talking about the number I just read?

7 Q Yes.

8 A Yes, sir.

9 Q Okay. But do you know where page 2, 3, 4, 5, 6, 7 and
10 8 are?

11 MR. LANGLEY - Judge, this doesn't have anything
12 to do with the defendant's ability to pay. He's gone on
13 for 15 minutes now, and it's totally irrelevant to what
14 we're here about today.

15 MR. VARNER - Your Honor, it goes to credibility,
16 because I have page 2, and it directly contradicts what
17 she's saying.

18 MR. LANGLEY - There is no page 2 to ---

19 MR. VARNER - I have page 2.

20 MR. LANGLEY - To what we've introduced today,
21 there is no page 2; page 1 of 1, and he's ---

22 MR. VARNER - It's page 1 of 8, Your Honor.

23 MR. LANGLEY - Your Honor ---

1 THE COURT - Okay, hang on a minute, gentlemen.
2 Hang on. Okay, so you're challenging this evidence? Is
3 that what we're doing?

4 MR. VARNER - Yes, I'm challenging -- I'm cross-
5 examining her, and I'll tell you where I'm going. She's
6 got page 1 of 8; that's it. She is taking the position
7 that her name was on an account. I have page 2. Page 2 --
8 -

9 MR. LANGLEY - Your Honor ---

10 MR. VARNER - --- excuse me -- page 2 says her
11 joint tenant account has seventeen cents in; the trust
12 account that does not have her name on it is the one
13 million ninety-three thousand dollars; that goes to her
14 credibility.

15 MR. LANGLEY - Your Honor, may I approach?

16 THE COURT - Yes, sir.

17 MR. LANGLEY - This is the page we put into
18 evidence. As counsel pointed out, at the top it says page
19 1 of 1. He's going off -- he asked her to provide ---

20 MS. ROSE - I hope you'll let me respond ---

21 MR. LANGLEY - Hold on, hold on --

22 MS. ROSE - There's ---

23 MR. LANGLEY - Stop. He asked her to provide all
24 these documents and has taken her through them; has nothing
25 to do with what we put in evidence, which specifically

1 shows this defendant's ability to pay. That's the only
2 purpose for offering that Exhibit.

3 THE COURT - I understand.

4 MR. VARNER - Your Honor, what I'm referring to is
5 the document that she's using to testify from that says
6 page 1 of 8.

7 THE COURT - Okay, I got that; I got that. If you
8 have other evidence, then put it in evidence so I can see
9 it.

10 MR. VARNER - I will when I get him on the witness
11 stand, Your Honor.

12 THE COURT - All right.

13 Q So it is your testimony here today that the rest of
14 the 2, 3, 4, 5, 6, 7, 8 is going to show that you have your
15 name on those trust accounts.

16 A I don't know. That paper came from my husband who
17 gave it to another attorney who represented me in a
18 criminal case, and that is my husband's evidence that -- of
19 that account. That's where that came from.

20 Q Are you talking about your criminal trial?

21 A That's why the rest -- the rest is not in there,
22 because that is what he gave to my attorney, Jack Riordan.

23 Q That's your criminal attorney.

24 A He's right back there, yes, sir.

1 Q All right, sir. All right, ma'am, and wasn't it --
2 was it your testimony -- did you testify or present any
3 evidence at that trial?

4 A We gave those documents, yes, sir.

5 Q No, ma'am. I asked you did you testify or ---

6 MR. LANGLEY - Judge, we're getting into ---

7 Q --- present any evidence at the criminal trial ---

8 MR. LANGLEY - --- way far a-field. I mean this
9 doesn't have anything to do with the ---

10 MR. VARNER - Your Honor, this goes ---

11 COURT REPORTER - I'm sorry, they're talking at
12 the same time ---

13 THE COURT - My court reporter can't do that.

14 Yes, sir.

15 MR. VARNER - This goes to credibility.

16 MR. LANGLEY - Credibility's not an issue, Your
17 Honor; he's in default. It's solely about ---

18 MR. VARNER - Your Honor, if she is ---

19 MR. LANGLEY - --- the damages.

20 THE COURT - Well, no -- it is; it is, but
21 credibility is at issue as to her damages.

22 MR. LANGLEY - But he's not asking her about her
23 damages.

1 THE COURT - I -- he's asking her about her
2 credibility, but I understand though. If you've got other
3 documents, Mr. Varner, put them in so I can consider them.

4 MR. VARNER - I will at the appropriate time, Your
5 Honor. I'm sorry.

6 THE COURT - Okay. All right.

7 Q Are you friends with Homer on Facebook?

8 A I was friends with him before the assault, and after
9 the assault I blocked him until some time the first part of
10 December when was put in the hospital and had major surgery
11 and said he was dieing and I was contacted that I needed to
12 help him, that he was -- wanted to go apologize in case in
13 died, and yes we became -- we -- I started helping him, and
14 we became friends on Facebook again.

15 Q Okay. One of the things your psychologist -- and I'm
16 not going to go through the whole thing -- of all the
17 things that have happened to you in your life. I'm not
18 going to do that.

19 A I'm sure you will; you already have.

20 Q Ma'am, if you could, just ---

21 THE COURT - Ma'am, just answer the question,
22 please. Thank you. Mr. Varner.

23 Q One of the things was brought up -- you were --
24 brought that your husband was committing adultery back in
25 August of this past year. Is that correct?

1 A I was brought up that my --

2 Q Okay. Did you mention to the psychologist, your
3 therapist and/or your psychiatrist that you believed your
4 husband was having an adulterous affair in August?

5 A I know he was.

6 Q Okay. Have you told anyone that your husband was
7 impotent?

8 A No.

9 Q So if anybody said you had told them you (sic) were
10 impotent, they wouldn't be telling the truth, would they?

11 A That I was impotent?

12 Q No, that he is impotent, ma'am.

13 A People can say whatever they want. I would never say
14 he was impotent.

15 Q Okay. Well, my question was, if somebody said that
16 you told them he was impotent, they're not telling the
17 truth.

18 MR. LANGLEY - Judge, it's calling for
19 speculation. There's hearsay; he's pitting witnesses.

20 THE COURT - I haven't heard anybody say that, but
21 I'm going to overrule it, so they would either be mistaken
22 or not telling the truth; I don't know.

23 Q All right now we go to Dr. Page's notes.

24 (WHEREUPON, DISCUSSION IS HELD BETWEEN MR. VARNER
25 AND THE COURT REPORTER WHICH WAS NOT REPORTED.)

1 Q Who is Dr. Page?

2 A He is my doctor.

3 Q Okay, is he a psychiatrist?

4 A Yes, sir, he is.

5 Q And how many years has he been treating you?

6 A He's been treating me on and off since 1997.

7 Q Okay. And how often do you generally go see him?

8 A Since 1997?

9 Q Yes, on an average.

10 A Just according to what my symptoms are. He has --
11 initially I saw him in 1997 after my assault. The State of
12 South Carolina sent me to see him, and I saw him a good bit
13 the first few weeks, the first six weeks that I was, you
14 know, out of work. After that when I started getting
15 better, he released me to my family doctor who was in
16 Seneca. I would -- when I had to -- when I had some kind
17 of major life event or when I -- the PTSD acted up again I
18 might have to go back and see him. We talked about the two
19 times that -- that I had -- that I started back into the
20 PTSD symptoms and I would have to go back and see him, so
21 off and on sometimes -- now I see him about every three
22 months.

23 Q Okay. When did you start seeing him about once every
24 three months again?

1 A That's pretty much what you normally -- I've normally
2 seen him, about every three months, if he's my -- if he
3 hasn't released me to a family doctor.

4 Q Well, were there any periods of time when you went,
5 say, six months without seeing him?

6 A There were many years that I went without seeing him
7 at all.

8 Q Okay. But we don't have his records for 15 years; we
9 don't know -- you don't have any evidence of you saw him
10 more, less or anything since this episode happened, do we?

11 A I haven't seen him very much, because I've actually
12 been at home in bed traumatized.

13 Q Okay, well, let's go to Sep -- excuse me -- 2014 prior
14 to September the 18th, prior to this alleged -- or this
15 incident. At that point in time, how often do you think
16 you were seeing him then, because you'd previously
17 testified you sometimes would go more than a year without
18 seeing him. How many times do you think you saw him in
19 2014, prior to this alleged assault?

20 A Maybe twice.

21 Q All right.

22 A Maybe more. I don't -- I don't recall because -- I --
23 I just don't.

24 Q Well, I'll let you look at this. This is Defendant's
25 Exhibit 1. It shows in 2014 you saw him -- well, we'll

1 back up. You saw him at the end of October of 2000 and --
2 but in 2014 you saw him in February, April ---)

3 MR. LANGLEY - Excuse me, counsel, do you have an
4 extra copy of that?

5 MR. VARNER - No, this was your Exhibit, not mine.

6 MR. LANGLEY - I'm not the defendant. You said
7 Defendant's Exhibit 1.

8 MR. VARNER - Okay, it was an exhibit provided by
9 you expert. I'll let you look over my shoulder.

10 THE COURT - It's in evidence here.

11 MR. VARNER - Yes, it's evidence.

12 Q You saw him ---

13 MR. LANGLEY - I thought you said Defendant's
14 Exhibit. It is Defendant's Exhibit.

15 THE COURT - Okay.

16 Q You saw him in February; you saw him in April; you saw
17 him in June; you saw him in July, and you saw him in
18 September. Five times by September in 2014 you had seen
19 him; is that correct?

20 MR. LANGLEY - Object to the misrepresentation of
21 the document.

22 THE COURT - Overruled; go ahead.

23 Q Did you see him five times before this episode ever
24 happened in nine months?

25 A If you say so.

1 Q Well, in less than nine months; eight months and two
2 days. What was going on that you had to see him five times
3 in eight months and two days prior to this alleged -- or
4 prior to this incident?

5 A I'd been convicted of crimes that I was innocent of.

6 Q Okay. And you were diagnosed back in June with
7 chronic PTSD. Correct?

8 A No, sir.

9 Q All right, I know you're not an expert, but did you
10 hear your expert yesterday say in June the notes indicated
11 you were diagnosed with chronic PTSD in June of 2014? Do
12 you dispute that or agree with that?

13 A I heard him say that my doctor wrote that on my notes,
14 but when I talked to my doctor, I was not showing any signs
15 of PTSD. I had anxiety and was depressed.

16 Q All right. Well, during 2014 when you saw him during
17 that time, were you being guarded or skittish at that point
18 in time?

19 A No, sir.

20 Q Do you have any feelings of guilt or shame,
21 overwhelming?

22 A I didn't have any feelings of guilt; I'm not sure what
23 I would've been ashamed of.

1 Q Okay. Did you have any self-destructive behavior,
2 such as drinking too much, taking too much medication or
3 driving too fast or anything like that?

4 A If I drink, I might drink a glass of wine once a week,
5 which would actually be a lot for me. If -- I did not
6 over-abuse any drugs. I only took what I was prescribed.
7 I was actually going off my medication, trying to go off of
8 it, which is why I got so depressed. I don't know what
9 else you asked me.

10 Q Okay. Well, that was it. Did you have any trouble
11 concentrating back before this happened?

12 A Actually, before this happened, no. I honestly didn't
13 -- I was fully invested in my defense and was going almost
14 every day to my attorney's office where I had an office set
15 up and was working to defend myself.

16 Q Did you have trouble sleeping?

17 A I always have trouble sleeping.

18 Q Okay. Did you have trouble being easily startled or
19 frightened?

20 A No, sir. I felt very protected at home with my
21 husband.

22 Q Now, you're very familiar with what PTSD is. Correct?

23 A Yes, sir, I am.

24 Q Okay. You don't dispute those are the symptoms of
25 PTSD.

1 A And many more.

2 Q Okay. And you don't dispute future your doctor
3 diagnosed you in June prior to this happened with chronic
4 PTSD.

5 A I was at that appointment, and my doctor -- I don't
6 know what he put on the form, because I never see the
7 forms, but I know what we discussed, what was going on in
8 my life at the time; I know what he told me and, no, we
9 didn't have -- I didn't any symptoms and had no complaints
10 of that and he -- we didn't discuss it, and that's all I
11 can tell you.

12 Q Okay. All right. You understand and you know from
13 talking with your lawyers, you have the burden of proof of
14 proving your damages here today in this particular hearing.
15 Correct?

16 A If you say so, sir.

17 Q All right. Well, did you bring or did you instruct
18 anybody to subpoena or bring Dr. Page here so that we would
19 have your whole 15 year history so that we would know if
20 there had been any changes since September?

21 A Actually I had an appointment with Dr. Page today at
22 12:20 that I had to call and cancel this morning, because
23 we didn't get finished yesterday, and no, I didn't know I
24 needed to, but I'd love to have him here.

1 Q Okay. So the answer to my question is no, you did
2 not, neither did your lawyer -- nobody subpoenaed him to be
3 here today.

4 A I don't have subpoena power, sir.

5 Q Okay. You have -- let me just rephrase it. This
6 Court will never know what change in condition from your
7 treating psychiatrist for the last 18 years. We don't
8 know, do we?

9 A If you say so.

10 MR. VARNER - Your Honor, I would ask her to
11 respond to the question on the record, please. If you say
12 so is not an appropriate response.

13 THE COURT - Ma'am, just answer the question, yes
14 or no.

15 MS. ROSE - Can you rephrase or tell me the
16 question again?

17 Q This Court does not have any way of knowing what your
18 psychiatrist can testify to as the change in your condition
19 since the September episode because he's not here.

20 A Yes, sir.

21 Q All right. You also go to a therapist. Correct?

22 A I used to go to a therapist.

23 Q Okay, who is your therapist?

24 A I don't have a therapist right this moment.

25 Q Who was your therapist?

1 A The last therapist I used was Linda Morton.

2 Q And when did you go to her? From what years to what
3 years?

4 A I really don't know.

5 Q Well, your best estimate, ma'am.

6 A All right, give me a moment to think. I started
7 seeing Linda Morton in 2002 at the initial onset of my
8 first -- or my first divorce, and I saw her for some time
9 then maybe on and off on through the divorce, so from 2002;
10 my divorce lasted til 2004; I probably would've stopped
11 seeing her at some point there and on and off from there
12 just as things -- as I had problems that I needed somebody
13 to talk to. At some point I quit seeing her altogether
14 when me and Homer -- in 2000 and -- maybe 7 when we
15 actually started into a certain phase of our relationship
16 where everything was very cordial and we had decided to get
17 married and -- I just know in probably 2007 I stopped
18 seeing her, and then I started back seeing her when --
19 probably when the three men came and set my house on fire,
20 which would've been in 2012 and off and on from that.

21 Q That's the arson that you were convicted of, four
22 counts defrauding an insurer, filing a false insurance
23 claim and two counts of arson, so you were the one who did
24 that. Correct?

25 A No, sir, I did not do that.

1 MR. VARNER - Your Honor, let the record reflect -
2 - and I believe I've handed up in the packet -- if I could
3 have the conviction sheets -- if they've not been made part
4 of the evidence, I would like to have them marked at this
5 particular point in time.

6 (WHEREUPON, DISCUSSION IS HELD BETWEEN MR. VARNER
7 AND THE COURT REPORTER WHICH WAS NOT REPORTED.)

8 THE COURT - Mr. Varner, you can just ask her on
9 the record but I -- I mean I know she was, but you can ask
10 her if you want if she was convicted ---

11 MR. VARNER - All right, Your Honor, it is my
12 understanding that that's already a part of the Court file;
13 there is no need to introduce it as evidence. I'll move
14 forward, Your Honor.

15 THE COURT - I don't think there's any objection
16 that she's been convicted. She can maintain her innocence;
17 that's fine with the Court, but she's been convicted so ---

18 Q All right, ma'am, and going back to Dr. Page's notes,
19 since September the 18th, you've seen him one time in the
20 last -- well, since September the 18th. Is that correct?

21 A Yes, sir.

22 Q You hadn't been back to him.

23 A I missed my appointment because I took my husband to
24 the hospital for his -- to get his staples out.

1 Q All right, so you have not had the need to either
2 reschedule -- since this alleged assault, you haven't had
3 the need to see him but once.

4 A No, sir, I've had the need. I wasn't -- I've missed
5 now two appointments, but I've had the need; I just haven't
6 been able to go.

7 Q Okay. But prior to this you saw him, how many ever
8 times it was, four or five, five times in eight months.
9 Correct?

10 A Correct.

11 Q All right. Has Dr. Page given you any -- well, let me
12 rephrase that. Has anybody given you any new diagnosis
13 since your last one of chronic PTSD?

14 A The last time that I went, my son went in with me for
15 the appointment because my memory was so bad ---

16 Q All right, let me ---

17 A --- and we talked about -- that's when he told me that
18 the PTSD was probably the reason that I was having all of
19 the issues that I was having.

20 Q All right, so you have not brought anything from Dr.
21 Page showing your condition has changed since this alleged
22 -- or since this incident. Correct?

23 A I didn't bring anything physically, but the paper you
24 showed me, his documents, my symptoms that I told him

1 before the assault were not PTSD symptoms; my symptoms
2 afterwards were PTSD symptoms.

3 Q All right, have you changed your medication in the
4 last couple of months?

5 A Yes, I did after I filed the divorce action and you
6 responded to the divorce action on behalf of my husband.
7 Your claim or his claim was that I was, I think, abusing
8 drugs or maybe a drug addict, so I asked my doctor to not
9 prescribe me anything that was a narcotic, which I didn't
10 really -- I took an Ativan sometimes at night to relax; I
11 never took a lot of them, but I said I want to go off of
12 them, and he put me on Seroquel which is not a narcotic.
13 It's just a anti-depressant that has some sleep -- makes
14 you get sleepy and that's what I started taking at night,
15 but I stayed on the Prozac or I was prescribed the Prozac.
16 I actually -- because of my husband's accusations, I
17 actually took myself -- just -- I stopped taking the
18 Prozac, which actually led to the severe depression which
19 led to me trying to commit suicide.

20 Q Okay. So you're saying your doctor took you off the
21 narcotic. What doctor?

22 A Dr. Page.

23 Q Okay. And was that back -- I believe the last time
24 you saw him was September the 2nd, of 2014?

25 A I don't know. I could tell you if I looked at it.

1 Q All right, well -- September the 14th -- why don't you
2 just read what it says as best you can on September --
3 excuse me -- September the 2nd of 2014. What does it say,
4 ma'am?

5 A You want me to read the whole thing?

6 Q Yes, ma'am, please.

7 A Patient -- do you want me to PT seen or do you want me
8 put patient?

9 Q Go ahead and read it in English.

10 A Patient seen, she reports in detail her reported
11 discovery of his planned infidelity. She says she and
12 husband are sleeping apart and patient says she wants a
13 divorce, upper anxiety -- I don't know what some of these
14 medical things are -- but relatively calm considering
15 circumstances. I don't know what all that means. I don't
16 know what a lot of this means. It says c-h-r PTSD 309,
17 insomnia, plan, RX Ativan, one milligram, Seroquel,
18 continue Prozac.

19 Q Okay. And he put you on -- I believe that's -- and
20 I'm not trying to take your space, so-to-speak, but he put
21 you on Lunesta, a sleep aid also.

22 A (No response)

23 Q You see where I'm talking about? Right there, Lunesta?

24 A I'm not sure if that's what he took me off of or what,
25 because the Seroquel is one I take to sleep. I did try

1 Lunesta, because I won't take Ambien because I've had some
2 problems with things happening in the middle of the night,
3 such as my son had a wreck, and I didn't remember it, so
4 that's why we tried the Lunesta, but I'm not sure what his
5 -- what all this is saying, because there's other things
6 here that we can't read. I'm not sure if I came off the
7 Lunesta, and he put me on the Seroquel, but that's what I
8 was taking, but, you know, you take it ---

9 Q I understand. I understand. All right, but where it
10 says DX, you understand that means diagnosis. Correct? Or
11 do you? If you don't, you can say you don't know.

12 A I don't, no.

13 Q Okay. And it says chronic PTSD on September the 2nd
14 prior to this incident. Correct?

15 A If that's what that means, sure.

16 Q And since that time you say your symptoms have
17 increased, but yet you've gone down on your medication;
18 you've come off of a narcotic and you even quit taking some
19 of your medication. Correct?

20 A I did that because of what my husband was alleging;
21 yes, sir, I did.

22 Q Okay. And you haven't gone back to your therapist who
23 you say you need to talk to since this happened, have you?

1 A I've talked to her over the phone, because she's my
2 friend, and she's been talking to me just on a friend basis
3 doing what we normally do in person.

4 Q Okay. Well, have you had an appointment with her
5 since September the 18th?

6 A Not a appointment to go in and talk with her at her
7 home.

8 Q And, again, you didn't bring her here today to help
9 establish your damages, did you?

10 A No, sir.

11 Q But what you brought was a person you met for two and
12 a half hours at your lawyer's office. Correct?

13 A I didn't bring him, but he came here on my behalf.

14 Q All right. And you took what's called an MMPI; that's
15 where you -- and if I'm wrong, you correct me -- but you
16 take a number pencil and check a, b, c or d or color
17 blocks. Correct?

18 A Yes, sir.

19 Q How long did it take you to take that test?

20 A About an hour from what I remember.

21 Q Okay. And the psychologist did supervise that test.
22 Correct? In other words, he ---

23 A He sat there.

1 Q Okay. So of the two and a half hours, an hour of it
2 you were spent -- you spent taking an exam. You spent a
3 total of an hour and an half with this man.

4 A No, sir. No, sir.

5 Q Okay.

6 A Would you like me to tell you, ---

7 Q Yes, ma'am, you ---

8 A --- say why I'm saying no, sir?

9 Q --- can tell me; you can explain it.

10 A The two and half hours is how long we talked. The
11 hour was in excess of the two and a half hours, so it was
12 actually three and a half hours at least. I thought it was
13 more like four.

14 Q Okay. And you did previously collect a total
15 disability workmen's compensation claim for PTSD.

16 A No, sir.

17 Q What was that for?

18 A It was for depression and PTSD.

19 Q Okay. So -- and but -- but you didn't bring those
20 records here today either, did you?

21 A No, sir.

22 Q And you've also been collecting social security for
23 how many years?

24 A Since 1999.

1 Q And so for 16 years you've been getting the social
2 security check every month. Correct?

3 A Yes, sir.

4 Q You've never been terminated from social security at
5 any time, have you?

6 A No, sir.

7 Q And every three years you go back and be -- and you're
8 re-evaluated to see if you're totally disabled every three
9 years. Correct?

10 A No, sir.

11 Q Oh. How do they re-evaluate you every three years
12 then in social security?

13 A I -- they re-evaluate me whenever they send me a re-
14 evaluation, which I -- probably since 2004 since I've been
15 with Homer, I may have been re-evaluated twice.

16 Q Okay. And when they do their re-evaluation, you send
17 them your doctor's notes and whatever you've got, your
18 appointments and everything.

19 A I don't send them; they get them from my doctor.

20 Q But you didn't bring any of your social security stuff
21 or any of your re-evaluations here today as part of your
22 case either, did you?

23 A I don't have anything about a re-evaluation; that's
24 all handled by social security.

1 Q Okay. Well, you didn't bring any of your social
2 security award records or any of your re-evaluation ---

3 MR. LANGLEY - He's asked this, Judge, four or
4 five times.

5 THE COURT - He's asking about the social
6 security; they're not here. Thank you.

7 MS. ROSE - No, sir.

8 Q All right, ma'am, and in regard to your criminal
9 charges, when the police came out that night, you told them
10 what happened. Correct? The fire.

11 A You said -- you referred to my criminal charges and
12 then you're saying when the police came out -- oh, about
13 the fire.

14 Q Yes, the criminal charges. You told the police what
15 happened? I'm not asking what you told them, but did you
16 tell them what happened?

17 A Yes, sir.

18 Q And you told the fire department what happened?

19 A No, sir.

20 Q Okay, they didn't -- the firemen didn't ask you any
21 questions?

22 A No, sir, they put out the fire.

23 Q Did the arson investigators ask you questions?

24 A Oh, yes, sir.

25 Q Insurance companies ask you questions?

1 A Many.

2 Q And you were convicted of lying to all of them,
3 weren't you?

4 MR. LANGLEY - Objection, Your Honor. The
5 conviction's in the record. We've already been over this
6 time and time again; has nothing to do with her damages in
7 this case.

8 THE COURT - It has nothing to do with damages; it
9 has to go to credibility, but she told them a story and --
10 which she's been convicted of; the conviction's there.

11 MR. VARNER - That's all the questions I have.

12 THE COURT - Thank you. Anything further?

13 MR. LANGLEY - Nothing from the plaintiff, Your
14 Honor.

15 THE COURT - Okay. Ma'am, you may step down.
16 Please be careful. Anything else?

17 MR. LANGLEY - Beg the Court's indulgence.

18 (Pause) No further witnesses, Your Honor.

19 THE COURT - All right, plaintiff rests. Mr.
20 Varner?

21 MR. VARNER - Your Honor, could I have just a few
22 minutes. My -- because I do intend to put my client up,
23 but he does have criminal charges. I want to make sure he
24 understands the limit of his testimony and I understand the
25 Court's ruling from damages -- certain -- excuse me --

1 Fifth Amendment rights that I want to be sure he protects,
2 and I don't want to get accused of malpractice on that. I
3 would like to go through that in detail with him and have
4 five or ten minutes or if you want to break for lunch and
5 we'll start back early, whichever way you want to do it,
6 Your Honor.

7 MR. HODGE - Can we have a moment with the Court?

8 THE COURT - Yes. Let's go back here.

9 (WHEREUPON, CONFERENCE OUTSIDE THE COURTROOM IS
10 HELD WHICH WAS NOT REPORTED)

11 THE COURT - Okay, we're going to take about 15
12 minutes, Mr. Varner?

13 MR. VARNER - That'd be fine, Your Honor.

14 THE COURT - Okay, you want to take your client
15 outside and I'm going to sign a few things while I'm
16 sitting here.

17 MR. VARNER - Your Honor, I do want to make sure
18 of this. What we previously spent if it's part of the
19 file, that is not -- we don't need to put that in evidence.
20 That is part of the Court's file.

21 THE COURT - (Indicating yes)

22 MR. VARNER - All right, fine. (Pause) Just one
23 moment, Your Honor. They wanted him to explain something
24 and he would need to do it anyway.

1 (WHEREUPON, DISCUSSION IS HELD BETWEEN COUNSEL
2 WHICH IS NOT REPORTED.)

3 MR. LANGLEY - Can I try to articulate what we
4 believe the stipulation to be and then Mr. Varner can
5 correction me, because I believe it would be easier.

6 MR. VARNER - I have no objection to that.

7 THE COURT - Okay.

8 MR. LANGLEY - I believe that the stipulation of
9 what Mr. Rose would testify to, not that we agree to it,
10 but if we -- we stipulate that this would be his testimony
11 were he to come up, is that the money that he has that's in
12 trust accounts, that he does have in these trust accounts
13 value in his name of three point eight million dollars?

14 MR. VARNER - Correct.

15 MR. LANGLEY - Three point eight million dollars
16 and that trust pays him on an annual basis somewhere
17 between a hundred and fifty and a hundred and sixty
18 thousand dollars. Is that right?

19 MR. VARNER - No, it's a hundred and forty-six
20 thousand eight hundred dollars average three years. That's
21 in the tax returns.

22 MR. LANGLEY - On the past three years, that has
23 paid him annually a hundred and forty-six thousand dollars,
24 approximately, and that he has the ability to pledge at

1 least some portion of the trust proceeds and has done so
2 for property in the past.

3 MR. VARNER - No, he -- that's not part of what he
4 would testify to. He can pledge the interest proceeds, in
5 other words, what his income could be, but there - I'll let
6 him finish, Your Honor. I'm sorry.

7 MR. LANGLEY - And that he has additional sources
8 of income other -- over and above the trust income in
9 retirement accounts, social security, things of that
10 nature.

11 MR. VARNER - Your Honor, that's not all inclusive
12 and I ---

13 THE COURT - Okay.

14 MR. VARNER - I agree with the first part of what
15 he said whole-heartedly. This would be what he would
16 testify to. That does not mean that they concur that it's
17 accurate or that it's accepted as truthful, but they -
18 they just merely say that that's what he would testify to.

19 THE COURT - That's what he would testify to.
20 Okay.

21 MR. VARNER - All right, sir. Your Honor, what
22 that amounts to is this. He would testify that for the
23 last three years he has averaged a hundred and forty-six
24 thousand, I believe, six hundred or eight hundred dollars a
25 year income from that trust; that the trust was set up by

1 both his mother and father and then a Rose Family Trust,
2 that he is entitled to receive the interest from that
3 trust. He would also testify that that varies from year to
4 year. It is mostly in the bond market, but it has been
5 more in previous years, and it could be less in future
6 years, but that is the three-year average, the hundred and
7 forty-six thousand eight hundred. He would further testify
8 that he receives state retirement, is a retired trooper, of
9 slightly less than twenty thousand dollars per year; it's
10 nineteen thousand, probably about six hundred or eight
11 hundred dollars again. He additionally receives social
12 security of about eighteen thousand five hundred dollars
13 per year. In regard to assets, he owns a four hundred and
14 twenty-five thousand dollar home; that that home is
15 encumbered by three hundred and twenty-five thousand dollar
16 mortgage; that at the domestic hearing his wife took the
17 position she was entitled to half the equity, and that
18 after sales costs, the net equity would be about sixty
19 thousand dollars, so he would attribute his net worth on
20 that at about thirty thousand dollars. He does have a
21 pickup truck that is probably a five hundred dollar pickup
22 truck. There is a Mercedes that his wife currently has
23 that is going to be the subject of Family Court dispute as
24 to the wife is claiming she's entitled to it; he's claiming
25 he's entitled to it; that may be a variable asset

1 ultimately and divided, but it has a value of about forty-
2 five thousand dollars. And he does have personal property
3 which will be divided of no great significance. He has no
4 other assets, Your Honor. He will testify that he has,
5 approximately, a hundred and thirty-something thousand
6 dollar debt to Mr. Jack Riordan for his wife's criminal
7 defense, that he owes that, so in essence he has a negative
8 net worth. He would further testify that in regard to
9 financial picture -- and we're not going in the domestic
10 part, but that his home was previously paid for; he was
11 doing very well and the market was better, particularly the
12 bond market, but he spent well over a hundred thousand
13 dollars for her previous criminal defense down in Seneca.
14 He has paid about three hundred thousand dollars of credit
15 card debts, which he would allege she ran up, and he
16 further -- the money -- and this is accounting where the
17 money went -- he paid for her son's education, bought him a
18 Mercedes, which is solely in his name, and it came out at
19 the Family Court hearing -- it was in his previous
20 affidavit -- of the account -- there was an account with a
21 hundred and seventy-five thousand dollars; the wife removed
22 it, and at the time of the Family Court hearing it had
23 seventeen cents in it. They introduced an exhibit, and
24 Your Honor, I guess for purposes of the record, I need to
25 know which exhibit it is.

1 THE COURT - There's all of them right there.

2 MR. VARNER - It's that document right there, one
3 of the last exhibits they put up.

4 (WHEREUPON, DISCUSSION IS HELD BETEEN MR. VARNER
5 AND THE COURT REPORTER WHICH IS NOT REPORTED.)

6 MR. VARNER - I think it's Plaintiff's Number 9.
7 There are four accounts listed. They are account number
8 8416, which has the denomination trust, A/C on it, showing
9 one million eight hundred and forty-eight thousand dollars;
10 there is another trust account, 64818, which has nine
11 hundred and fifty-eight thousand four hundred and fifty-
12 five dollars, and an additional account that does not have
13 a denomination on it, it is 67787, which has a million and
14 fifty-three thousand dollars in it. It is his testimony
15 that the top two trust are his family -- the Rose Family
16 Trust, the other one is his father's family trust, and the
17 third one is his mother's -- or it -- it's either his
18 mother or his father's family trust; that her name has not
19 and could not have ever been put on a trust account; that
20 the joint tenant account was their checking account, which
21 does show a zero balance on that date; that in regard to
22 her USB document she was referring to, he would testify --
23 and Your Honor, I guess we would offer this into evidence -
24 ---

25 MR. LANGLEY - Your Honor, it's too late for that.

1 THE COURT - Well, he would testify; go ahead.

2 MR. VARNER - That he has in his possession the
3 document she had that is the USB. It is titled 1 of 8 in
4 which she testified there was one million ninety-eight
5 thousand eight hundred and sixty-two dollars, and she
6 purported her name was on that account. It was 1 of 8.
7 She did not have the rest of the pages. Page 3 of that
8 account would provide ---

9 MR. LANGLEY - Your Honor, the difficulty is,
10 these documents are not in the record, so ---

11 MR. VARNER - Well, I attempted to put them in; he
12 objects.

13 THE COURT - I understand. He's just saying what
14 he would testify to, and I -- and I understand from our
15 conversation that you don't -- you don't necessarily agree
16 with what he said, but this is what the man would say.

17 MR. LANGLEY - Yes, sir, Your Honor.

18 THE COURT - Okay.

19 MR. VARNER - That he had in his possession and
20 has in his possession page 3, which shows the joint tenant
21 account with Paula, being the plaintiff, and his name as
22 the joint tenant, had three dollars in it as of that date
23 and that the one million nine -- ninety-eight thousand
24 eight hundred and fifty-nine dollars and sixty-four cents
25 reads as the Carly P. Rose Trust. And so, therefore, he

1 would say the rest of that document shows that that -- the
2 summary sheet purported is a summary of both the joint
3 tenant and his, but the joint tenant had the three dollars
4 in it at that time. He would further testify that in
5 August -- and this is in the Family Court record of the
6 order -- that she did remove twenty-five thousand dollars
7 from that account ---

8 MR. LANGLEY - All right, Judge, now, -- this is -
9 I've got to object to this. We had a short stipulation
10 that we were going to agree to. Now it's gone far a-field.
11 and that basically his attorney having an opportunity to
12 testify for him, which is not the idea of what we came up
13 with. It was supposed to be a short circuit, very specific
14 to these documents that are in evidence, not just all
15 through the Family Court.

16 THE COURT - Why do I need to know about the
17 Family Court stuff?

18 MR. VARNER - Well, it was going to go to his net
19 worth here in just moment. I mean ---

20 THE COURT - His net worth is stipulated that
21 there's three point eight million; he receives a hundred
22 and forty-six thousand -- I'm using round numbers -- he
23 receives eighteen thousand five hundred -- again round
24 numbers -- and about nineteen thousand and might have
25 thirty thousand dollars in property and in some personalty.

1 MR. VARNER - Correct. What I was going to as to
2 his net worth is there is another twenty-five thousand
3 dollars -- and I don't think there's argument. She took
4 twenty-five thousand out of an account; Family Court has
5 required an accounting; we don't know how that's -- what I
6 was going to say is we don't know how that's going to be
7 distributed, whether she gets it or he gets it; I don't
8 know how that affects his net worth.

9 THE COURT - So he might have another twelve five.

10 MR. VARNER - Possibly. I don't know how that's
11 going to turn out, Your Honor.

12 THE COURT - Okay.

13 MR. VARNER - He would further testify that in
14 regard to the Facebook thing -- to be honest with you, he
15 doesn't want to get caught; that's what he would say.

16 THE COURT - Okay.

17 MR. VARNER - In regard to the other texting, I
18 mean he would say, yes, I did text that and she -- but
19 again, you look at the entire exhibit; she was mad at the
20 woman; she was charging her money and that, you know, I'll
21 kick her GD ---

22 THE COURT - It speaks for itself.

23 MR. VARNER - --- was a term of art as opposed to
24 an actual threat. That would be the extent of it, Your
25 Honor.

1 THE COURT - Thank you so much. Yes, sir, Mr.
2 Langley?

3 MR. LANGLEY - Obviously, just for the record, we
4 dispute a number of the assertions made ---

5 THE COURT - Sure.

6 MR. LANGLEY - --- including the representations
7 about what he had paid for for Chaz's education; Chaz got
8 student loans, that kind of thing. The stipulation, as we
9 understood it, has been limited to what his net worth is,
10 as the Court has already articulated.

11 THE COURT - Okay. Anything further from anybody?

12 MR. LANGLEY - Just affidavit in support of our
13 attorney's fees since they're in default on the plea for
14 fees and cost. I need to sign this, but that's it.

15 MR. VARNER - I would like to look at it, Your
16 Honor.

17 THE COURT - Sure.

18 (WHEREUPON, BRIEF PAUSE IS TAKEN AND DISCUSSIONS
19 HELD WITH OTHER ATTORNEYS IN OTHER MATTERS.)

20 MR. VARNER - Your Honor, I think we can shorten
21 the process. They want to put that in; I know I have the
22 right to cross examine them on that. If they would agree
23 that I would interpose this question and/or objection to
24 their attorney's fee affidavit, my question would be there
25 was no need for three lawyers to sit their against one, but

1 other than that, I would question the need for three
2 lawyers as opposed to one or possibly two. That's my only
3 objection to the -- and I only question ---

4 MR. KENNEDY - My response, Your Honor, would be
5 that she retained all of us, and he had his partner here
6 yesterday as well.

7 THE COURT - All right, it's noted on the record.

8 MR. HODGE - Judge, thank you for your patience.

9 THE COURT - Thank all of you.

10 MR. VARNER - Yes, thank you very much for your
11 time and your patience, Your Honor. Just to relieve
12 everybody's anxiety, particularly mine, do you have any
13 idea how long it'll be before you render some kind of
14 decision, next week, two weeks or ---

15 THE COURT - We will try -- you want to mark that?

16 MR. LANGLEY - Yes. We'll make it a Court's
17 exhibit.

18 MR. VARNER - Oh, sure.

19 (WHEREUPON, DOCUMENT MARKED AS COURT'S EXHIBIT
20 NUMBER 1.)

21 THE COURT - We'll be off the record.

22 (WHEREUPON, COURT IN RECESS AT 12:10 P.M.)

23 (END OF TRANSCRIPT)

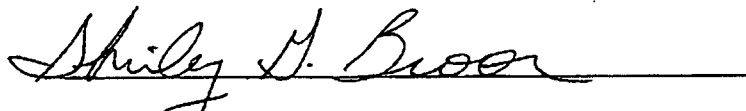
24

25

C E R T I F I C A T E

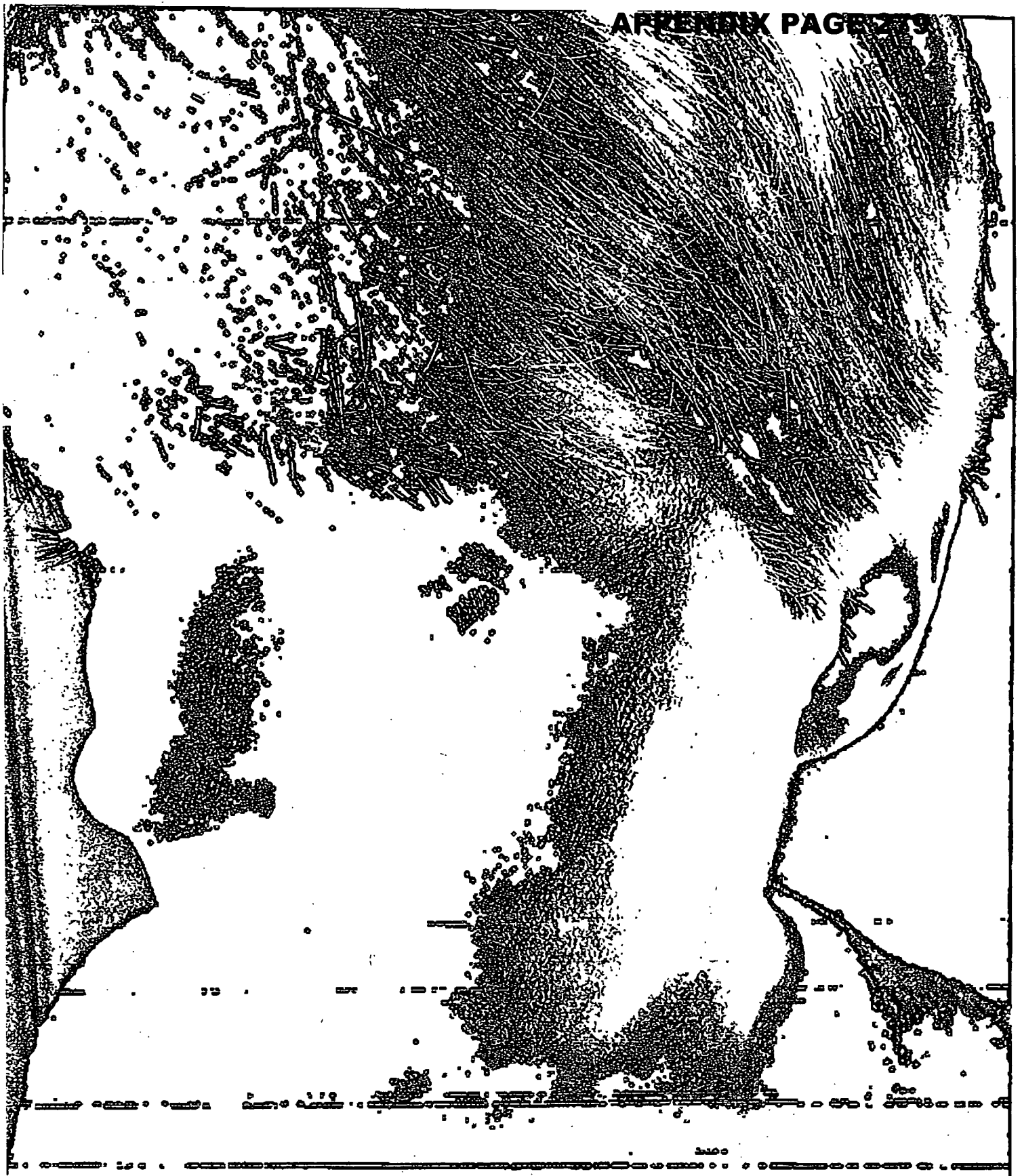
I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 178 pages consisting of Volumes I and II is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Paula Rose vs. Charles Homer Rose, II, as taken by me in the Court of Common Pleas of the Seventh Judicial Circuit on January 21 and 22, 2015, and provided by me this the 29th day of June, 2015.

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

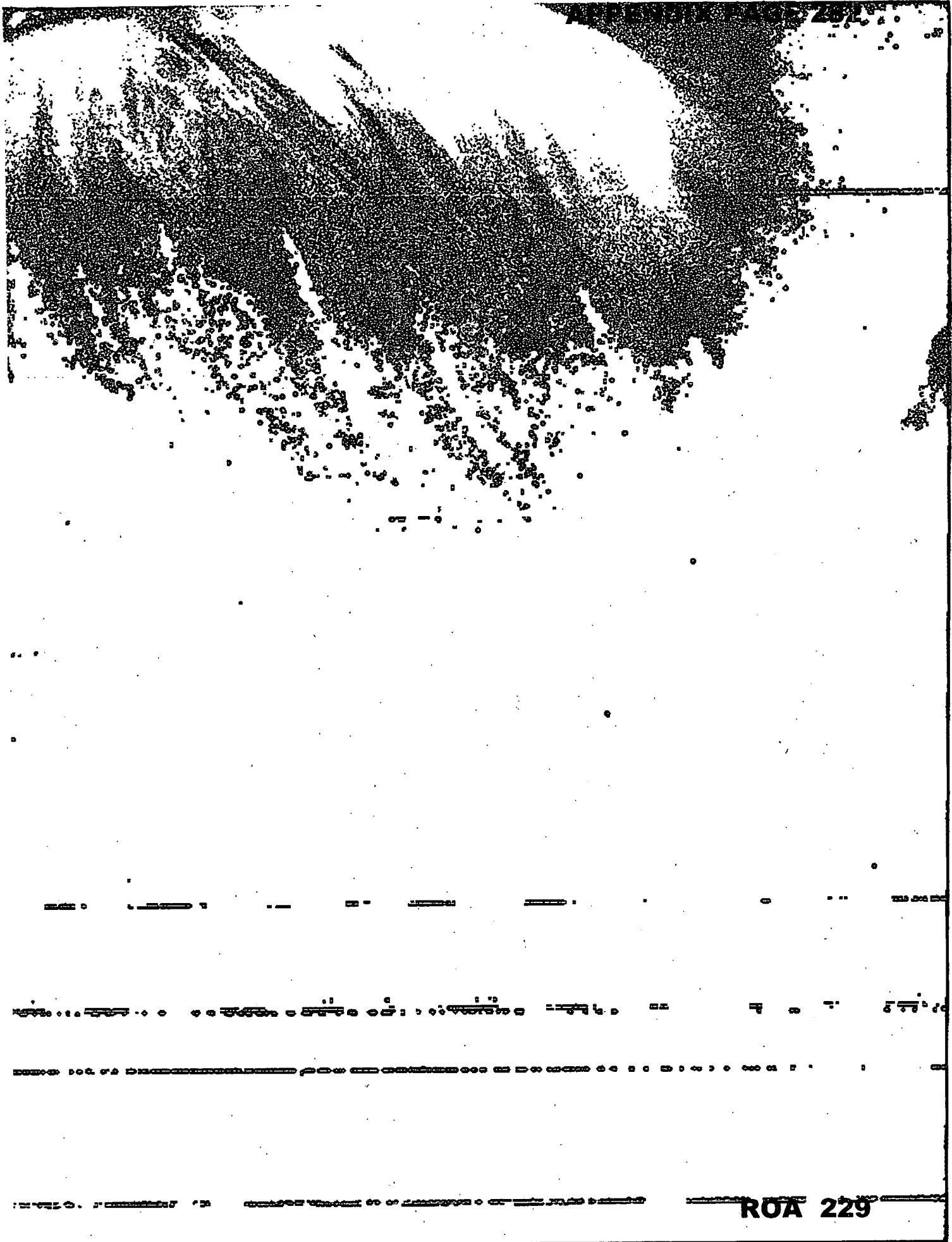


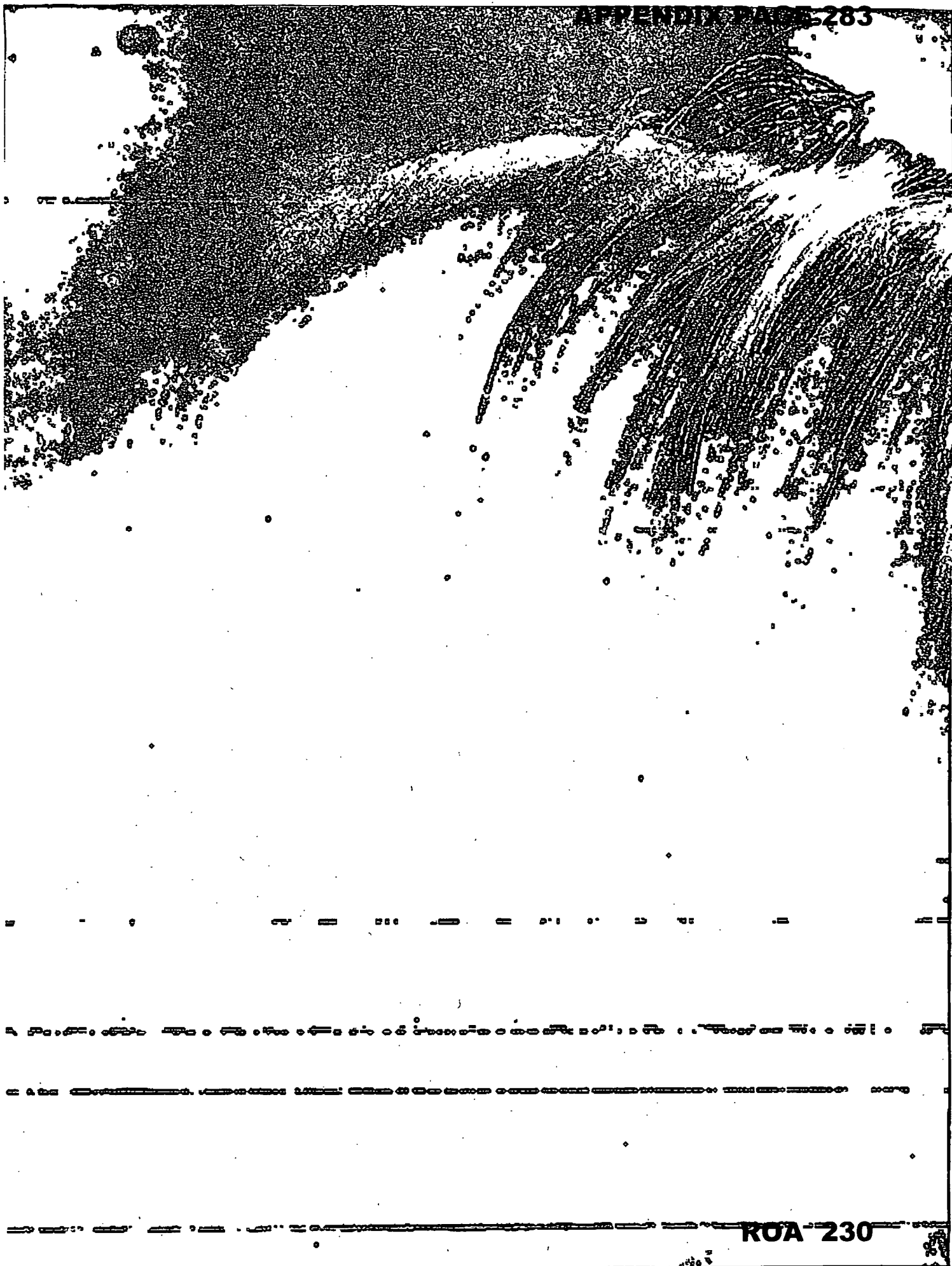
Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

















DEWALT

< Back (28)

Spanky

Details

And the TV.
I'll kick her
goddamn
ass. And
you thought
she was
your
friend....
.swell

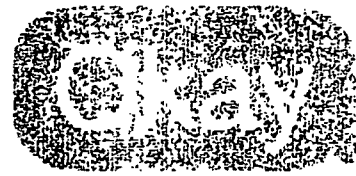
Not really. I
don't trust

[Back \(28\)](#)

Spanky

[Details](#)

take them
with you.



I'll put the
benz in your
name for
doing
this.....just
don't tell
anyone

Back (26)

Spanky

Details

He's driving

Good.

Do you think
I can sue
Kim for poor
representation?

Reply 1:20 PM

Are you ok?

< Mary (28)

Spanky

Details

Yes but keep
it cool

Have u told
her about
this

I told her you
are upset
with me

Swell....why
did u do

.. ..

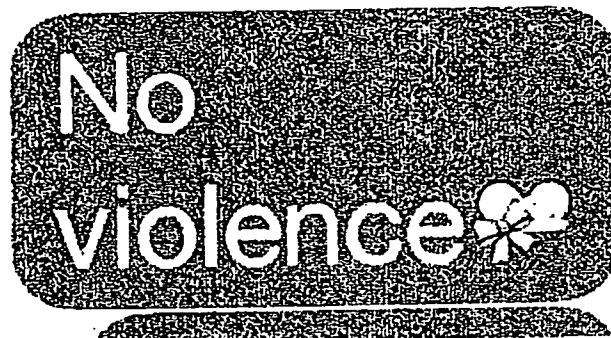
[Back \(28\)](#)

Spanky

[Details](#)

Swell....why
did u do
that.

If I kick the
shut out o
her I want
her to know
why



Hom Ros

Paula · None



Hom Ros

✓ Friends

✓ Following

Message

Timeline

About

Friends 7 Mutual

Photos

More

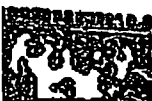
7 mutual friends including Jodie Rose and Chuck Rose

Retired at South Carolina Highway Patrol

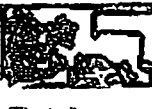
Studied at Wofford College

Lives in Spartanburg, South Carolina

FRIENDS · 7 Mutual



Angie Rose



Elizabeth Margaret Rose



Jodie Rose



Chuck Rose



Thomas Nance



Hal Rose

PHOTOS · 1



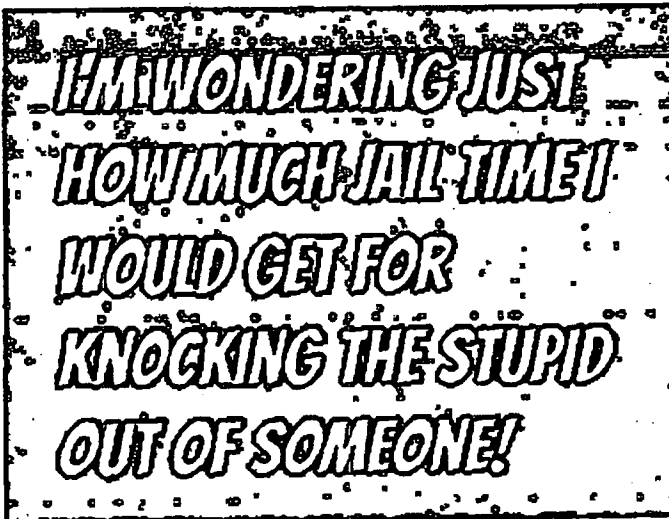
Post

Photo / Video

Write something...



Charles Helms shared a photo to Hom Ros's timeline.
23 hrs ·



"jussayin"

#jussayin

Like · Comment · Share



Hom Ros None... tried it!

Chat (54)



Write a comment...



Hom Ros shared a link.
Yesterday at 12:36pm

Recent

2010s

2000s

1980

1969

1954

Born

Sponsored



New Too Faced Palette

www.ulta.com

The Semi-Sweet Chocolate Eyeshadow Collection includes 16 sweet new shades! Online now



Inspired Silver Deaf ALERT! →

http://www.inspiredsilver/supportaw Show your support for the Men...

Like Page

RECENT ACTIVITY

Hom likes Metaspoon.

Hom added a life event: Started School at Phillips Andover

Hom added Short Hills, New Jersey as his hometown.

<https://www.facebook.com/homerosell>

AnMed Health FaROA Cr 241 01

1/5

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE FAMILY COURT

Judy Elizabeth Rose,)
Plaintiff,)

vs. :

DECREE

Charles Homer Rose, III,)
Defendant.)

This matter comes before the Court upon a verified Complaint of the plaintiff seeking a divorce from the defendant on the grounds of physical cruelty.

The hearing was held on the 9th day of January, 1975, in Greenville, South Carolina; the plaintiff appeared personally and was represented by her attorney, Demetrie J. Liatos; the defendant was not present, nor was he represented by counsel.

It appears that the parties were married on the 4th day of May, 1965, in Greenville, South Carolina, and that one child has been born of this marital union to-wit: Charles Homer Rose, IV, eight years of age.

From the evidence presented, this Court has jurisdiction of this matter and of the parties. The defendant was personally served but no demurrer, answer or notice of appearance was served upon the plaintiff's attorney as required by law as will appear by Affidavit of Default. The defendant being in default, was not called by the Court for a reconciliation conference, which it appears from the plaintiff's corroborated testimony established that the defendant is guilty of physical cruelty, and I conclude that the defendant is guilty of these acts as contemplated by the divorce laws of South

vs.

Charles Homer Rose, III,
Defendant.

This matter comes before the Court upon a verified Complaint of the plaintiff seeking a divorce from the defendant on the grounds of physical cruelty.

The hearing was held on the 9th day of *January*, 1975, in Greenville, South Carolina; the plaintiff appeared personally and was represented by her attorney, Demetrie J. Liatos; the defendant was not present, nor was he represented by counsel.

It appears that the parties were married on the 4th day of May, 1965, in Greenville, South Carolina, and that one child has been born of this marital union to-wit: Charles Homer Rose, IV, eight years of age.

H. J. Liatos
From the evidence presented, this Court has jurisdiction of this matter and of the parties. The defendant was personally served but no demurrer, answer or notice of appearance was served upon the plaintiff's attorney as required by law as will appear by Affidavit of Default. The defendant being in default, was not called by the Court for a reconciliation conference, which it appears from the plaintiff's corroborated testimony established that the defendant is guilty of physical cruelty, and I conclude that the defendant is guilty of these acts as contemplated by the divorce laws of South Carolina.

It is therefore, ORDERED, ADJUDGED AND DECREED, as follows:

1) That a complete and absolute divorce be granted to the plaintiff from the defendant from the bonds of matrimony on the grounds of physical cruelty;

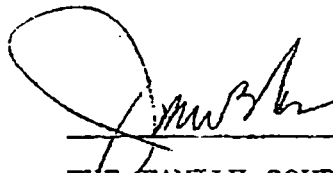
Page Two

2) That the plaintiff is awarded the complete care, custody and control of the said minor child of the parties with reasonable visitation privileges awarded to the defendant; defendant is to pay all expenses for the trip to and from the defendant's home;

3) That the defendant is to pay the plaintiff child support in the amount of fifty (\$50.00) dollars every two weeks to coincide with the defendant's pay days.

4) ~~That the house of the parties is to be sold~~ and the proceeds to go to the defendant's father, Charles Homer Rose, Jr.

AND IT IS SO ORDERED.



THE FAMILY COURT

JUDGE

Greenville, South Carolina

day of

, 19

(LS)

Notary Public for South Carolina.

ADMISSION OF SERVICE

A copy of the within Summons, Notice and Complaint is admitted at
this day of 19

FILED CLERK OF COURT
GREENVILLE S.C.
JUL 2 1975

56. H. 115

*Filed July 1, 1975
10:55 A.M.
Charles H. Rose, III
Plaintiff*

Charles Homer Rose, III,

vs

Plaintiff(s)

Judy Elizabeth Rose

STATE OF SOUTH CAROLINA
(Ch. H. 115) vs
COUNTY OF GREENVILLE 385

SUMMONS AND NOTICE

MONTEGUE J. JARVIS
Attorney(s) for Plaintiff(s)

Defendant(s)

We find

FOREMAN

HODGE & LANGLEY LAW FIRM, P.C.

Attorneys at Law
229 MAGNOLIA STREET, P.O. BOX 2765

Spartanburg, SC 29304-2765

TEL (864) 585-3873

FAX (864) 585-6485

CHARLES J. HODGE

E-MAIL: hodgecharles@hotmail.com

NBTA CERTIFIED CIVIL TRIAL SPECIALIST

T. RYAN LANGLEY

E-MAIL: RLangley@hodgeclawfirm.com

LICENSED IN SOUTH CAROLINA AND GEORGIA

January 13, 2015

HAND DELIVERED

Charles Homer Rose, III
3000 Portrush Drive, Apt. 4
Spartanburg, SC 29301

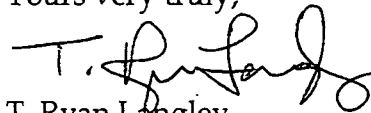
**RE: Rose v. Rose
2014-CP-42-3846**

Dear Mr. Rose:

With regards to the above referenced matter, please find enclosed the following:

- 1.) Copy of the Complaint in this matter;
- 2.) Affidavit of Default and Motion for Damages Hearing;
- 3.) Affidavit of Service; and,
- 4.) Notice of motion hearing set for Wednesday, January 21, 2015 at 2:00 pm at the Spartanburg County Judicial Center.

Yours very truly,



T. Ryan Langley

TRL/tp

Enclosures

cc: Mr. Kim R. Varner (w/enclosures-via certified mail)
Attorney at Law
304 Pettigru Street
Greenville, SC 29601

HODGE & LANGLEY LAW FIRM, P.C.

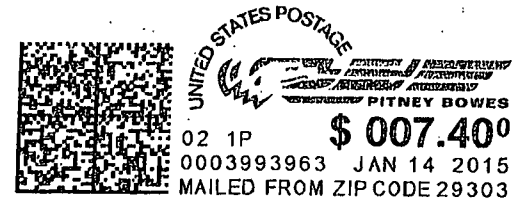
Attorneys at Law
229 MAGNOLIA STREET
P.O. Box 2765

Spartanburg, South Carolina 29304-2765

CERTIFIED MAIL



7006 2150 0002 5573 6816

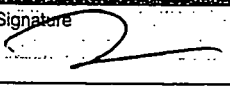
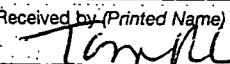


Mr. Kim R. Varner
Attorney at Law
304 Pettigru Street
Greenville, SC 29601

7006 2150 0002 5573 6816

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Sent To: Mr. Kim R. Varner Street, Apt. No.: 304 Pettigru Street or PO Box No.: 304 Pettigru Street City, State, ZIP+4: Greenville, SC 29601	
JAN 14 2015 29303	
PS Form 3800, August 2005 See Reverse for Instructions	

ROA 247

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature  ☐ Agent ☐ Addressee	
1. Article Addressed to: Mr. R. VARNER Attorney at Law 304 Pettigrew Street Greenville, SC 29601		B. Received by (Printed Name)  C. Date of Delivery	
2. Article Number (Transfer from service label)		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
3. Service Type ☒ Certified Mail® ☐ Priority Mail Express™ ☐ Registered ☒ Return Receipt for Merchandise ☐ Insured Mail ☐ Collect on Delivery		4. Restricted Delivery? (Extra Fee) ☐ Yes	
PS Form 3811, July 2013		Domestic Return Receipt	

GREENVILLE UNITED STATES POSTAL SERVICE 15 JAN 15 PH Re: P. Rose		First-Class Mail Postage & Fees Paid USPS Permit No. G-10	
• Sender: Please print your name, address, and ZIP+4® in this box•			
Hodge & Langley Law Firm ATTN: <u>Tracy Pack</u> P.O. Box 2765 Spartanburg, SC 29304			

(S)

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS
R. Keith Kelly, Circuit Court Judge**

**Appellate Case No.: 2015-000701
Circuit Court Case No.: 2014-CP-42-02846**

RECEIVED

FEB 12 2016

SC Court of Appeals

Paula Rose, ... Respondent,

v.

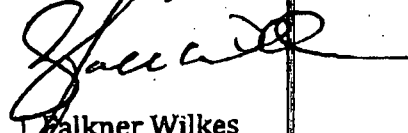
Charles Homer Rose, II, ... Appellant.

CERTIFICATE

I certify that the Record contains all of the matter designated by the parties and no other matter.

I further certify that the Record has been redacted in compliance with the Supreme Court's Revised Order on redaction of records 2014-04-15-02 in Appellate Case 2013-002681.

Respectfully submitted,



J. Falkner Wilkes
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
COUNSEL FOR APPELLANT

February 11, 2016.

5

APPENDIX PAGE 303

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS
R. Keith Kelly, Circuit Court Judge

Appellate Case No.: 2015-000701
Circuit Court Case No.: 2014-CP-42-02846

RECEIVED

FEB 18 2016

SC Court of Appeals

Paula Rose, ... Respondent,

v.

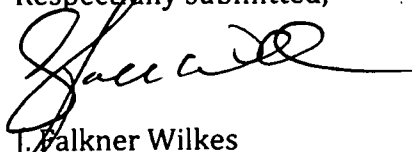
Charles Homer Rose, II, ... Appellant.

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Respectfully submitted,



J. Falkner Wilkes
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
COUNSEL FOR APPELLANT

February 11, 2016.

(S)

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS
R. Keith Kelly, Circuit Court Judge

DEC 21 2015
SC Court of Appeals

Appellate Case No.: 2015-000701
Circuit Court Case No.: 2014-CP-42-02846

Paula Rose, ... Respondent,

v.

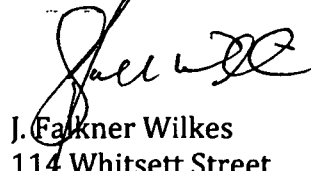
Charles Homer Rose, II, ... Appellant.

CERTIFICATE OF SERVICE

I certify that on the 17th day of December, 2015, I served the Record on Appeal and Certificate on the Respondent by placing a copy of same in the U. S. Mail, first class postage prepaid, addressed to counsel of record as indicated below:

Charles J. Hodge
T. Ryan Langley
Hodge & Lanley Law Firm, P.C.
229 Magnolia Street
Spartanburg, SC 29306

Respectfully submitted,



J. Falkner Wilkes
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
COUNSEL FOR APPELLANT

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS
R. Keith Kelly, Circuit Court Judge

Appellate Case No.: 2015-000701
Circuit Court Case No.: 2014-CP-42-02846

RECEIVED
JAN 11 2016
SC Court of Appeals

Paula Rose, ... Respondent,

v.

Charles Homer Rose, III, ... Appellant.

SUPPLEMENTAL RECORD ON APPEAL

Kim R. Varner
Varner & Segura
304 Pettigru Street
Greenville, SC 29601
(864) 271-2232

J. Falkner Wilkes
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292

COUNSEL FOR APPELLANT

Charles J. Hodge
T. Ryan Langley
P.O. Box 2765
Spartanburg, SC 29304
(864) 585-3873

Christopher D. Kennedy
N. Douglas Brannon
P.O. Box 3254
Spartanburg, SC 29304
(864) 707-2020

Attorneys for Respondent

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS
R. Keith Kelly, Circuit Court Judge**

**Appellate Case No.: 2015-000701
Circuit Court Case No.: 2014-CP-42-02846**

Paula Rose, ... Respondent,

v.

Charles Homer Rose, III, ... Appellant.

SUPPLEMENTAL RECORD ON APPEAL

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Varner & Segura
304 Pettigru Street
Greenville, SC 29601
(864) 271-2232

J. Falkner Wilkes
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292

COUNSEL FOR APPELLANT

Charles J. Hodge
T. Ryan Langley
HODGE & LANGLEY LAW FIRM, P.C.
P.O. Box 2765
Spartanburg, SC 29304
(864) 585-3873

ATTORNEYS FOR RESPONDENT

INDEX

ANSWER..... 1

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 PAULA ROSE,)
)
 PLAINTIFF,)
)
 VS.)
)
 CHARLES HOMER ROSE, III.,)
)
 DEFENDANT.)

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2014-CP-42-3846

ANSWER

CLERK OF COURT
 SPARTANBURG COUNTY
 2015 JAN 20 AM 8:42
 M. HOFE BLACKLEY

The Defendant answering the Complaint of the Plaintiff would respectfully show unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. That the cause of action alleged herein in did occur in its entirety within the confines of the County of Greenville, State of South Carolina and that venue is not appropriate in Spartanburg County.

FOR A SECOND DEFENSE

2. That any and all allegations of the Complaint not herein specifically admitted, modified, or explained are denied and strict proof demanded thereof.

3. The allegations of Paragraphs 1 and 2 are admitted.

4. The allegations of Paragraph 3 are denied and the Defendant asserts that Greenville County is the proper venue for this action.

5. The Defendant denies so much of the allegations of Paragraph 4 as alleges that on September 18, 2014 that there was an altercation of a minor nature between the parties. The Defendant asserts that he never committed any assault or battery against the Plaintiff and that there was no force or violence or infliction of bodily harm on the Plaintiff whatsoever. The



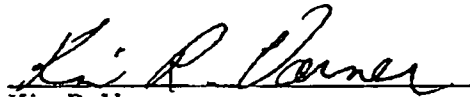
Defendant vehemently denies that he unlawfully struck the Plaintiff or that there was any intention to harm the Plaintiff in a rude, insolent, and/or vengeful way. The allegations of Paragraph 4 are therefore vehemently denied and strict proof demanded thereof. The Defendant furthermore asserts that the Plaintiff created a false allegation and that he fully recorded same on an audio recording and that same was fraudulently set up by the Plaintiff to gain a monetary advantage in both Family Court and this civil proceeding.

6. The allegations of Paragraph 5 are denied. In this regard, the Defendant asserts that EMS did come to the residence at the time of the alleged incidence and that no medical treatment was rendered. The Defendant therefore denies those allegations. The Defendant is without sufficient information and knowledge to form a belief as to the remaining allegations concerning any alleged medical care or treatment and therefore denies same and demands strict proof thereof.

7. The Defendant denies the allegations of Paragraph 6.

WHEREFORE, having fully answered the Complaint of the Plaintiff the Defendant respectfully prays as follows:

1. That the venue in this matter be transferred to Greenville County;
2. That the Complaint of the Plaintiff be dismissed with costs; and
3. For such other and further relief as the Court may deem just and proper.


Kim R. Varner
Attorney for the Defendant
304 Pettigru Street
Greenville, South Carolina 29601
(864) 271-2232

January 19, 2015
Greenville, South Carolina

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 JAN 20 AM 8:42
M. HOPE BLACKLEY

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

R. Keith Kelly, Circuit Court Judge

Appellate Case No.: 2015-000701
Circuit Court Case No.: 2014-CP-42-02846

RECEIVED

JAN 11 2016

SC Court of Appeals

Paula Rose, ... Respondent,

v.

Charles Homer Rose, II, ... Appellant.

CERTIFICATE OF SERVICE

I certify that on the 6th day of January, 2016, I served the Supplemental Record on Appeal and Certificate on the Respondent by placing a copy of same in the U. S. Mail, first class postage prepaid, addressed to counsel of record as indicated below:

Charles J. Hodge
T. Ryan Langley
Hodge & Lanley Law Firm, P.C.
229 Magnolia Street
Spartanburg, SC 29306

Respectfully submitted,



J. Falkner Wilkes
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
COUNSEL FOR APPELLANT

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS
R. Keith Kelly, Circuit Court Judge**

**Appellate Case No.: 2015-000701
Circuit Court Case No.: 2014-CP-42-02846**

RECEIVED

NOV 28 2016

SC Court of Appeals

Paula Rose, ... Respondent,

v.

Charles Homer Rose, II, ... Appellant.

PETITION FOR REHEARING

Kim R. Varner
Varner & Segura
304 Pettigru Street
Greenville, SC 29601
(864) 271-2232

J. Falkner Wilkes
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292

Counsel for Appellant

PETITION

This Court's decision overlooks the trial court's failure to adequately consider the parties' spousal relationship as a major factor underlying the Appellant's default. The nature of the parties' special relationship as spouses is essential to the analysis of this case. The impact of the Respondent's actions on the Appellant must be evaluated in light of their relationship.

As found by the trial court, the Appellant was hospitalized near the end of his time for filing an answer. (R. p. 2; R. p. 50). The record shows that during the period of time that Mr. Rose was in the hospital, Mrs. Rose came to visit him regularly. (R. p. 50). Photographs taken of the parties together at the hospital show the parties appearing to have reconciled their differences. (R. 36-40; 50). In light of clear evidence of what appears to be their reconciliation prior to the default, the parties' special relationship as spouses explains Mr. Rose's subsequent delay in filing an answer and establishes good cause under Rule 55.

Although novel, the existence of the spousal relationship is a necessary consideration in the analysis of the facts. Here, the family court failed to address clear evidence that shortly before Mr. Rose's default, the parties appear to have reconciled their differences. The photographs in evidence are

consistent with Mr. Rose's testimony that throughout his hospitalization and convalescence, Mrs. Rose was repeatedly assuring him that she was dropping the lawsuit. (R. p. 20-21; 23-27; 33-34; 35; 50). These photographs indisputably support Mr. Rose's belief that the parties' had resolved their differences and establishes an elevated basis for Mr. Rose's reliance on Mrs. Rose's assurances that she would not pursue the claim. Due to the parties' spousal relationship, Mr. Rose's reliance on Mrs. Rose's assurances, and his delay in filing an answer were entirely reasonable and thus constitute good cause.

The standard for granting relief from an entry of default under Rule 55 is "good cause." Rule 55(c), SCRCF. "This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). Here Mr. Rose, as a husband, relied on the representations of Mrs. Rose, as his wife, in delaying the filing of his answer. Mrs. Rose's actual intent in leading Mr. Rose to believe they were reconciling their differences and that she would not pursue the civil case is not important. The issue is whether Mr. Rose's belief and reliance were

reasonable so as to establish good cause is the issue. Here, due to the marital relationship, Mr. Rose's interpretation and reliance on Mrs. Rose's actions were entirely reasonable.

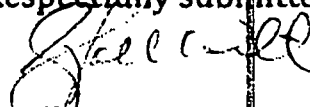
If Mrs. Rose never intended a reconciliation the result is the same as misrepresentations and fraud are each relevant in determining whether good cause has been shown under Rule 55(c), SCRCF. See *New Hampshire Ins. Co. v. Bey Corp.*, 312 S.C. 47, 50, 435 S.E.2d 377, 378-79 (Ct.App. 1993). The end result, which has been overlooked, is that Mr. Rose was not afforded an opportunity to litigate the merits of the case based on his reliance of his wife's assurances. A result that would not have happened but for the marital relationship.

Application of default in the present case is similar to cases involving extrinsic fraud, which "induces a person not to present a case or deprives a person of the opportunity to be heard." *Chewning v. Ford Motor Company*, 354 S.C. 72, 579 S.E.2d 605 (2003) (citing *Hilton Head Ctr. of South Carolina v. Public Serv. Comm'n*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)). Here, Mr. Rose lost his ability to defend based on his reliance on his wife's assurances that she would not pursue the case. The result is simply inequitable.

CONCLUSION

Appellant moves the Court to reconsider its decision and grant a rehearing in this case.

Respectfully submitted,



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November 26, 2016.

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS
R. Keith Kelly, Circuit Court Judge**

**Appellate Case No.: 2015-000701
Circuit Court Case No.: 2014-CP-42-02846**

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SC Court of Appeals

Paula Rose, ... Respondent,

v.

Charles Homer Rose, II, ... Appellant.

CERTIFICATE OF SERVICE

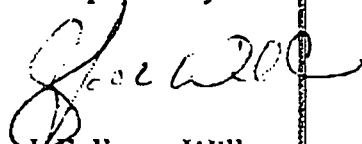
I certify that on the 26th day of November, 2016, I served a copy of the Appellant's Petition for Rehearing and Certificate of Service on the Respondent by placing a copy of same in the U. S. Mail, first class postage prepaid, addressed to counsel of record as indicated below, and by facsimile or other means if indicated:

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