

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

Appeal from Dorchester County
Court of Common Pleas

Diane Schafer Goodstein, Circuit Court Judge

Unpublished Opinion No. 2017-UP-067 (S.C. Ct. App. filed Feb. 1, 2017)

William McFarland and Jennifer McFarland, Petitioners,

v.

Mansour Rashtchian and Amy Rashtchian, Respondents.

APPENDIX VOLUME 1

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Counsel for Respondents

RECEIVED
JUL 13 2017
S.C. SUPREME COURT

INDEX

Appendix Volume 1

Record on Appeal, Volume 1	001

Appendix Volume 2

Record on Appeal, Volume 2	414

Final Brief of Appellants	830

Final Brief of Respondents	854

Unpublished Opinion No. 2017-UP-067, filed February 1, 2017	888

Appellants' Petition for Rehearing	890

Respondents' Return to Petition for Rehearing	900

Appellants' Reply to Respondent's Return to Petition for Rehearing	905

Order Denying Petition for Rehearing	911

22355

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Dorchester County
Court of Common Pleas

Diane Schafer Goodstein, Circuit Court Judge

Appellate Case No. 2015-000058
Trial Court Case No. 2013-CP-18-00735

RECEIVED

JAN 26 2016

SC Court of Appeals

William McFarland and Jennifer McFarland,

Appellants,

v.

Mansour Rashtchian and Amy Rashtchian,

Respondents.

RECORD ON APPEAL
VOLUME I

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INDEX

Page

Volume I

Orders, Judgments, Decrees, or Decisions

Order Granting Defendants Motion to Reopen Plaintiffs Deposition, November 11, 2014.....	1
Form 4 Judgment in Civil Case dated December 12, 2014	6
Verdict Form (Jennifer McFarland).....	8
Verdict Form (William McFarland).....	9

Pleadings

Summons and Complaint.....	10
Amended Complaint	13
Answer	16

Transcripts

December 8-12, 2014 Trial Transcript excerpts	20

Volume II

Transcripts

December 8-12, 2014 Trial Transcript excerpts (cont.).....	411

Exhibits

Plaintiffs' Exhibits

Plaintiffs' Exhibit 1 (Subdivision Plat).....	539
Plaintiffs' Exhibit 2 (Photo).....	540

Plaintiffs' Exhibit 3 (Photo).....	541
Plaintiffs' Exhibit 6 (Handwritten Statement of Lance Johnson to Summerville Police Department).....	542

Defendants' Exhibits

Defendants' Exhibit 1 (E-Mail)	543
Defendants' Exhibit 5 (see Summons and Complaint at pages 10-12)	
Defendants' Exhibit 8 (E-Mail)	545
Defendants' Exhibit 9 (Letter)	549
Defendants' Exhibit 10 (Civil Action Cover Sheet).....	551
Defendants' Exhibit 13 (Statement).....	562

Court's Exhibits

Court's Exhibit 2 (Depo Majid Rashtchian)	565
Court's Exhibit 3 (Depo F. Rashtchian)	600
Court's Exhibit 4 (Depo Mansour Rashtchian)	626
<u>Certificate of Counsel</u>	823

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

William McFarland and Jennifer
McFarland,

Plaintiffs,

vs.

Mansour Rashtchian and Amy Rashtchian,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

CASE NO.: 2013-CP-18-0735

ORDER GRANTING DEFENDANT'S
MOTION TO REOPEN PLAINTIFFS'
DEPOSITIONS & COMPELLING
PRODUCTION OF DOCUMENTS

CERTIFIED COPY

12-10-14

Charles H. Haden
Clerk of Court
Dorchester County

This matter is before me upon motion of the Defendants to strike Plaintiffs' Complaint or in the alternative to reopen Plaintiffs' depositions, Defendants' Motion to Compel Plaintiffs to produce records relating to the Live Oak case (2012-CP-18-2583) and Attorney Brandt Shelbourne's Motion to Quash Subpoena for records relating to the Live Oak case. James A. Stuckey appeared on behalf of the Plaintiffs. Richard Burke, former attorney for the Plaintiffs, and Brandt Shelbourne, attorney for the Plaintiffs in the Live Oak case appeared as well. David C. Cleveland appeared on behalf of the Defendants.

Defendants assert that Plaintiffs failed to produce a typewritten statement of witness Lance Johnson dated June 11, 2013 in response to discovery requests. Plaintiffs assert that the document was initially prepared to be given to their attorney and therefore enjoys attorney/client privilege. Plaintiffs concede that the document was provided to Lance Johnson, the landscaper for the Plaintiffs who allegedly witnessed the incident at issue. Plaintiffs admit that Mr. Johnson signed the three-page, typed statement, that they prepare from alleged information provided from Mr. Johnson to Jennifer McFarland.

Defendants have served Plaintiffs with Requests for Production of Documents requesting all non-privileged documents from the Live Oak Village Homeowners Association, Inc.. Jennifer McFarland, Carlton Holcomb, Ute Holcomb v. Thomas Morris, David Hannemann, Sophia Mazell and Michael Mazell, Defendants, and Sophia Mazell and Michael Mazell, Third-Party Plaintiffs v. William McFarland, Third-Party Defendant. Ms. McFarland asserts in that suit that the Mazells defamed her by making the same alleged statements as were alleged in the present action. Plaintiffs' counsel in this matter, Mr. Stuckey, asserts that he does not have those documents.

After hearing argument of counsel, I rule as follows:

Defendants' Motion to Strike Plaintiffs' Complaint is denied. However, Defendants have been prejudiced by Plaintiffs' failure to provide the statement of Mr. Johnson dated June 11, 2013. Therefore, Defendants are entitled to take the depositions of both Plaintiffs. Since this was necessitated by the Plaintiffs' failure to produce the statement of Mr. Johnson, the Plaintiffs will be responsible for all fees and costs associated with the taking of their depositions.

Defendant's Motion to Compel Plaintiffs to produce the non-privileged documents from the Live Oak case is granted. Defense counsel has agreed to go to the office of Plaintiffs' counsel in the Live Oak case, Brandt Shelbourne, for the purpose of reviewing that file. Plaintiffs are responsible for any fees that are incurred due to Mr. Shelbourne reviewing the file and removing privileged documents before defense counsel's review.

Mr. Shelbourne filed a Motion to Quash the subpoena issued by Defendants for the non-privileged documents in his file in the Live Oak matter. In light of the ruling

above, that Motion is now moot. The non-privileged portions of Mr. Shelbourne's file in the Live Oak case will be produced pursuant to Defendants' Requests for Production of Documents and Plaintiffs will pay all fees associated with the production of that file.

Defense counsel shall provide an affidavit to the Court within thirty (30) days of taking the depositions of the Plaintiffs setting forth the fees and costs associated with Plaintiffs' depositions due to Plaintiffs' failure to produce the statement of Mr. Johnson in a timely manner. Once counsel has reviewed the claimed fees and costs, if needed the Court will conduct a hearing to determine the amount of fees and costs to be ordered. The Court will then award all attorney fees and costs associated with work necessary due to the Plaintiffs' failure to provide the statement of Mr. Johnson.

IT IS SO ORDERED.


The Honorable Diane Shafer Goodstein
Schafar

Conroy -, SC
11-13, 2014

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP1800735

William McFarland

Jennifer McFarland

Mansour Rashtchian

Amy Rashtchian

CERTIFIED COPY

12-10-14 (250)

Christy Graham
Clerk of Court
Dorchester County

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC: ☐ Rule 41(a), SCRPC (Vol. Nonsuit):
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC: ☐ Bankruptcy:
☐ Binding arbitration, subject to right to restore to confirm; vacate or modify arbitration award: ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed: ☐ Reversed: ☐ Remanded: ☐ Other: _____

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Diane S. Goodstein
Circuit Court Judge

2112
Judge Code

12/8/2014
Date

For Clerk of Court Office Use Only

This judgment was entered on ¹⁰12/8/2014, and a copy mailed first class or placed in the appropriate attorney's box on ¹⁰12/8/2014, to attorneys of record or to parties (when appearing pro se) as follows:

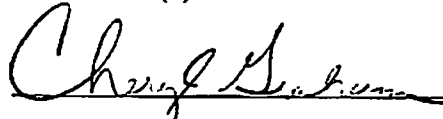
James A. Stuckey Jr. 123 Meeting Street Charleston, SC 29401

David Cooper Cleveland 126 Seven Farms Dr., Ste. 200 Charleston, SC 29492

P. Brandt Shelbourne, 131 E. Richardson Avenue, Summerville, SC 29483

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP1800735

William McFarland Jennifer McFarland Mansour Rashtchian Amy Rashtchian

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC. ☐ Rule 41(a), SCRPC (Vol. Nonsuit).
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award. ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order, (formal order to follow) ☒ Statement of Judgment by the Court: **The jury found in favor of the Defendants.**

ORDER INFORMATION

This order ☒ ends ☐ does not end the case
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Diane S. Goodstein
Circuit Court Judge

2112
Judge Code

12/12/2014
Date

RECEIVED

JAN 12 2015

For Clerk of Court Office Use Only

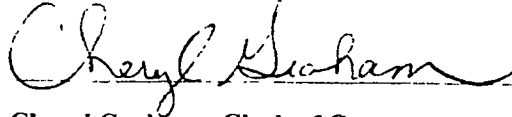
This judgment was entered on **12/12/2014**, and a copy mailed first class or placed in the appropriate attorney's box on **12/12/2014**, to attorneys of record or to parties (when appearing pro se) as follows.

James A. Stuckey Jr. 123 Meeting Street Charleston, SC
29401

ATTORNEY(S) FOR THE PLAINTIFF(S)

David Cooper Cleveland 126 Seven Farms Dr., Ste 200
Charleston, SC 29492

ATTORNEY(S) FOR THE DEFENDANT(S)



Cheryl Graham - Clerk of Court

Court Reporter: Ruth Mott

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case Number: 2013-CP-18-00735

William McFarland and)
Jennifer McFarland,)
Plaintiffs,)

vs.)

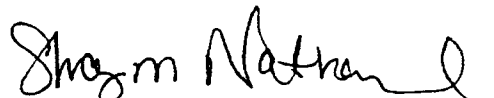
VERDICT FORM

Mansour Rashtchian and)
Amy Rashchian,)
Defendants.)
_____)

VERDICT

We, the Jury, unanimously find for the Plaintiff, Jennifer McFarland in the amount of
_____ dollars actual damages

We, the Jury, unanimously find for the Defendants.


PRESIDING JUROR

December 12, 2014
St. George, South Carolina

WHEN YOU HAVE COMPLETED YOUR DELIBERATIONS, PLEASE NOTIFY
THE BAILIFF

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

William McFarland and)
Jennifer McFarland.)

Plaintiffs.)

vs.)

Mansour Rashtchian and)
Amy Rashchian.)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case Number: 2013-CP-18-00735

VERDICT FORM

VERDICT

We, the Jury, unanimously find for the Plaintiff, William McFarland in the amount of

_____ dollars actual damages.

We, the Jury, unanimously find for the Defendants.

Sharon Nathaniel

PRESIDING JUROR

December 12, 2014
St. George, South Carolina

WHEN YOU HAVE COMPLETED YOUR DELIBERATIONS, PLEASE NOTIFY
THE BAILIFF

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

WILLIAM MCFARLAND and JENNIFER
MCFARLAND

Plaintiffs,

VS.

MANSOUR RASHTCHIAN and AMY
RASHTCHIAN

Defendants.

TO THE DEFENDANTS ABOVE-NAMED:

) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT

) CASE NO.: 2013-CP-18-

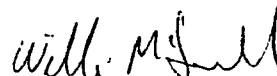
735

SUMMONS

FILED - RECORDS
2013 APR 24 AM 11:3
CHERYL
CLERK OF COURT
DORCHESTER COUNTY

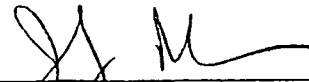
YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day or such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

By:



William McFarland, Pro Se Plaintiff
105 Oak Village Ln.
Summerville, SC 29483
(843) 200-7098
b21536@bellsouth.net

By:



Jennifer McFarland, Pro Se Plaintiff
105 Oak Village Ln.
Summerville, SC 29483
(843) 200-7098
b21536@bellsouth.net

Summerville, South Carolina
April 24, 2013

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

WILLIAM MCFARLAND and JENNIFER
MCFARLAND

Plaintiffs,

VS.

MANSOUR RASHTCHIAN and AMY
RASHTCHIAN

Defendants.

TO THE DEFENDANTS ABOVE-NAMED:

) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT

) CASE NO.: 2013-CP-18-

735

COMPLAINT
(Slander)

JURY TRIAL DEMANDED

CHERYL
CLERK OF COURT
DORCHESTER COUNTY

2013 APR 24 AM 11:32

FILED - RECORD

TO DEFEDANTS, ABOVE-NAMED:

Plaintiffs William McFarland and Jennifer McFarland (hereinafter "Plaintiffs") hereby complain of Defendants Mansour Rashtchian and Amy Rashtchian (hereinafter "Defendants") as follows:

1. Plaintiffs at all times relevant have resided in the Live Oak Village subdivision located in Dorchester County, South Carolina.
2. Defendants at all times relevant have resided in Dorchester County, South Carolina.

**AS AND FOR A FIRST CAUSE OF ACTION
(Slander and Defamation)**

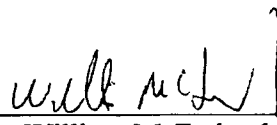
3. Upon information and belief Defendants have committed slander and defamation against Plaintiff Jennifer McFarland by alleging to third persons that Jennifer McFarland is unchaste and having extra-marital relations, and against Bill and Jennifer McFarland by alleging that they

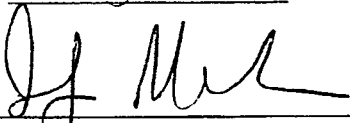
committed criminal acts by stealing Jennifer McFarland's father's business; and that Bill and Jennifer McFarland are racists, all of which are untrue and amount to slander per se and defamation.

4. As a direct and proximate result of Defendants' slander, slander per se and defamation Plaintiffs have been embarrassed, humiliated, suffered emotional distress and other actual damages and is entitled to the same and to punitive damages all in an amount to be determined by the trier of fact.

WHEREFORE, Plaintiffs pray for:

- (a) Actual and punitive damages as allowed by law; and
- (b) Any such other and further relief this Court deems just and proper.

By: 
William McFarland, Pro Se Plaintiff
105 Oak Village Ln.
Summerville, SC 29483
(843) 200-7098
b21536@bellsouth.net

By: 
Jennifer McFarland, Pro Se Plaintiff
105 Oak Village Ln.
Summerville, SC 29483
(843) 200-7098
b21536@bellsouth.net

Summerville, South Carolina
April 24, 2013

STATE OF SOUTH CAROLINA)
:
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
Case No. 2013-CP-18-0735

WILLIAM McFARLAND and
JENNIFER McFARLAND,

Plaintiffs,

-versus-

MANSOUR RASHTCHIAN and
AMY RASHTCHIAN,

Defendants.

AMENDED COMPLAINT

(Slander)

(Jury Trial Demanded)

FILED-RECORDED

12-9-14 9:33am
Cheryl Graham
Clerk of Court
Dorchester County

Plaintiffs WILLIAM McFARLAND and JENNIFER McFARLAND complain of
Defendants as follows:

1. Plaintiffs at all times relevant have resided in the Live Oak Village subdivision
located in Dorchester County, South Carolina.

2. Defendants at all times relevant have resided in Dorchester County, South
Carolina.

FIRST CAUSE OF ACTION
(Slander and Defamation)

3. Upon information and belief Defendants have committed slander and defamation
against Plaintiff Jennifer McFarland by alleging to third persons that Jennifer McFarland is
unchaste and having extra-marital relations, all of which is untrue and amounts to slander *per se*
and defamation.

4. As a direct and proximate result of Defendants' slander, slander *per se*, and

defamation Plaintiff Jennifer McFarland has been embarrassed, humiliated, suffered emotional distress, and other actual damages, and is entitled to the same, and to punitive damages, all in an amount to be determined by the trier of fact.

SECOND CAUSE OF ACTION
(Slander and Defamation)

5. Upon information and belief Defendants have committed slander and defamation against Plaintiffs Bill and Jennifer McFarland by alleging that they committed criminal acts by stealing Jennifer McFarland's father's business, all of which is untrue and amounts to slander *per se* and defamation.

6. As a direct and proximate result of Defendants' slander, slander *per se*, and defamation Plaintiffs Bill and Jennifer McFarland have been embarrassed, humiliated, suffered emotional distress, and other actual damages, and is entitled to the same, and to punitive damages, all in an amount to be determined by the trier of fact.

THIRD CAUSE OF ACTION
(Slander and Defamation)

7. Upon information and belief Defendants have committed slander and defamation against Bill and Jennifer McFarland by alleging to third persons that they are racists, all of which is untrue and amounts to slander *per se* and defamation.

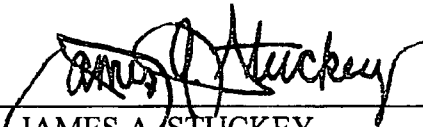
8. As a direct and proximate result of Defendants' slander, slander *per se*, and defamation Plaintiffs Bill and Jennifer McFarland have been embarrassed, humiliated, suffered emotional distress, and other actual damages, and is entitled to the same, and to punitive

damages, all in an amount to be determined by the trier of fact.

WHEREFORE, Plaintiffs pray for:

(a) Actual and punitive damages as allowed by law; and

(b) Any such other and further relief this Court deems just and proper.



JAMES A. STUCKEY

ALISSA C. LIETZOW

STUCKEY LAW OFFICES, LLC

123 Meeting Street

Charleston, SC 29401

843-577-9323

Email: jstuckey@stuckeylaw.com

Email: acollins@stuckeylaw.com

Facsimile: 843-577-3635

Attorney for Plaintiffs

December 8, 2014

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

William McFarland and Jennifer
McFarland,

Plaintiffs,

vs.

Mansour Rashtchian and Amy
Rashtchian,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2013-CP-18-0735

**ANSWER OF MANSOUR
RASHTCHIAN AND AMY
RASHTCHIAN**

The Defendants, Mansour Rashtchian and Amy Rashtchian, answering the Complaint of the Plaintiffs, William McFarland and Jennifer McFarland, hereby allege and state as follows:

FOR A FIRST DEFENSE

1. Upon information and belief, the Defendants admit Paragraph 1 of the Plaintiffs' Complaint.
2. The Defendants admit Paragraph 2 of the Plaintiffs' Complaint.
3. In response to Paragraph 3 of the Plaintiffs' Complaint, the Defendants admit that Plaintiff William McFarland is a racist. The remaining allegations of this paragraph are denied and strict proof is demanded thereof.
4. The Defendants deny Paragraph 4 of the Plaintiffs' Complaint and demand strict proof thereof.
6. The Defendants deny each and every allegation of the Plaintiffs' Complaint which is not herein specifically admitted, qualified, or explained, and strict proof is demanded thereof.

FILED - RECORDED
2013 MAY 31 AM 11:32
SHIRYL GRADAM
CLERK OF COURT
DORCHESTER COUNTY

FOR A SECOND DEFENSE

7. The Defendants move to dismiss this action pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure on the basis that the Plaintiffs have failed to state facts sufficient to constitute a cause of action.

FOR A THIRD DEFENSE

8. Any statements made were true or substantially true and the Defendants plead truth as a complete defense.

FOR A FOURTH DEFENSE

9. The Plaintiffs' claims against the Defendants are barred under the applicable Statute of Limitations in South Carolina for defamation cases.

FOR A FIFTH DEFENSE

10. While the Defendants deny that they published any defamatory statements as alleged, any such statements would have been provoked by the wrongful conduct, intimidation, and harassment by the Plaintiffs, the defamatory statements made against the Defendants by the Plaintiffs, and the general interference with the Defendants by the Plaintiffs.

FOR A SIXTH DEFENSE

11. While the Defendants deny that they published any defamatory statements as alleged, any such statements would be qualifiedly or conditionally privileged under South Carolina law and the application of the First Amendment of the United States Constitution.

FOR A SEVENTH DEFENSE

12. While the Defendants deny that they published any defamatory statements as alleged, any such statements would be absolutely privileged under South Carolina law and the application of the First Amendment of the United States Constitution.

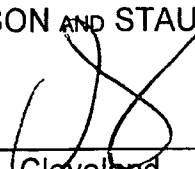
FOR A FOURTH DEFENSE

13. The claims asserted in the Plaintiffs' Complaint, to the extent that they seek punitive or exemplary damages, violate that right of the Defendants to procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina, and therefore fail to state a cause of action upon which either exemplary or punitive damages can be awarded.

WHEREFORE, having answered the Complaint of the Plaintiffs, the Defendants pray as follows:

- a. That the Plaintiffs' action be dismissed with prejudice;
- b. For trial by jury on all issues so triable;
- c. For the costs and disbursements of this action; and
- d. For such other and further relief as the Court deems just and proper.

CLAWSON AND STAUBES, LLC



David C. Cleveland
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
(843) 577-2026

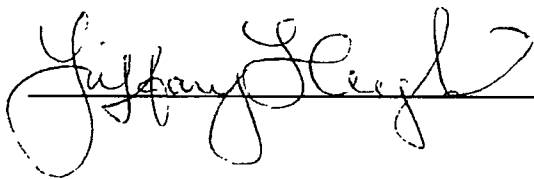
Attorney for Defendants

May 30, 2013
Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing pleading(s) has been served upon opposing counsel on the 30th day of May, 2013 via:

☒	United States Postal Service
☐	Facsimile
☐	Electronic Email



FILED - RECORDED
2013 MAY 31 AM 11:32
CHERYL GRANATH
CLERK OF COURT
DORCHESTER COUNTY

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF DORCHESTER 2013-CP-18-0735
3
4 WILLIAM MCFARLAND AND) TRANSCRIPT OF RECORD
JENNIFER MCFARLAND)
5)
VS.)
6)
7 MANSOUR RASHTCHIAN AND AMY) DECEMBER 8-12, 2014
RASHTCHIAN) ST. GEORGE, SC
8

9
10 B E F O R E :
11 HONORABLE DIANE S. GOODSTEIN, JUDGE, AND A JURY.

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1	I N D E X			
2	WITNESS	DIRECT	CROSS	REDIRECT RECROSS
3	OPENING STATEMENTS			
	BY MR. STUCKEY	169		
4	BY MR. CLEVELAND		186	
5	WILLIAM MCFARLAND			
	MR. STUCKEY	204		353
6	MR. CLEVELAND		259	382
7	STEPHON JOHNSON			
	MR. STUCKEY	389		408
8	MR. CLEVELAND		396	
9	JENNIFER MCFARLAND			
	MR. STUCKEY	417		492
10	MR. CLEVELAND		450	503
11	LOUIS MOFFA			
	MR. STUCKEY	506		
12	LANCE JOHNSON			
13	MR. STUCKEY	525		582
	MR. CLEVELAND		543	590
14	MANSOUR RASHTCHIAN			
15	DEPOSITION READ	593		
	MR. CLEVELAND	630		
16	MR. STUCKEY		664	
17	MARISSA MCFARLAND			
	MR. STUCKEY	604		
18	MR. CLEVELAND		617	
19	AMY RADY RASHTCHIAN			
	MR. CLEVELAND	693		
20	MR. STUCKEY		710	
21	CLOSING ARGUMENTS			
	BY MR. STUCKEY	750		
22	BY MR. CLEVELAND		761	
23	CHARGE OF THE COURT	793		
	VERDICT OF THE JURY	827		
24	CERTIFICATE OF REPORTER	834		
25		- - -		

E X H I B I T S

NO.	DESCRIPTION	ID	EVD
P-1	PLAT	116	216
P-2	PHOTOGRAPH	252	254
P-3	PHOTOGRAPH	252	257
P-4	NOTICE OF TRESPASS	357	357
P-5	NOTICE OF TRESPASS	357	357
P-6	STATEMENT TO POLICE	539	539
D-1	EMAIL	280	
D-2	NOTICE OF TRESPASS	325	468
D-3	NOTICE OF TRESPASS	326	
D-4	NOTICE OF TRESPASS	327	
D-5	SUMMONS AND COMPLAINT	329	
D-6	DIAGRAM	402	403
D-7	STATEMENT	405	
D-8	8/23/12 EMAIL	412	
D-9	9/30/12 LETTER	412	
D-10	CIVIL ACTION COVER SHEET	462	465
D-11	RESPONSES TO REQUESTS FOR PRODUCTION	489	
D-12	DOCUMENT PREVIOUSLY MARKED	558	
D-13	DEPOSITION EXHIBIT 1 STATEMENT	561	567
C-1	JUROR INFORMATION SHEETS	32	
C-2	MAJID RASHTCHIAN DEPOSITION TRANSCRIPT	131	
C-3	FARIMA RASHTCHIAN DEPOSITION TRANSCRIPT	131	
C-4	MANSOUR RASHTCHIAN DEPOSITION TRANSCRIPT	149	
C-5	JURY NOTE	155	
C-6	JUROR NOTE	323	
C-7	WILLIAM MCFARLAND 11/25/13 DEPOSITION TRANSCRIPT	332	
C-8	WILLIAM MCFARLAND 11/13/14 DEPOSITION TRANSCRIPT	336	
C-9	STEPHON JOHNSON DEPOSITION TRANSCRIPT	379	
C-10	JURY NOTE	379	
C-11	AFFIDAVIT OF SERVICE AND SUBPOENA	416	
C-12	DEPOSITION TRANSCRIPT	476	
C-13	DEPOSITION TRANSCRIPT	476	
C-14	EMAIL	524	
C-15	JURY NOTE	525	
C-16	JURY NOTE	525	

EXHIBITS (CONTINUED)

NO.	DESCRIPTION	ID	EVD
C-17	LANCE JOHNSON DEPOSITION TRANSCRIPT	545	
C-18	MARISSA MCFARLAND DEPOSITION TRANSCRIPT	620	
C-19	AMY RASHTCHIAN DEPOSITION TRANSCRIPT	718	

- - -

1 punitive damages. In addition, Court's Rule 42(b) provides
2 that it's the Court's discretion, I think, it may be
3 bifurcated.

4 THE COURT: Okay. Shall is not discretionary.

5 MR. CLEVELAND: Yes. The statute says "shall," I think,
6 Your Honor. The rule, I think, is a little bit different,
7 but we would take the position that the statute, having been
8 passed since the rule, is what governs.

9 THE COURT: That's really helpful. Okay. That's really
10 helpful. Thanks.

11 Okay. Good. All right. So Ms. Collins is looking at
12 the deposition. I'm looking at the statute.

13 I think we're coming to a conclusion on the income tax
14 return, income tax return, passport, testimony being
15 excluded.

16 MR. CLEVELAND: Would you like to hear my argument on
17 that issue, Your Honor?

18 THE COURT: Which one?

19 MR. CLEVELAND: As I understood it, Mr. Stuckey was
20 asking that the testimony of both the brother and the sister
21 be excluded relating to the --

22 THE COURT: Because of the relevance because of the
23 difference of the time and what relevance does it have, yes,
24 okay.

25 MR. CLEVELAND: Big picture, Your Honor, the plaintiff

1 is making three different types of claims relating -- three
2 different statements relating to defamation: One is that
3 Mr. McFarland is a racist; two, that there was an issue
4 relating to stating that he or his wife stole the in-laws'
5 business; and third, that Ms. McFarland is unchaste.

6 On the issue of racism, we admit that both Mr. and
7 Mrs. Rashtchian said that Mr. McFarland was racist. And
8 further, we'd plead the truth of the matter asserted, of
9 course, and evidence relating to what he did before the
10 incident as well as evidence relating to what he did after
11 the incident is relevant on the issue of him being a racist.

12 THE COURT: All right. Mr. Stuckey.

13 MR. STUCKEY: Would you like response to those things,
14 Your Honor?

15 THE COURT: Only as to -- obviously if truth is an
16 absolute defense, would the party claiming truth as an
17 absolute defense, would that party be limited to evidence
18 that predates the statement in the essence of libel or
19 slander, or can they go beyond the date of the statement for
20 the purpose of proving truth?

21 MR. STUCKEY: No. I don't think it can go beyond it,
22 Your Honor.

23 THE COURT: Okay.

24 MR. STUCKEY: Because it may be a definite change in
25 position, either plus or minus. And if he alleges as a

1 certain -- if we allege as a certain -- if he alleges truth
2 as a defense as of a certain date, then we think he's bound
3 to -- with his proof as of that date and preceding that date
4 and not to go far afield some year and a half later and try
5 to prove a previous fact by that.

6 THE COURT: Okay.

7 MR. STUCKEY: In fact, I think subsequent conditions are
8 inadmissible I think, and that might have been -- it might
9 have been a subsequent condition. He's suing or setting up
10 the truth that as of April the 26th, 2011, then this was the
11 truth. This is what it was. And for him to try to go beyond
12 months, a year and a half past that and make some other proof
13 has nothing to do with the -- isolating the fact as to what
14 occurred on that date.

15 THE COURT: Okay. Authority. Anybody got any authority
16 for your position?

17 MR. CLEVELAND: Your Honor, looking at Rule 405, methods
18 proving character, B deals with specific instances of
19 conduct. It does not say anything about you're limited only
20 to evidence relating to what has occurred before the incident
21 occurred as opposed to afterwards.

22 THE COURT: I understand. How about case law?
23 Anything, got anything on point where the court has dealt
24 with this particular issue?

25 MR. CLEVELAND: Not as I'm standing here right now, Your

1 Honor.

2 THE COURT: Okay. We'll take a look. We'll all delve
3 into that as well.

4 All right. Any other motions?

5 MR. STUCKEY: Your Honor, motion in limine. We have
6 subpoenaed one Stephon Johnson. Mr. Johnson, we understand,
7 is an inmate now in the Berkeley County detention center
8 awaiting trial on certain charges. He, in response to the
9 subpoena, may appear in an orange jump suit. I don't know.

10 But anyhow, we think it's irrelevant as to what he may
11 be charged with and what charges are pending, because, of
12 course, the innocent as well as the guilty can be charged,
13 and they may be valid charges or may not be valid charges
14 depending, but we don't think that that's an impeachable
15 matter as to what he may just merely be charged with.

16 Convictions are one thing; charges are entirely different.

17 THE COURT: Okay. Has anyone signed -- I don't think
18 I've signed a transfer order for him, have I?

19 MR. STUCKEY: No, I don't think so, Your Honor. We sent
20 a subpoena over to him, and I think probably the detention
21 centers are sort of coordinating back and forth since he's
22 not an SCDC prisoner.

23 THE COURT: Yes. Okay. Might want to check on that,
24 because if I need to do a transfer order, you all will need
25 to just fix me one.

1 MR. STUCKEY: We will, Your Honor.

2 THE COURT: And we have the conference rooms.

3 (Discussion held off the record.)

4 MR. STUCKEY: Your Honor, we want to try this case on
5 the pertinent incidents [sic] that we think are relevant.
6 And our client, Mr. Bill McFarland, is the president of the
7 homeowners association at the -- what's the name of the?

8 THE COURT: Live Oak Village.

9 MR. STUCKEY: Live Oak Village.

10 THE COURT: Okay.

11 MR. STUCKEY: Live Oak Village.

12 THE COURT: Yes.

13 MR. STUCKEY: Live Oak Village is a robust, bustling
14 community of about eight houses and -- with a lot of
15 interplay with each other as to the homeowners association.
16 Mr. Cleveland has lined up at least three disgruntled
17 homeowners who -- a Mr. Morris, a Mr. Handyman, the Mazells
18 and possibly the Knights, Donna and Pete Knight, I think.

19 And there was inner conflict going on between the
20 homeowners association as to whether or not the homeowners
21 dues should be paid. And Mr. McFarland, as the duly elected
22 president of the homeowners association, sought to abide by
23 the bylaws, which was not suitable to the -- apparently a lot
24 of the homeowners as far as having to pay the dues.

25 So a lot of conflict arose between them. And I

1 understand there's an ongoing case now with the homeowners
2 association suing certain -- maybe Mr. McFarland and certain
3 others. And I think, Your Honor, Mr. Brandt Shelbourne, I
4 believe, is one of the attorneys involved in that and a
5 couple of -- two or three or four Charleston lawyers.

6 But we would ask that the testimony of any of these
7 people, apparently, as I understand the thrust of it, they're
8 seeking to impugn the character of Mr. McFarland by coming in
9 and saying, "Oh, yes, these specific incidences of his filing
10 liens on our houses and his seeking to collect the regime
11 fees and so forth, he's just a bad character, nobody likes
12 him." And we just don't think that is proper character
13 assassination, if that's what Mr. Cleveland wants to engage
14 in. Then we think it ought to be general reputation in the
15 community and not specific acts as to -- as to particular
16 persons.

17 THE COURT: Yes, sir.

18 MR. CLEVELAND: Your Honor, what Mr. Stuckey's referring
19 to is that there's a defense that some plaintiffs are just
20 libel proof, and that's what we have here is that the
21 plaintiff's reputation is so poor in the community that it's
22 impossible for them to be defamed.

23 Let me give you examples of some of the testimony we
24 have. We have witnesses who will testify to that
25 Mr. McFarland's been called Hitler. One of the claims is

1 that he's been defamed by being called a racist. Hitler, of
2 course, would be in the hall of fame of racism. So that's
3 certainly relevant and important.

4 The lawsuits involve claims that they misused HOA funds,
5 which Mr. McFarland admits is the same as stealing. So the
6 claim relating to him stealing his family's business or
7 in-laws' business, there's other people in the community that
8 say that he's stealing things.

9 The plaintiff, Ms. McFarland, has brought a claim for
10 defamation in that other Live Oak case, making exactly the
11 same allegations against other people that she's claiming
12 here. Certainly one of the issues to be decided in this case
13 is proximate cause. What injuries or damages do the
14 plaintiffs have proximately caused by any act or omission of
15 my clients.

16 If there's other people out there saying the same things
17 or saying things about them relating to their reputation,
18 that is all relevant on the issue of causation and on the
19 matter of truth of the matter asserted.

20 And if Your Honor likes, I can show you the pleadings
21 where there's been claims made by Ms. McFarland that she's
22 been defamed by other people. Claims have been made against
23 them that they misused the HOA funds, which Mr. McFarland
24 admits is --

25 THE COURT: Okay, yes. So just to make sure I'm hearing

1 you correctly, your position is it goes to damages.

2 MR. CLEVELAND: Well, it goes to the issue of whether or
3 not he is, in fact, a racist.

4 THE COURT: Okay.

5 MR. CLEVELAND: It goes to the issue of whether or not,
6 in fact, they do have the reputation in the community of
7 stealing. It goes to credibility. It goes to proximate
8 cause. It going to the extent of any damages, if there are
9 damages.

10 THE COURT: And it would be your position that those
11 witnesses are called to the exclusion of Ms. McFarland or are
12 those types of witnesses that are also called regarding
13 Ms. McFarland?

14 MR. CLEVELAND: I'm sorry, I didn't understand the
15 question.

16 THE COURT: In other words, it's my understanding that
17 you would call those witnesses on the base -- it's really
18 twofold: Number one, on your position that truth is a
19 defense. Said that he is a thief, and you would offer that
20 testimony that his reputation in the community is as a thief
21 or they know him and their opinion of him is that he is a
22 thief or he's untruthful, yes?

23 MR. CLEVELAND: Yes, Your Honor.

24 THE COURT: All right. And that goes to both
25 credibility as well as the defense of truth is an absolute

1 defense.

2 MR. CLEVELAND: And causation as well, Your Honor.

3 THE COURT: I'm less understanding of the issue of
4 causation, because, as you know, character -- what you're
5 asking to do is you're asking to put his character at issue.
6 He's not putting his character at issue. You're asking to
7 put his character at issue because this is character
8 testimony, right?

9 MR. CLEVELAND: Your Honor, it's my position that if
10 he's making a claim of damage to his reputation, he's the one
11 that's putting the issues of his character and reputation
12 under the microscope.

13 THE COURT: I'm with you, but the testimony, the
14 evidence that you're offering is character evidence, yes?

15 MR. CLEVELAND: Yes, Your Honor.

16 THE COURT: Okay. And so -- and I will go back and take
17 a look at that, but when you offer affirmatively, when you're
18 not on cross-examination, but when you offer up character
19 opinion testimony or character evidence, that it's got to be
20 handled in a fairly stylized way. It's the cross-examination
21 that there can be instances of specific instances offered on
22 cross-examination.

23 Because when you are offering -- for example, I don't
24 believe that the fact that someone else has called this
25 witness a derogatory term is evidence that, in fact, he's a

1 racist because someone else has called him a derogatory term.
2 I don't think it is.

3 I mean, what they know of him, what their opinion of him
4 is a closer instance than, you know, "I called him a bad
5 name; therefore he must be the bad name because I called him
6 a bad name."

7 MR. CLEVELAND: Maybe I did a poor job of explaining
8 earlier, Your Honor, but even if it's not true, whatever the
9 statement is that he stole the business, that he stole from
10 the HOA, whatever else, it still goes to the issue of his
11 reputation and damages relating to the allegations made
12 against my clients. Even if it's not true, if his reputation
13 already is that he's a thief, then certainly that's relevant
14 for the purpose of proximate cause.

15 THE COURT: I'm with you, but there are ways that you
16 ask for that. There are ways that you ask for the -- what is
17 someone's reputation in the community. There are ways --
18 there are stylized ways that you ask that. And the fact that
19 someone called him -- you've mentioned Hitler. The fact that
20 somebody called a person Hitler isn't proof of anything other
21 than they've slandered him, because that doesn't mean
22 anything.

23 If you call somebody a name, that doesn't mean that the
24 person is that name. It just means they got called that
25 name. I mean, I guess that's my concern about it. If you

1 call somebody a bad name, you choosing to call somebody a bad
2 name doesn't go to, I think, evidence that's going to help
3 this jury make a determination.

4 If they've watched and they've witnessed and they're
5 aware of somebody's reputation in the community or they have
6 an opinion based upon their interaction and their opinion
7 based upon several years of interacting with a person and
8 this is their opinion or this is what they have perceived to
9 be the reputation in the community, that's one thing.

10 But to say that somebody is a racist because, you know,
11 I heard Mr. Smith chose to call this person Hitler, that -- I
12 mean, that -- I don't believe that that is evidence that goes
13 to show that somebody -- if you're trying to show that
14 they're racist, for example. The fact that somebody calls
15 him a bad name doesn't make him a racist.

16 Are you following at least where I'm coming from? That,
17 in and of itself, is not sufficient. I think what you're
18 telling me is that it was such an extent that he was known as
19 this.

20 MR. CLEVELAND: Yes, Your Honor.

21 THE COURT: I think is what you're telling me. Okay.

22 Yes.

23 MR. STUCKEY: Your Honor, I agree with Your Honor. I
24 haven't practiced criminal law in much too long a time, but,
25 as I recall, when you prove general reputation in the

1 community, the question is: "Mr. So and So, are you familiar
2 with the general reputation of John Smith in the community of
3 the truth and veracity?"

4 "Yes, I am."

5 "Well, what is it?"

6 "It's bad or it's good."

7 And it's not specific acts.

8 THE COURT: And that's done. The specific acts come in
9 on cross-examination.

10 MR. STUCKEY: That's correct. That's correct, Your
11 Honor.

12 THE COURT: Yes, I understand. Yes.

13 MR. STUCKEY: Better than I, better than I, I might say.

14 THE COURT: I don't know. The difference is, here's the
15 difference, in terms of the character, and I'm less clear,
16 Mr. Cleveland. I'm going to go back and look at proximate
17 cause, but here's the -- it's not, character can't just be
18 wide open. It has to be either character for truthfulness
19 and untruthfulness, or it has to be a particular character
20 trait that is at issue in the litigation.

21 For example, if somebody's charged with murder, what is
22 their reputation of peaceableness. What is the victim's --
23 and that's unique, of course, to criminal law -- what is the
24 victim's reputation or what is your opinion regarding the
25 victim's reputation for peaceableness or violence. Because

1 obviously in a murder case, peaceableness and violence are
2 the character trait that is at issue.

3 In a slander case, which is one of those unique cases
4 where character really is a part of the underlying cause of
5 action. It's like a murder case on the criminal side. What
6 is the character trait that is at issue? You would say
7 honesty and -- or whether or not you would say he's honest.
8 You would say he's a thief. And so I think that character
9 trait is at issue.

10 You all have told me that with regards to Ms. McFarland
11 that the character trait that is of issue is her chasteness,
12 and so that would be the character trait that is at issue.
13 Obviously as to both is truthfulness and untruthfulness, the
14 character trait as well.

15 Okay. And the other is, of course, what is their -- do
16 you know, are you familiar with them, do you know what their
17 reputation is for tolerance or racism. Is that a character
18 trait? To be a racist, is that a character trait? I don't
19 think so, but I'm going to look.

20 And then the other issue goes to damages. And the
21 position, as I understand it, it is the position of the
22 defendants that when you're talking about someone being
23 unfaithful or being a thief, slander is presumed, slander per
24 se.

25 And it is the position of Mr. Cleveland, I gather, that

1 that is a rebuttable presumption. And with regards to
2 damages -- and he's couched it in terms of proximate cause.
3 There is no reputation much to be damaged, yes?

4 MR. CLEVELAND: That is part of it, Your Honor, yes.

5 THE COURT: Yes, it is part of it. It's part of it,
6 exactly.

7 MR. STUCKEY: And as I understand the law, just to be
8 forewarned, Your Honor.

9 THE COURT: Yes.

10 MR. STUCKEY: My understanding of South Carolina law is
11 once you plead truth, which is what Mr. Cleveland has
12 pleaded, and he doesn't prevail on that, then that is
13 additional -- much additional damages.

14 THE COURT: Okay. Okay.

15 All right. Any other additional motions?

16 MR. STUCKEY: Your Honor, since we've mentioned Hitler,
17 that testimony was by Mr. Carlton Holcombe, who was a witness
18 of ours. Your Honor may recall his name as being in this
19 case previously, and we understand that Mr. Cleveland has
20 subpoenaed him. That is a gentleman, as you'll recall when
21 we were discussing the case --

22 THE COURT: On the cruise.

23 MR. STUCKEY: On the cruise.

24 THE COURT: Yes.

25 MR. STUCKEY: On the cruise.

1 And I gather he wasn't saying, "I don't know what you're
2 talking about, Mr. Cleveland. I didn't get anything from
3 you," as opposed to, "Thank you for the share. I'm not going
4 to show up," right?

5 MR. CLEVELAND: The last time that I spoke to him before
6 the term for November 14 or whatever that date was, yes, Your
7 Honor, that is correct.

8 THE COURT: Got it.

9 MR. CLEVELAND: Yes, Your Honor, we have a subpoena for
10 him to testify the week of December 8, 2014. It was served
11 on him through his wife at his residence at **REDACTED**
12 in Ladson on December 2nd.

13 MR. STUCKEY: Is that C-R-A-I-G, Craig?

14 MR. CLEVELAND: Yes, Craig.

15 THE COURT: Okay. Good. So you've got your Affidavit
16 of Service or process. Okay.

17 MR. STUCKEY: Could I have his telephone number, please.

18 MR. CLEVELAND: Sure. 343-6238.

19 THE COURT: Okay. So Wednesday morning we'll look for
20 him. If not, we'll send the sheriff's department for him.
21 Okay.

22 All right. What else?

23 MR. STUCKEY: The last matter hopefully, Your Honor. My
24 clients prepared a pro se complaint in this case to toll the
25 statute of limitations early on. And as Your Honor --

1 pointed out to Your Honor, I'm the second attorney involved
2 in this, and basically it's one cause of action alleging dual
3 plaintiffs and sort of jumbled causes of action.

4 There's one -- there's a claim by Mrs. McFarland for
5 attack on her chastity. There's a claim by Mr. McFarland for
6 allegedly stealing the father-in-law's business. And then I
7 think there's a claim against both of them or by both of them
8 that they were accused of being racist.

9 And what I'd like to do is just amend the complaint and
10 basically put three causes of action and have one cause of
11 action for one plaintiff, one cause of action for another
12 plaintiff and maybe a third cause of action for both of them
13 to simplify it.

14 I think that would make it a lot easier with both the
15 Court and the jury to weigh these issues, because, as I
16 pointed out, we think we're entitled to a directed verdict on
17 Mr. McFarland's claim for stealing, allegedly stealing the
18 business and being a thief. And it would be a lot easier, I
19 think, to deal with the separate cause of actions rather than
20 to have them all lumped together.

21 THE COURT: Okay. Mr. Cleveland.

22 MR. STUCKEY: And basically he can -- I mean, he can --

23 THE COURT: Have you done the complaint so that
24 Mr. Cleveland can take a look at it?

25 MR. STUCKEY: I've done it, Your Honor. I was planning

1 to bring it tomorrow morning when we came, and I hope to have
2 it then, but he can put in the same -- I mean, his --
3 basically if he wants to put in the same defenses, that's
4 fine with us. I mean, no problem.

5 THE COURT: Okay. Mr. Cleveland, I think it's just --
6 I'm asking you to argue something you haven't seen. I don't
7 think that's exactly fair.

8 So what I'd just -- Mr. Stuckey, if you'll just share
9 that with Mr. Cleveland tomorrow, then we'll deal with that
10 tomorrow.

11 MR. STUCKEY: I'll try to email it to him tonight.

12 THE COURT: Yes, you'll email it to him tonight.

13 Because it may be, Mr. Cleveland, that it is simply
14 easier to read it and it doesn't add or it doesn't detract as
15 opposed to something else, and I just don't think it's fair
16 to you, especially if it exists. He'll email it, and we'll
17 deal with that in the morning, okay? All right.

18 MR. STUCKEY: That's it, Your Honor.

19 THE COURT: Any additional in limine motions,
20 Mr. Cleveland?

21 MR. CLEVELAND: Quite a few, Your Honor.

22 THE COURT: Oh, good.

23 MR. CLEVELAND: Yes, we would move to exclude any
24 evidence or argument attempting to appeal to the prejudice of
25 the jury against Mr. Rashtchian based on the fact that he is

1 and give me a chance to rule on it before it comes out. I
2 can't possibly know if it's relevant at this point. I just
3 can't. I don't know anything about the case. I don't know
4 anything about the -- I mean, I know it in broad terms,
5 getting better moment by moment, but it's still -- these are
6 so new to me. I can't -- I don't want to rule in a vacuum.

7 I appreciate knowing about it, though, Mr. Cleveland,
8 but before it comes out, lights and cameras, let me know, and
9 give me a chance to rule on it on the basis of -- you know,
10 relevancy is like what fact that is of consequence to the
11 litigation does that evidence make more probable or less
12 probable. There's no way I can know that at this point, so
13 just give me a heads-up and I'll be able to make a
14 determination then. And I'm delighted to know, so I'll be
15 listening.

16 MR. CLEVELAND: Yes, Your Honor. We've addressed some
17 of these issues with plaintiffs motions. One thing we have
18 not addressed yet is that we need to edit the depositions
19 of -- the video depositions of Mansour's brother and sister,
20 Majid Rashtchian, and the sister, Farima Rashtchian.

21 And I have sent Mr. Stuckey a letter dated November 13
22 identifying the portions that we intended to publish, asking
23 him to let me know what portions he wanted to be published so
24 that we could try to resolve any disputes before appearing
25 here today. Unfortunately I've not heard any response from

1 him.

2 THE COURT: Okay. Mr. Stuckey passed up one today, but
3 I don't -- this is for Mansour. This is for your client.

4 MR. CLEVELAND: Correct.

5 THE COURT: This is for the defendant.

6 MR. CLEVELAND: Your Honor --

7 THE COURT: Yes.

8 MR. CLEVELAND: -- and if you would like a copy of my
9 letter to him, I'm happy to share it.

10 THE COURT: Mr. Stuckey?

11 MR. STUCKEY: Your Honor, these are two very short
12 depositions, and I'll read over -- try to read over them
13 tonight and see if we have anything objectionable to them,
14 but, of course, we have asked the Court to exclude in their
15 entirety both of them, because after the fact, we think
16 they're irrelevant and we think they're very prejudicial.

17 THE COURT: Okay. Can you do that for me this evening,
18 just because I don't know what I'm going to do. I've got to
19 do some research to be able to rule on what you suggest, and
20 just if you can just have those ready to go in the event that
21 they're not excluded.

22 MR. STUCKEY: I'll do my best, Your Honor.

23 THE COURT: That would be wonderful.

24 MR. CLEVELAND: Your Honor, Mr. Stuckey indicated this
25 last week that he intended to call Lynne Payne as a witness.

1 have that this evening.

2 THE COURT: Thank you.

3 MR. CLEVELAND: And we'll probably need to address that
4 tomorrow sometime.

5 THE COURT: Thank you. We will.

6 MR. STUCKEY: Well, he can't object to our offer. I
7 mean, he can supplement it, as I understand it.

8 THE COURT: He can object to them if they would be
9 inadmissible if that person was testifying.

10 MR. STUCKEY: Okay. Okay.

11 MR. CLEVELAND: That's all for now, Your Honor. Thank
12 you.

13 THE COURT: For now. Thank you for the qualifier. Very
14 well. Very good.

15 Okay. So here's what I need. I'm looking for case law
16 gentlemen and lady, madam. I really probably -- I know I
17 need to be talking to you. Pay attention.

18 So here's what we need. I need -- I'm looking for case
19 law. I'm looking for case law on relevance to conduct,
20 relevance to statements made after, after the -- I'm going to
21 call it the alleged event, the comments, the statements made
22 with regards to proximate cause, damages and as a defense to
23 truth.

24 Before the event, no problem, after the event. In other
25 words, what is the relationship between what someone had to

1 have in their mind at the time the comment was made. Can
2 truth become a defense after the fact, if you will.

3 MR. CLEVELAND: Absolutely.

4 THE COURT: I'm looking for case law. I'm just looking
5 for authority. You're going to take a look at the amended
6 complaint. You're going to get that emailed to you, so I
7 need you to look at that.

8 Mr. Stuckey's going to look and email the excerpts from
9 the two depositions. You're going to see if you can --
10 you're going to be busy. Sleep's overrated. You're going to
11 speak to the sister in Manchester and see if you can get some
12 better pictures or more information regarding the dates.

13 MR. CLEVELAND: And I think what was requested by
14 Mr. Stuckey was the dates as opposed to any actual documents.
15 If I obtain that information, is that sufficient?

16 THE COURT: We'll be excited. That will be, you know --
17 because, yes. I mean, if she has the ability to scan and
18 send her passport, that would be yummy, but only through
19 October. Only through October of 2000 what?

20 MR. CLEVELAND: '12, Your Honor.

21 THE COURT: 2012, that would be great.

22 MR. STUCKEY: Your Honor, could they maybe take a
23 photograph, iPhone photograph of the passport or something
24 like that and just shoot that over to him?

25 THE COURT: I don't know because I don't know what kind

1 MR. STUCKEY: Okay.

2 THE COURT: The statute is pretty clear.

3 MR. STUCKEY: So basically all we talk about in opening
4 and so forth is actual damages.

5 THE COURT: Yes. And with your permission, I would
6 not -- when I'm telling the jury that they will -- what the
7 procedure is going to be, I would not be inclined to talk
8 about punitive damages at that point. I would not.

9 MR. STUCKEY: Okay.

10 THE COURT: And let me just again take a look at the
11 statute. That is my reading of it. If you can offer any
12 authority contrary, let me know, but it looks very clear.

13 MR. STUCKEY: 15-32-520.

14 THE COURT: Yes. Okay. Good. Good. See you all in
15 the morning. I think you all probably ought to be here a
16 little bit early. I think you guys are planning to be here
17 at 9. We'll still have the jury probably waiting a little
18 while, but it will be less if we can convene at 9.

19 MR. STUCKEY: Thank you, Your Honor.

20 THE COURT: Thank you all.

21 (Trial of the case adjourned for the day at 5:01 p.m.)

22 (Trial of the case resumed on 2/9/14 at 9:15 a.m.)

23 (Plaintiff's Exhibit 1 premarked for identification.)

24 THE COURT: All right. Tell me -- we'll start with
25 Plaintiff. I'm looking for authority. Did you find me some?

1 MR. STUCKEY: Your Honor, we didn't find any. We found
2 something, which I don't have a copy of, in Am Jur which
3 deals with reputation, but not anything on your specific
4 question. I mean, we, the logic of it is -- I think is that,
5 of course, you know, we're talking about truth on the thing,
6 as I understand it is truth, subsequent truth. Is that part
7 of admissibility, and we just don't think it is.

8 We think you've got remedial measures, of course, under
9 Rule 404, whatever it is. And remedial measures says that
10 can't be introduced, a change after the fact to show
11 negligence. You just -- you can't do that. And so I think
12 the same thing here.

13 I mean, let's say that somebody's accused of adultery,
14 and they sued right at that time. Well, good defense lawyers
15 being what they are, I mean, they might want to put out some
16 enticement later on after that, after the case is brought and
17 after the case -- the cause of action is finalized. And
18 let's say that an act of adultery is committed after that.
19 We don't think that that would be admissible.

20 And because what you're dealing with is reputation at
21 the time and not any subsequent developments on it. So we
22 just think that all of this stuff to talk about after the
23 fact and we're speaking of -- speaking of the depositions of
24 Majid and Farima Rashtchian that we just don't think that's
25 admissible, these things, because this was a year and a half

1 after the fact when they were -- they were pointing to
2 Mr. McFarland, which we deny.

3 And I think it's fascinating that both of these
4 depositions, and I have asked Mr. Cleveland to read them
5 in -- both of them in their entirety, it sounds like a play.
6 It sounds like a progression, that both of them were here,
7 they get together with Mr. Rashtchian and they start walking
8 down the street on the same path that they're going through
9 the woods like Hansel and Gretel or something like that. And
10 then all of these things are said, in the exact words, and we
11 don't know what, why it was said. And also that
12 Mr. Mansour Rashtchian's reaction to it is identical, the
13 same thing.

14 So what they're doing is they're doing the same thing.
15 They're walking along the same path. My client,
16 Mr. McFarland allegedly says the same thing, and
17 Mr. Rashtchian, who had flown off the -- had flown off the
18 handle when this incident happened on April the 26th, 2011,
19 he says, "Oh, no, you know, don't worry about that. Just
20 come on, come on," identically with both of them. So it's
21 almost like a script kind of thing.

22 So we think that all of this being after the fact, the
23 same thing as I mentioned the situation about the later
24 adultery, that we just don't think that has any relevance to
25 what happened on April the 26th, 2011, or the state of mind

1 of the person or what he was at that particular time.

2 THE COURT: Okay.

3 MR. STUCKEY: And particularly, particularly, Your
4 Honor, when -- I don't know. It just looks like a script to
5 me that is posed.

6 THE COURT: Got it.

7 Yes, sir, Mr. Cleveland.

8 MR. CLEVELAND: We, of course, oppose and disagree with
9 Mr. Stuckey's position, Your Honor. Rule 405(a), of course,
10 deals with the ability to cross-examine about specific
11 instances relating to character.

12 And then (b) does not even limit it to
13 cross-examination.

14 Rule 406 deals with habit and says that it's relevant to
15 prove habit of, in this instance, the plaintiff using the
16 expression sand N-word.

17 You know, there's case law, of course, discussing that
18 use of those rules, but there's no limitation on it. And I
19 think that's the reason, because there's never been this
20 novel argument made by Mr. Stuckey before, and certainly, you
21 know, he uses the example of someone committing adultery
22 after the fact. Certainly that comes into reputation,
23 causation, proximate cause of any problems and truth of the
24 matter asserted as well.

25 He makes a mistake as far as the timing goes. The

1 incident with the brother occurred in the summer of 2011,
2 just within a couple of months of this incident. The
3 situation with the sister was October 2012. That's the one
4 that would be about a year and a half after the April 2011
5 incident.

6 But both, of course, are relevant to show that the
7 plaintiff is, in fact, that is Mr. McFarland, is a racist,
8 that he has exhibited this type of behavior over time.

9 THE COURT: Okay. First of all, let's talk about habit.
10 I heard you mention that under the rules of evidence. Here's
11 what habit is: Habit is for 20 years you have corn flakes
12 every morning for breakfast. And you can prove that you've
13 had corn flakes for 20 years as evidence that you had corn
14 flakes on a particular time.

15 The fact that you've got these utterances twice is not
16 habit, so I want to be -- that's easy, so let's move beyond
17 that. That is not habit if you have these two comments,
18 these comments made on two separate occasions.

19 Let me ask this question: As I understand what you all
20 argued yesterday, the slander occurred on a particular date
21 in April of 2011, and whatever damage occurred occurred as a
22 result, I gather, of that singular occurrence rather than
23 there being the situation where that comment was repeated
24 time and time again; is that correct, Mr. Stuckey? Am I
25 correct in --

1 MR. STUCKEY: Your Honor, it's correct on that incident.

2 THE COURT: Okay.

3 MR. STUCKEY: But the continuing damage, since slander
4 is damage to reputation --

5 THE COURT: Yes.

6 MR. STUCKEY: And involves humiliation and bad feelings
7 and all of that --

8 THE COURT: Yes, well, I realize --

9 MR. STUCKEY: -- that's continuing. It happened at one
10 particular time. On April the 26th, 2011 is the isolated
11 incident is when it happened.

12 THE COURT: Okay. This is not a circumstance where
13 there was a group of people, for example, an allegation of
14 adultery, and then that gets carried forward by everybody in
15 the group and they say and they say it and you have evidence
16 of that. We are talking about one instance of conduct,
17 slander per se, yet the damages continue; is that correct?

18 MR. STUCKEY: That's correct, Your Honor.

19 THE COURT: All right. The truth has to be in existence
20 on the date of the slander. That I'm clear about. And so I
21 will look at the depositions, if you like, but the deposition
22 has got to be somehow connected with conduct that would tend
23 to prove that -- if we are talking about adultery, for
24 example, we have to have evidence that would indicate that on
25 the date, the relevant date, that the person was, in fact, an

1 adulterer on the date that the comment was made.

2 Having said that, the evidence afterwards could be
3 important. For example, you're talking to a friend. You
4 tell that friend after the date of the statement, So and so
5 is an adulterer. You're having a conversation with your
6 friend and you tell your friend, "Oh, gosh, I've been having
7 an affair for two years."

8 Well, the two years takes it back before the comment,
9 before the alleged slander. So the statement afterwards
10 certainly could have relevance to events before. And I think
11 the rules of evidence have established that, that even though
12 it would come after, it would relate to incidents before so
13 that the evidence offered, if it occurs after the statement,
14 has to relate to propriety of the statement to be proof of
15 truth at the time the statement was made.

16 Now, with regards to damages, with regards to damages,
17 I'm going to reserve that for this reason, that I've got to
18 hear the plaintiff's case, because obviously these
19 depositions are going to be offered in the defendant's case,
20 correct? Yes?

21 MR. CLEVELAND: Yes, Your Honor.

22 THE COURT: I'm not going to make that determination
23 because it may have some relationship with regards to
24 damages. So I'm going to reserve that and look at the
25 depositions probably.

1 MR. CLEVELAND: I just want to make sure I understand
2 that you're ruling, though, relating to the truth of the
3 matter asserted, Your Honor. It's our position that the
4 plaintiff's utterances to the brother and the sister
5 subsequent to April of 2011 is relevant and probative
6 relating to whether or not he is a racist on the date of this
7 incident, April 26th, 2011.

8 And if their position is that somehow he became a racist
9 after this incident occurred, yes, I'm interested in hearing
10 that position. I think the jury ought to hear that as well.

11 THE COURT: I don't know how I'm supposed to be able to
12 make that determination unless I look at it. In other words,
13 it's got to have a relation back prior to the utterance of
14 the comment, and I can't make that determination unless I've
15 looked at it. And you all haven't submitted the depositions,
16 so if you want me to rule on that, you need to submit the
17 depositions.

18 MR. CLEVELAND: I will submit them immediately.

19 THE COURT: Now --

20 MR. STUCKEY: So, Your Honor, no mention is to be made
21 in opening --

22 THE COURT: No.

23 MR. STUCKEY: -- by either of us --

24 THE COURT: No.

25 MR. STUCKEY: -- concerning anything about these

1 depositions.

2 THE COURT: That's correct.

3 MR. STUCKEY: Okay.

4 THE COURT: With regards to the tax return, Mr. Stuckey,
5 you have indicated that you need the tax return for the
6 purpose or tax returns for the purpose of both for punitives
7 but for a topic that I've told you I think is irrelevant,
8 whether or not -- the kind of contractor that the defendant
9 may be. I cannot imagine how that would have relevance.

10 So with regards to the tax return, you're going to have
11 to establish that before it would come out in your case in
12 chief rather than as a part of a punitive showing.

13 But with regards to your possession of the tax returns,
14 of course you would accept them pursuant to the protective
15 order that I've already indicated. And just to reiterate
16 that, you will not make copies of them. You may share them
17 with your clients, but your clients are bound not to have any
18 discussion with anyone about those tax returns to include an
19 expert that you may retain to take a look at them to help you
20 evaluate them, because that person can look at them himself
21 or herself.

22 But I think that in order to allow you to prepare for
23 the eventuality of a punitives case, in the event we get that
24 far, you need them currently. So I'm going to ask that they
25 be turned over today, but the protective order, of course,

1 THE COURT: Okay.

2 MR. CLEVELAND: I don't have tax returns right now
3 except for the personal returns, Your Honor.

4 THE COURT: Okay. You'll get them, and you'll turn
5 those over as well.

6 MR. CLEVELAND: Yes, Your Honor.

7 THE COURT: Okay. Thank you. Perfect.

8 Now, and, of course the protective order covers the
9 entities as well. And I think I want you to number the tax
10 returns. If you want to just put something that can be
11 removed if you would like to, but I just -- I want to know
12 the number of tax returns. I don't want us getting into a
13 debate about how many were turned over and how many were
14 given back.

15 So if you would do that, that would be -- and just keep
16 going. If you want to start with individual ones, 1, 2, 3,
17 4, whatever, and then just keep the number going so we're
18 dealing with one number rather than three for this entity,
19 two for this, you know? Let's just make it as simple as we
20 can. One number, that many returns, back they go.

21 MR. CLEVELAND: Yes, Your Honor.

22 THE COURT: Because I don't want that to be an issue.

23 All right. Was there anything else? Seems as though
24 there was something else we needed to address this morning.

25 MR. STUCKEY: Your Honor, we've handed up -- we emailed

1 Mr. Cleveland last night a proposed amended complaint --

2 THE COURT: Oh, yes.

3 MR. STUCKEY: -- which we filed with the Court. Just
4 let him put in the same answers or whatever he wants to do.

5 THE COURT: Right. You needed to look at it and --

6 MR. CLEVELAND: Yes, Your Honor. We would object to
7 Plaintiff's amended complaint. They're attempting to either
8 double or triple their recovery by breaking down this one
9 claim of defamation into the three different causes of
10 action.

11 It's kind of like a negligence claim where somebody
12 makes ten different allegations of negligence. It's still
13 just a single negligence cause of action. So we would object
14 for those reasons, Your Honor.

15 THE COURT: Okay.

16 MR. STUCKEY: Well, we wanted to divide them up, Your
17 Honor, because we think, for the convenience of the Court,
18 that would be better. As I've already intimated, we think
19 we're going to be entitled to a directed verdict concerning
20 what Mr. Rashtchian said, and that is that Bill McFarland
21 stole his father-in-laws' business.

22 I mean, we're going to put in today testimony from his
23 deposition which he says specifically himself, "Yes, I said
24 that. I said that." And I think it gets complicated if we
25 start trying to break it down and have him -- directed

1 verdict, a partial directed verdict as to that. Maybe Your
2 Honor can instruct him. Maybe that's not even a problem.

3 But basically we've got three different kinds of things.
4 We've got Amy Rashtchian. She comes firing out, and she's
5 the one who leads the charge and says -- well, attacks
6 Jennifer McFarland's character. You know, people are coming
7 in the back door and all of that stuff. So we think that
8 is -- that's basically a separate kind of thing.

9 In fact, there are two separate people on that. One is
10 the allegation against Mr. Rashtchian as to attacking
11 Bill McFarland and then Amy Rashtchian attacking
12 Jennifer McFarland, and then I think both of them join in,
13 both of them join in with the racist kind of thing.

14 So basically you've got certainly basically three
15 separate instances and three separate causes of action,
16 although it's all subsumed under slander, which we've
17 labeled, labeled each one of them slander, but we've
18 specifically broken them down.

19 THE COURT: Okay.

20 MR. STUCKEY: I mean, we can have -- we can have one
21 recovery. We don't worry about that, if the Court wants to
22 lump them together, but I think -- I think it would be
23 better, the jury may believe -- and as I say, the complaint
24 was drawn pro se by my clients.

25 And I think for purposes of conducting the trial and

1 getting a verdict, it's much easier to structure it that way
2 and have, okay, a verdict against Mr. Rashtchian for -- on
3 the first cause of action for such and such, a verdict
4 against Amy Rashtchian on the second cause of action for such
5 and such, and do it that way. I mean, I think it's mainly
6 for procedure and for the convenience of the Court.

7 THE COURT: Gotcha.

8 Mr. Cleveland, from your perspective, are the parties
9 the same? There's not a change in the parties?

10 MR. CLEVELAND: No, Your Honor, there would not be a
11 change in the parties.

12 THE COURT: And is the underlying action still
13 defamation, from your review?

14 MR. CLEVELAND: Yes, Your Honor.

15 THE COURT: Your concern is that they've broken out the
16 three different statements?

17 MR. CLEVELAND: Yes, Your Honor.

18 THE COURT: Okay. Okay. It's not going to go to the
19 jury anyway. The damages are going to be the damages. I
20 will allow the amendment. Very well.

21 MR. STUCKEY: Thank you, Your Honor.

22 MR. CLEVELAND: And the answer that we've already filed
23 will be sufficient?

24 THE COURT: Absolutely. Absolutely, Mr. Cleveland. And
25 you've answered that one as well. It's done. There is an

1 answer. All right.

2 We have an active jury, you'll all be so delighted to
3 know. I have my first note from the jury. They've not even
4 been sworn. They want to take notes, and to that end, they
5 have sent me a note.

6 So I want to hear from you about your feeling about
7 taking notes.

8 MR. STUCKEY: As long as Your Honor gives them the
9 standard usual instruction that they aren't to use that --

10 THE COURT: Right.

11 MR. STUCKEY: -- you know, to try to influence a fellow
12 juror, I'd like them to take notes. I think that would be
13 good.

14 THE COURT: How do you feel about that, Mr. Cleveland?

15 MR. CLEVELAND: I have no objection, Your Honor.

16 THE COURT: All right. Go on and get the notepads and
17 everybody will be happy. And I will instruct them absolutely
18 about the taking of notes.

19 All right. Did you get the submittals last night?

20 MR. CLEVELAND: Yes, I submitted that to Mr. Stuckey.
21 Would Your Honor like an additional copy?

22 THE COURT: No. Because he was going to look at the
23 depos and stuff last night. You viewed the pages and lines.

24 MR. CLEVELAND: Oh, yes.

25 THE COURT: You've already done it.

1 MR. CLEVELAND: Your Honor, I have objections to it.
2 These are for the depositions of Farima and Majid Rashtchian.

3 THE COURT: Right.

4 MR. CLEVELAND: Would you like to review the
5 depositions?

6 THE COURT: I do want to see -- I need to see those,
7 yes, I do.

8 MR. CLEVELAND: And he made you --.

9 THE COURT: So you can open them.

10 MR. CLEVELAND: Certainly.

11 THE COURT: We'll just mark them as the Court's
12 Exhibits.

13 (The Court's Exhibits 2-3 marked for identification.)

14 MR. CLEVELAND: Mr. Stuckey requested pretty much the
15 entire depositions, and I do have quite a few objections
16 relating to the portions that he -- we haven't had a chance
17 to discuss it yet. A lot of it has to do with things you've
18 already ruled on yesterday relating to him attempting to
19 appeal to the passion and prejudice of the jury, things that
20 he's done throughout these depositions.

21 THE COURT: Got it. We'll deal with those later. I
22 know you need to print it. Let's don't deal with that now.
23 Let's deal with that maybe -- I've got a hearing at lunch --
24 in the morning.

25 MR. CLEVELAND: That would be great.

1 THE COURT: I think I said today too. Yes, yes, yes,
2 absolutely. If it's in the attic, tomorrow morning will be
3 fine. That will be fine.

4 MR. CLEVELAND: Thank you.

5 THE COURT: Anything else before we bring the jury out
6 from the plaintiffs?

7 MR. STUCKEY: Your Honor, just a couple of bookkeeping
8 things.

9 THE COURT: Okay. Or housekeeping. Bookkeeping's going
10 to mess with me. I'm not good on any numbers. Housekeeping,
11 I'm largely okay with that.

12 MR. STUCKEY: The HOA case, which is another separate
13 case, that's the one that Brandt Shelbourne is involved in
14 and several defense lawyers from Charleston, and it involves
15 certain members of the homeowners association against
16 Mr. Bill McFarland and Jennifer McFarland, because Bill was
17 president of the homeowners association, and Jennifer, I
18 think, at one time was acting treasurer or secretary.

19 And since they sued her, she has filed a libel and
20 slander action against Sophia Mazell, which we've talked
21 about the Mazells, and the Mazells are going to be mentioned
22 in the case, but we would like a ruling from the Court that
23 that's irrelevant.

24 I know Mr. Cleveland would like to argue that this
25 situation with the Mazells can be -- or any damage to

1 Jennifer's reputation can be ameliorated by that lawsuit. We
2 don't think that has any relevance at all. She's
3 counter-claiming in that separate lawsuit, and we would ask
4 Mr. Cleveland not mention that.

5 THE COURT: Let me ask you this question: What is the
6 subject of the slander suit? What is the subject?

7 MR. STUCKEY: That Sophia Mazell said certain things. I
8 think she -- I think this case that Mr. Rashtchian will
9 attempt to say because the evidence is that when he was
10 confronted by or he confronted the McFarlands and they said,
11 "Why in the world are you saying these things about us? I
12 mean, what basis do you have for this?" and he motions over
13 to the Mazells' house, over there. So I think what they've
14 done is, not in this particular suit, because I'm not
15 involved in that --

16 THE COURT: Right.

17 MR. STUCKEY: -- but they have -- they filed a slander
18 action against Sophia Mazell because Mr. Rashtchian is
19 saying -- now whether that's due diligence or whether that's
20 gross negligence or whatever it is, which we think it would
21 be for just rumors and talk on the street, but supposedly
22 that's the basis for Jennifer McFarland suing Sofia Mazell.

23 THE COURT: Okay. Then I think that it's relevant.

24 Was that your argument, Mr. Cleveland? Did I keep you
25 from making your argument?

1 MR. CLEVELAND: I have nothing to add to that at this
2 point, Your Honor.

3 THE COURT: When you're ahead quit?

4 MR. CLEVELAND: Exactly.

5 THE COURT: It seems to me that it's a core part of, if
6 you will, the events. You know, as you tell what happened,
7 if it's the position of your client that he got that
8 information from someone else, I think that that occurrence
9 is just relevant. "I said that because I was told that by
10 Ms. Mazell, who I thought understood and knew." It makes it
11 relevant.

12 MR. STUCKEY: Okay.

13 THE COURT: But object at the time, because that's where
14 I am at this moment. I would not exclude it, but who knows.
15 Trials can do wild and crazy things. So at the time that it
16 occurs, if you object then I'll certainly be crisper about
17 it.

18 All right. What else?

19 MR. STUCKEY: Second thing, Your Honor, is we've been
20 involved in quite a few depositions with Mr. Cleveland. And,
21 of course, depositions are one thing; the rules of evidence
22 are something entirely different. But it seems to me that
23 Mr. Cleveland has a penchant for asking, "Have you heard that
24 he was a wife-beater? Have you heard that he robbed a bank?
25 Have you heard such and such?" Which has no basis at all.

1 just do it once, he did it numerous times, even on those
2 occasions when his window wasn't down, he would see
3 Mr. McFarland mouth those words at him.

4 Now, that sets the stage for what happened in this case
5 back in April of 2011. On that day Mansour had been working
6 in his yard all day long. About in the evening, he's in his
7 house, he's having a glass of water and he looks out the
8 window. And at that time the McFarlands have hired
9 Lance Johnson and his cousin Stephon and one other gentleman
10 to deliver a load of mulch.

11 Now, there's a drive -- you'll see photographs of the
12 rear of their house. There's a very short drive with a gate
13 to the rear. This full-sized truck backed up the trailer
14 into that pad, the back of their house, but then the truck
15 was almost completely blocking Flud Street.

16 Mr. McFarland's going to admit, or at least he did in
17 his deposition, that the truck was within at least a foot or
18 so of the edge of Flud Street on the Rashtchians' side.

19 Mr. Mansour Rashtchian will tell you that after having
20 worked in his yard all day, he looks outside to see
21 Mr. McFarland directing traffic on Flud Street to go into the
22 Rashtchian yard and around the truck.

23 Now, you'll hear that there's an easement or
24 right-of-way for the Town of Summerville that extends into
25 both yards on both sides. And there's no question about it,

1 that is true. There's probably 10, 15 feet of easement into
2 the Rashtchian yard. But in addition to that, Mansour had
3 built or put a culvert in for drainage purposes, and he was
4 concerned about the vehicles traveling over that culvert and
5 damaging it.

6 This is what happened: Mansour came outside and he said
7 to Mr. McFarland, "Why are you so inconsiderate?" And he
8 turned to the landscaper and said, "Would you please move
9 your truck."

10 Mr. McFarland says, "No, we're not moving the truck
11 until we're finished with the job, not going to unhitch the
12 trailer."

13 Mr. Rashtchian then says, "Well, it's this type of crap
14 that nobody in the neighborhood likes you, it's this type of
15 stuff that you do.

16 To which Mr. McFarland replies, "Go get your green
17 card."

18 Once again, Mansour's been a naturalized citizen for
19 over 20 years, a productive member of society and this man
20 across the street from him is saying, "Go get your green
21 card," after having repeatedly said sand N-word to him over a
22 period of two years.

23 What happened next. Well, at that point Mansour got
24 angry. There's no question about it. He said -- I'm going
25 to look at my notes here for just a second to make sure I get

1 this correct.

2 He called him an F'ing racist, and he didn't use the
3 word F'ing. He said the real word. And that's one of the
4 claims they're making. That's the first allegation they're
5 making of defamation is that Mr. McFarland was called a
6 racist. And we admit that. And we also assert that he is,
7 in fact, a racist; therefore, it was not defamation.

8 In response to that, Mr. McFarland says, "I know all
9 about you." And this is something that you'll hear
10 throughout the testimony is that is something that the
11 McFarlands continuously say, "I know all about you." And he
12 also said, "I know what type of shoddy contractor you are."

13 Mansour, at that point, he made a mistake. He showed
14 poor judgment. He responded to that by saying, "At least I
15 didn't steal my in-laws' business," and he had heard that
16 somewhere else on the street and he shouldn't have said it.
17 He will admit to you that he showed poor judgment in saying
18 that. He should have gone back inside the house.

19 Ultimately he did go back inside the house. There was a
20 break about 40 minutes, and at that point Mansour came back
21 outside to move a hose pipe that was watering the lawn.

22 At this time Ms. McFarland inserted herself into the
23 situation. She comes out into the Rashtchian drive. She's
24 pointing her finger at Mansour. She's saying, "Where did you
25 hear this? What are you talking about?" And he just backs

1 the law is, and you'll be bound by what I tell you the law
2 is.

3 You may proceed. You're getting close to argument,
4 though, but you certainly may proceed.

5 MR. CLEVELAND: Thank you, Your Honor. During the time
6 that all four of them were in Flud Street with Mr. McFarland,
7 he'll admit that he was using profanity, including the
8 F-word. Ms. McFarland was using profanity as well. During
9 this period of time, Ms. McFarland keeps saying, "I know all
10 about you. I know all about you," to which Amy did say, she
11 says, "You need to pay more attention to who's coming to you
12 all's house, both of your house, when you all are not there,"
13 referring to a teenage boy had driven up on Flud Street, had
14 gone through a neighbor's yard, had gone towards their house.

15 Not -- you'll hear testimony somebody said something
16 about cheating. Not true. Nobody said anything about
17 Mrs. McFarland cheating on her husband, being unchaste or
18 adultery or anything else. That's basically the incident
19 that occurred on April 26th, 2011.

20 Now, about two weeks -- the police were not called that
21 day. Two weeks later, the McFarlands, to set up this
22 lawsuit, they called the police when the landscapers were
23 back at their home. At that time they did it, they'd already
24 spoken to a lawyer, they did it so that they could document
25 the incident so that they could come to you and ask for a

1 else that happened during the years before that.

2 Third issue, the claim is that Ms. McFarland, it was
3 alleged that she was unchaste, that she was unfaithful, that
4 she fooled around on her husband. That's not true. That was
5 not said. What was said by Ms. Rashtchian was that the
6 McFarlands needed to be concerned about who was coming to
7 their house when they were not home, referring to the teenage
8 boy. The statement was provoked by, "We know all about you,"
9 as well as all the other experiences.

10 Now, one of the issues that you have to address in this
11 case are damages, what damages, if any, resulted from the
12 events that occurred on April 26, 2011. You'll have to make
13 that decision at the end of the case. I submit to you,
14 though, that there's been no damage resulting from it.

15 To the extent that you find that Mr. Mansour Rashtchian
16 said something he shouldn't have said, a verdict for \$1 would
17 be an appropriate award.

18 One of the things you'll have to listen to is were there
19 problems with the reputation unrelated to the incident in
20 this case. There's a lawsuit that was filed by Mr. McFarland
21 as HOA president along with his wife personally against
22 several parties, including the Mazells, David Hannemann,
23 Tom Morris.

24 In that lawsuit, Ms. Mazell claimed that she was defamed
25 by Ms. Mazell [sic]. She claimed that Ms. Mazell said that

1 DIRECT EXAMINATION BY MR. STUCKEY:

2 Q. Good morning, Bill. Would you adjust the microphone,
3 please, and give us your full name so the ladies and
4 gentlemen of the jury can hear.

5 A. William McFarland.

6 Q. Okay. No middle initial?

7 A. No middle initial, no.

8 Q. And where do you, live, Mr. McFarland?

9 A. REDACTED in Summerville.

10 Q. And tell us where that is.

11 A. It's a subdivision located right off Central Ave.

12 Q. Okay. And who lives there with you?

13 A. My wife, Jennifer, and my daughter, Marissa, part-time.
14 She's a student at the College of Charleston. And my son,
15 M REDACTED.

16 Q. And your wife Jennifer's seated here in court with you?

17 A. Yes, sir.

18 Q. And tell us about Marissa, please, her background and
19 education where she is now.

20 A. Marissa's education, she attended Summerville Catholic
21 School, eight years, and then went to Summerville High. She
22 did very well, an honors program student. She was president
23 of student council. She was -- sorry, senior class president
24 and also yearbook editor and did very well, received
25 scholarships for school.

1 Q. And have you earned your livelihood since then?

2 A. Well, since then I was able to take that concept and
3 license it with some overseas firms, and now I work as a
4 consultant for these overseas firms, and I assist them with
5 various companies here in the US to apply this technology.

6 Q. And what's Lou Moffa doing during this time?

7 A. He plays a lot of golf.

8 Q. Okay. Now, we were talking about Live Oak Village, and
9 you told us that Live Oak Village is located down Central
10 Avenue, I believe, in Summerville; is that correct?

11 A. Yes, sir.

12 Q. Okay. And tell us a little bit about Live Oak Village,
13 how many lots are involved, how many houses there are and
14 basically a little bit about it.

15 A. Okay. Live Oak Village basically created the
16 subdivision in 2002. My wife and I were first to buy a home
17 in there in 2002. That would have been March when we did our
18 contract. Our house wasn't completed until October of 2002.
19 We didn't move into our home until the very end of November
20 of 2002.

21 The subdivision's comprised of seven homes,
22 single-family use, and most of the lots in there are about
23 approximately one half acre each.

24 Q. Now, you've been elected and have been serving as
25 president of the homeowners association; is that correct?

1 A. Yes, sir, since 2009.

2 Q. And what are you called? Do you have a name for the
3 homeowners association?

4 A. Live Oak Village HOA.

5 Q. Okay. Let me show you what's been marked Plaintiff's
6 Exhibit 1 for identification and ask you if you can tell us
7 what that is, please.

8 A. This is a plot of the Live Oak Village subdivision.

9 Q. How do you know that?

10 A. I use this plot extensively. One of our first
11 assignments as HOA president was to install a drainage system
12 and put security system and gate in the front, so it was
13 necessary to use this plot.

14 Q. Is that a true and accurate representation of the layout
15 and plat of Live Oak Village?

16 A. I would say so.

17 MR. CLEVELAND: Objection. Leading, Your Honor. I
18 don't think he's qualified as a surveyor.

19 MR. STUCKEY: I'm at a loss, Your Honor, to understand
20 how else I could qualify. Other than being a true and
21 accurate representation of the area with his knowledge as
22 president of the homeowners association and owner of a lot
23 there.

24 THE COURT: It's a leading question and he's not an
25 expert, as I understand it. It's a leading question. He's

1 not an expert. Sustained on the basis that it's leading.

2 Q. Okay. Mr. McFarland, looking at this plat, would you
3 tell us what it is, please, sir.

4 A. This is a plat of Live Oak Village subdivision with all
5 seven properties listed, common areas and such. We did refer
6 to this plot several times with survey crews when we did our
7 project. So we used it quite extensively to make sure that
8 there was no encroachment on anybody's property. So it was
9 used extensively and in conjunction with the town, the town
10 engineer.

11 Q. When you bought your home in Live Oak Village, did you
12 use a plat to make your purchase?

13 A. Yes, sir, there was a plot provided for our exact
14 property, Lot 3 (indicating).

15 Q. Is that basically a facsimile of the plat that was used?

16 A. Yes, sir. It's one of them, and then there was an
17 individual plot of just the property along Lot 3.

18 Q. Okay. Well, based on your knowledge and background and
19 experience, do you believe what's been marked Plaintiff's
20 Exhibit for identification No. 1 is a true and accurate
21 representation of the geographic layout of Live Oak Village?

22 MR. CLEVELAND: And I object, Your Honor. He's not
23 qualified as an expert. It's also leading.

24 THE COURT: Very well, while that is a leading question,
25 let me see you guys, see counsel.

1 (Judge and attorneys confer.)

2 MR. STUCKEY: It's been admitted into evidence, Your
3 Honor, as Plaintiff's 1.

4 THE COURT: Plaintiff's 1, very well, it's in evidence
5 over the objection of defendants.

6 (Plaintiff's Exhibit 1 admitted into evidence.)

7 Q. Now, Mr. McFarland, referring to Plaintiff's Exhibit 1,
8 tell us which lot number where you and Jennifer generally
9 live.

10 THE COURT: Hold on one second, I don't know that --
11 even that you know this, and I apologize if you don't, but
12 this is like the Madden screen for the NFL. You can just
13 touch your finger to it and you will have Maddenability. Go
14 for it.

15 Q. Okay. Would you kindly indicate for the ladies and
16 gentlemen of the jury, please, the lot where you and Jennifer
17 live.

18 A. Okay. Lot 3 (indicating).

19 Q. Okay. And would you indicate, please, basically where,
20 and I realize it's not on the plat, but where the Rashtchians
21 live.

22 THE COURT: You can -- if you want to, I think you can
23 touch the screen on the color. It'll bring an array of
24 colors if you wish for that to be in a different color.

25 Mr. Stuckey, do you want that in a different color?

1 MR. STUCKEY: That would be great, Your Honor, thank
2 you.

3 THE WITNESS: Okay.

4 Q. Okay. Would you indicate or touch basically where the
5 Rashtchians live.

6 A. Okay. It would be -- Flud Street would be indicated by
7 the 50-foot right-of-way, so more or less right here
8 (indicating).

9 Q. You say Flud Street is a 50-foot right-of-way. Is
10 that -- that's a right-of-way to what? Is that the state
11 highway department or the county of Dorchester or the town of
12 Summerville?

13 A. I believe it's the town of Summerville.

14 Q. Okay. And would you tell the ladies and gentlemen of
15 the jury, please, on Flud Street, you've indicated there was
16 a 50-foot right-of-way, and how wide is Flud Street?

17 A. I couldn't give you an exact measurement, but it's not
18 50 foot wide. I would say there is a yellow reflector in the
19 center of the street, signifying the center. I would say
20 maybe 13 feet each way, 14 feet --

21 Q. What do you mean --

22 A. -- from the center of the street.

23 Q. Okay. So what you're saying then is that it's, what,
24 26, or Flud Street's about 26 or 28 feet wide?

25 A. Approximately, yes.

1 Q. Okay. And so on the other side, on each side of the
2 right-of-way, if you've got 28 feet of -- is it a paved
3 street or is it a dirt street?

4 A. It's paved.

5 Q. So on each side of the pavement, you've got how much
6 land, property left or footage?

7 A. It varies on both sides, but I would say more or less
8 maybe another ten feet maybe from the edge of the road.

9 Q. Okay. Would you indicate, please -- the name of the
10 Mazells has been mentioned, Sophie and Michael Mazell. Where
11 do the Mazells live or where did they live?

12 A. Yes, sir. I'll try and use a different color, if it's
13 all right. That would be Lot 4 (indicating).

14 Q. Okay. Now, there seems to be a cul-de-sac or something
15 looking like a light bulb on the plat. What is that?

16 A. That would be the common areas for egress and ingress,
17 coming and going.

18 Q. Okay.

19 A. To come into our subdivision.

20 Q. So how do you get in and out?

21 A. When you arrive off of Central, you would come up and
22 then, of course, the other owners to the right would directly
23 enter their properties. And then there is an easement or
24 street that goes down the line and in both directions for
25 Lot 1 and then to service Lot 3, Lot 4 and Lot 5.

1 Q. Okay. Now, your lot is Lot 3; is that correct?

2 A. Yes, sir.

3 Q. Okay. And you have access to your lot in what way?

4 A. Access to my lot via this right-of-way street in both
5 directions, because I have a circular drive in the front of
6 my home.

7 Q. Okay. Can you mark on that, I guess you're doing
8 some -- and can you draw an arrow kind of thing and --

9 A. Sure. Maybe I can do this (indicating). I'll try.

10 Q. And something that you might be able to move around and
11 indicate.

12 A. That's a circular drive that I can enter my property
13 from this street.

14 Q. And what about any access to Flud Street? What is that?

15 A. From my property?

16 Q. Sure.

17 A. My property, I have a gate off of Flud Street in the
18 very back. I have a brick and wrought iron fence that
19 borders the back of my property with a large gate in the
20 back, double gate.

21 Q. And what is that large double gate, wrought iron -- or
22 gate used for?

23 A. To gain access to the backyard for whatever reason:
24 Projects, you know, mulch, whatever, whatever needs to be
25 done in the back for access. Because the gates up front

1 would be, of course, walk-through gates and are smaller.

2 Q. Okay. Now, directing your attention to Mr. and
3 Mrs. Rashtchian, who you've indicated lived across --
4 basically across the street from you across Flud Street; is
5 that correct?

6 A. Yes, sir.

7 Q. Okay. And when did the Rashtchians move into their
8 home, if you know?

9 A. My understanding is that they were already there when we
10 moved in. When we first built our home, there was no other
11 homes in the subdivision. It was basically pretty dark in
12 there.

13 Q. So you were the first one to build in Live Oak Village;
14 is that right?

15 A. Yes, sir.

16 Q. And that was approximately when when you built?

17 A. We begun construction more or less March of 2002 and
18 completed in October, towards the end of October 2002.

19 Q. So you completed your house in October 2002?

20 A. Yes, sir.

21 Q. Okay. And what interplay or relationship did you have
22 with the Rashtchians, who were across Flud Street from you?

23 A. At that time, none.

24 Q. Okay.

25 A. I was not familiar with them.

1 Q. Okay. Now, let me direct your attention to the holiday
2 season in December of -- and maybe perhaps even early
3 January of 2002. Did you have any interplay with the
4 Rashtchians at that time?

5 A. Yes, sir. There was one incident. I suppose there was
6 an incident with some fireworks that were hitting my house.
7 I believe it was -- it was about a month after we moved in.
8 Again, we didn't move in until the end of November 2002. And
9 to me it was not a big deal, some children launching
10 fireworks, hitting the house. It's common. I think I
11 probably did it.

12 Q. How did it hit the house? It hit on the roof, hit on
13 the side of the house or what?

14 A. It was -- I believe my wife was upstairs with some
15 friends and we were downstairs. I was with the husband. She
16 was with the wife upstairs. And she alerted me, said that
17 she thought something hit the window of the home. And we
18 stepped outside on the back porch, and then we noticed that
19 they were launching fireworks right directly behind my home.

20 Q. From where?

21 A. From Flud Street, directly behind my home.

22 Q. And this was Mr. and Mrs. Rashtchian and perhaps some
23 other persons; is that correct?

24 A. I suppose. At the time I didn't know. I didn't know
25 them, so --

1 Q. Okay. And did you take any action at that time as far
2 as taking the matter up with them or discussing the thing?

3 A. I informed them that fireworks were hitting the house,
4 if they could be careful with the fireworks and be careful.
5 At that time we went back in, and then fireworks again were
6 hitting the house.

7 I had a guest with me, a Dr. Joe Evans. He was a dinner
8 guest. And he came out with me and he yelled over there,
9 "Hey, they're still hitting the home. Knock it off." And we
10 went back inside.

11 Q. Now, who is Dr. Joe Evans? You said he is a doctor.
12 What kind of doctor is he? What does he practice?

13 A. Family practice in Summerville.

14 Q. And is he about your age, older, younger, what?

15 A. He's, I would say, a couple years older. He won't tell
16 me his age.

17 Q. Okay. And so was anything done following that?

18 A. Again, this was 2002, but I believe a police officer had
19 come to the back, and then I was questioning why he had come
20 to Joe, and Joe mentioned that he'd called them.

21 MR. CLEVELAND: Objection. Hearsay, Your Honor.

22 THE COURT: Yes, don't.

23 MR. STUCKEY: Okay.

24 THE COURT: Sustained.

25 Q. Don't -- don't delve into any unknown area kind of

1 thing.

2 A. Okay.

3 Q. Did you call the police to respond?

4 A. No, sir.

5 Q. Did Jennifer call the police to respond?

6 A. No, sir.

7 Q. Okay. And so what did the Summerville Police
8 officers -- how many -- was there one officer or more?

9 A. Remembering, I believe it was one.

10 Q. Okay. And what, if any, action did he take?

11 A. Really none. I went out and explained to him that it
12 wasn't a big deal, and then he just, I believe, turned around
13 and told them to be careful.

14 MR. CLEVELAND: Objection. Hearsay, Your Honor.

15 THE COURT: Sustained.

16 Q. Okay. You can say what you told. So what did you tell
17 the police officer?

18 A. Well, that is what I told him.

19 Q. Okay.

20 A. I went out myself and explained to him that it wasn't a
21 big deal, that I had already asked them to stop. And he
22 went, okay, and then he just mentioned to them to please be
23 careful --

24 MR. CLEVELAND: Objection, Your Honor.

25 THE COURT: Sustained.

1 Q. Just don't say what he said.

2 A. Oh, I'm sorry.

3 Q. You can say what you said.

4 A. I didn't understand. Sorry.

5 Q. I'm sorry. It's my infirmity.

6 And what happened after the police officer responded to
7 the scene?

8 A. They stopped and we went back inside and I -- I told Joe
9 to please, you know, you know, this is where -- I just moved
10 in here, and I didn't appreciate him doing that, but, you
11 know, that's just kind of Joe's personality, but -- and that
12 was the end of it. I thought nothing more of it.

13 Q. Did you -- in the weeks or months to follow, did you
14 have any interplay or contact with the Rashtchians?

15 A. No, I did not. And my business in that particular time,
16 I was extensively traveling. I was on the road quite often.

17 Q. Okay. So would you see Mr. Rashtchian since you lived
18 across the street from him?

19 A. I would see him occasionally, but it's not that I'm
20 looking, but, yes, I would notice occasionally.

21 Q. Okay. So to your recollection, when do you recall that
22 either you or Jennifer had any other interplay with either
23 Mr. or Mrs. Rashtchian?

24 A. I would say that my wife -- there was a -- I guess my
25 wife was outside of the property line, 2009, discussing

1 something with Sofia Mazell, the individual that lives on
2 Lot 4, and I believe she had said something to Mr. Rashtchian
3 that day. That's about all I know.

4 Q. Now, what dealings -- first of all, tell us what you
5 know, please, about Sofia and Michael Mazell.

6 A. I know that they own Lot 4. I'm not sure I
7 understand --

8 Q. Okay.

9 A. -- the question.

10 Q. Okay. And owning Lot 4, did you have any connections or
11 dealings with them since apparently it appears that your
12 property lines are intersecting?

13 A. Yes, sir. There were some dealings with some issues
14 with some HOA issues. When I was first elected and all the
15 homeowners voted to do these two projects, put a drainage
16 project in, that project in particular is the one that
17 involved the Mazells, since the drainage line for that
18 project was going to intersect the side of the yard where
19 there's a drain easement. Can I mark that?

20 Q. Please.

21 A. Okay. There's a drain easement right there from the
22 town, ten-foot drain easement. Our drain line that was going
23 to come into the center of our property was going to start
24 here (indicating), which was the lowest point in the
25 subdivision for water drainage, was going to intersect in

1 this drain easement, and the town was going to install drain
2 pipe in there as long as we paid for the material and we paid
3 for the labor. That was the arrangement.

4 So they were very upset about the fact that a drain line
5 was going to come through their yard, and that's some of the
6 issues that began.

7 Q. Why was a drainage easement needed?

8 A. Well, interestingly enough, when they formed the -- my
9 understanding is when they formed the HOA and the town was
10 going to approve the project, there was some issues, so the
11 town required them to put this drainage easement behind the
12 property, because I guess my understanding from the developer
13 was that when you usually develop a property, you usually put
14 a retention pond --

15 MR. CLEVELAND: Objection. Hearsay, Your Honor.

16 THE COURT: Sustained.

17 THE WITNESS: I don't understand.

18 THE COURT: It's hearsay.

19 Q. Don't tell us, Mr. McFarland, or you can't tell us
20 really --

21 A. Okay.

22 Q. -- what anybody else said, because the other person's,
23 of course, not under oath.

24 A. Okay.

25 Q. So that's known as hearsay.

1 So was any cost involved in putting in the drainage
2 easement?

3 A. Yes, sir. We had done figures and we assessed all the
4 homes, maybe \$7800 per home for all the entire project.

5 Q. So you had to pay how much?

6 A. Myself, I believe it was approximately 7800.

7 Q. And the Mazells had to pay how much?

8 A. The same amount, all homeowners, all seven.

9 Q. Did you also have an issue with the Mazells other than
10 the drainage easement?

11 A. Yes, sir. They had some issue with my property line on
12 the other side of the property where I had built my fence.
13 And there was some issue with before we built the drainage
14 line, I attempted to solve the problem myself with my own
15 funds by installing a concrete -- just basic concrete gutter
16 down that property line.

17 Q. Where are you talking about? Are you talking about the
18 Mazells' lower property line, the southern property line?

19 A. I can mark it. Right here, down the line (indicating).

20 Q. And what was the issue with the property lines?

21 A. Well, it wasn't so much an issue at the time. What it
22 was was they wanted to connect their fence to my fence,
23 because I had built a fence down that whole line and, you
24 know, to save the money having to put the fence there.

25 And I agreed with them that we could do that, but I had

1 them sign an agreement stating that I didn't want you to
2 connect the fence to the actual brick, but you could put it
3 right next to it, and that I installed a drainage line, a
4 concrete drain and that I had paid for it and to understand
5 that that was my property.

6 Q. Okay. Did you have any major problems with the Mazells
7 concerning that?

8 A. Not until after we started the project with the HOA.
9 After we had begun the project with the HOA, then everything
10 was a problem.

11 Q. Did you get a signed consent from Sofia Mazell that you
12 could do the work on the property line?

13 A. Yes, sir. And we also had an affirmative vote from the
14 Mazells to do the project in the HOA.

15 Q. You said "to do the project." What project are you
16 referring to?

17 A. The drainage project and the security fencing on
18 Central.

19 Q. Okay.

20 A. They attended the meetings and voted in favor.

21 Q. Did the Mazells pay the drainage easement assessment?

22 A. Initially no. There was issues where after the meeting,
23 he rescinded his vote.

24 Q. You say "he." Who?

25 A. I'm sorry. Michael Mazell rescinded his -- said he

1 rescinded his vote and that that was not his vote and then --

2 MR. CLEVELAND: I would object to the hearsay, Your
3 Honor.

4 THE COURT: Sustained.

5 Q. Okay. So let me rephrase that a little better.

6 The Mazells had a drainage easement assessment of how
7 much?

8 A. It's approximately \$7800.

9 Q. Okay. And was that paid?

10 A. It was paid late. We didn't receive those funds 'til
11 towards the end of 2009.

12 Q. And the assessment was put in on when?

13 A. After the meeting. It was more or less March, April of
14 2009.

15 Q. 2009. Okay. Now, let me direct your attention,
16 Mr. McFarland, to April the 26th, 2011. And if you would
17 refer back to that, please, tell us what was going on at your
18 property, Lot 3, in Live Oak Village at that time.

19 A. On that exact date? I'm sorry, say the date again.

20 Q. April the 26th, 2011.

21 A. This date is when we had our incident with the
22 Rashtchians, and the incident begun with I had some
23 landscaping crew, Strictly Business Landscaping, who had done
24 work for me for some years prior to this event.

25 Q. Now, who -- Strictly Business Landscaping, what persons

1 compose that company or what people responded to your lot?

2 A. That would have been Lance Johnson, who I believe is the
3 owner of that company. And he also has Lance Johnson, and he
4 had various other workers that would work for him from time
5 to time.

6 Q. And so what were they supposed to do on April the 26th,
7 2011?

8 A. Deliver a trailer full of mulch and install it in my
9 backyard and along my fence line on Flud Street.

10 Q. What kind of mulch?

11 A. I believe that was -- it was the dark chip mulch, you
12 know, I forgot the name of it. Wood chip, I believe.

13 Q. Okay. And what was the purpose of putting the mulch on
14 your property?

15 A. Well, it's to, you put it around the trees and the beds,
16 and, you know, it enhances the appearance, of course, but it
17 helps with the trees, keep the moisture in, you know, the
18 trees when you water them, etc. And we had a rose garden in
19 the circular portion of our property in the backyard, and he
20 filled that in with mulch also.

21 Q. And did Strictly Business and Mr. Lance Johnson, the
22 owner, respond to your property at that time?

23 A. Yes, sir.

24 Q. Okay. And in what manner?

25 A. To deliver the mulch and install it. He was my normal

1 landscaping crew who normally worked on my yard.

2 Q. And how did they deliver the mulch?

3 A. Via trailer and a pickup truck pulling that trailer.

4 Q. And was Mr. Johnson, Lance Johnson there himself?

5 A. Yes, sir.

6 Q. And did he have any other persons with him?

7 A. Yes, sir, two.

8 Q. And do you know any of their names?

9 A. I know Stephon Johnson, and I've try to remember the
10 third gentleman.

11 Q. And approximately what time did they arrive at your
12 property?

13 A. I would say it was later in the day, maybe 4:30, closer
14 to 5:00, sometime around that time frame.

15 Q. And how did they arrive? And by that I mean where on
16 your property did they arrive?

17 A. They arrived down Flud Street so they could deliver the
18 mulch through my back gate, which would be the only way you
19 could deliver a trailer like that, to my back gate.

20 Q. Are you familiar with the houses on Flud Street and the
21 traffic that goes along Flud Street?

22 A. Yes, sir.

23 Q. Tell us approximately, ladies and gentlemen of the jury,
24 please, approximately how many houses there are on Flud
25 Street.

1 A. I would say approximately seven or eight homes.

2 Q. Okay. And it runs from where to where?

3 A. Where the homes are located?

4 Q. Flud Street runs from where to where?

5 A. Oh, I'm sorry it runs from -- it's a dead-end street
6 that runs to Central Ave.

7 Q. Okay. So if you enter, we see there on the plat the
8 entrance on Central Avenue, and if you go up Flud Street,
9 where do you go?

10 A. Can I make a drawing, please, or just put something --

11 Q. Sure, or tell us, one or the other.

12 A. The entrance to Flud Street from Central Ave. would be
13 right here, and then the exit or the homes are located on
14 these areas here and then various homes in the back
15 (indicating).

16 Q. Okay.

17 A. The dead-end, it dead ends.

18 Q. So I gather since it's a dead-end, so if you go down
19 Flud Street, you have to turn around and come back to Central
20 Avenue; is that right?

21 A. Yes, sir.

22 Q. Central Avenue is the only entrance and exit to Flud
23 Street?

24 A. Yes, sir.

25 Q. And approximately how many houses are there on Flud

1 Street?

2 A. Again, seven, eight, nine, I'm not sure exactly, but
3 there are two homes on Flud Street directly, but then there
4 are the rest of the homes behind.

5 Q. So on April the 26th, 2011, when the Strictly Business
6 Landscaping group arrived, where did they make entrance to
7 your property?

8 A. At my gate, which -- right here would be my gate
9 (indicating).

10 Q. And what were they planning to do and what did they do?

11 A. What they've always done. This is a procedure they've
12 done many times in the past, which was to come down Flud
13 Street and then back the trailer into my gate, where they
14 usually would disconnect the hitch from the pickup, park the
15 pickup, and then they could distribute the mulch from that
16 flatbed from that point.

17 Q. And approximately how many times previous to April the
18 26th had they done this procedure?

19 A. Two or three times a year at least, maybe four.

20 Q. Over a period of how many years?

21 A. Since I used Lance, and I was using Lance from sometime
22 maybe late 2008, early 2009.

23 Q. And had you ever had any problems with Mr. Rashtchian
24 before?

25 A. No, sir.

1 Q. And tell us, where would the Strictly Business group
2 park their pickup after they had disconnected the trailer and
3 placed it in your driveway?

4 A. They would normally park on the right-of-way on my side
5 of the property, which -- some time in that direction, in
6 that area right there (indicating), more or less.

7 Q. Tell us, please, the right-of-way, now, when you come
8 out of your driveway there, do you have a small bridge or
9 crossing over -- first of all, is there a ditch that runs the
10 length of Flud Street?

11 A. Yes, sir.

12 Q. Okay. And is it necessary, since the ditch -- does the
13 ditch run along the property lines of -- the property line of
14 Live Oak Village?

15 A. Yes, sir, behind it, yes.

16 Q. And so it's necessary then, if you cross over from
17 your -- to your property, how do you get across the ditch?

18 A. I have a concrete pad where the drain pipe runs
19 underneath.

20 Q. Okay.

21 A. Right where the gate's located.

22 Q. Okay. So you have a culvert, a concrete pipe
23 underneath, running along the ditch, and then you put fill or
24 dirt or something on top of the pipe; is that right?

25 A. Yes, sir.

1 Q. Okay. And is that basically the same that
2 Mr. Rashtchian has on his side of the street?

3 A. I suppose more or less. Mine's concrete, though. I had
4 reinforced concrete put on it.

5 Q. Okay. And so tell us what happened about this time
6 around 4:30 or 5:00 on April the 26th?

7 A. Well, Lance and his crew were coming around obviously,
8 and they alerted us that he obviously went to pick up the
9 mulch and called. He finished the work in the front of the
10 yard and went to go get the mulch and come back. So we were
11 waiting for him. We had the gate open for him to arrive.

12 As he's coming down Flud Street, he does the same
13 maneuver, which is to pull to the left and then to turn his
14 wheels and then back his trailer in to my -- back of my gate.
15 In the process of doing it, I was behind the trailer,
16 obviously making sure the gate didn't hit anything, because
17 the trailer's pretty big, and it's close to the walls of the
18 brick and the gate. I hear a loud commotion coming from Flud
19 Street and I hear --

20 Q. Now what do you mean loud commotion?

21 A. I hear a man screaming very loudly to the effect of,
22 "What are you doing here? Why are you using this gate? You
23 shouldn't be using this gate on this street," something to
24 the effect that, "People are going to run over my grass,"
25 something like that.

1 Q. Now, tell us at that point, you say you were behind the
2 trailer; is that correct?

3 A. Yes, sir.

4 Q. And where at that point were you physically located when
5 you say you were behind the trailer?

6 A. On the -- more or less on the concrete pad just behind
7 the gate as he's backing it in. So I have trees on both
8 sides, on one side of the fence there, so you -- it's for
9 privacy, so you can't see too much, but as he's backing the
10 gate in, I'm making sure he doesn't hit the fence or hit the
11 gate.

12 Q. Now, at the time you said you heard the commotion, what
13 was the proximity of Mr. Johnson's pickup to the -- to Flud
14 Street, the paved portion of Flud Street?

15 A. His pickup truck was in process of backing up, so it was
16 in Flud Street as he's backing the trailer into my gate.

17 Q. Was it blocking -- was it blocking Flud Street?

18 A. As the process of backing up, I wasn't in front. I
19 couldn't see if it was blocking the street, but I imagine, as
20 he made his turn, there could be a brief time where it could
21 have been blocking Flud.

22 Q. And why would that have been?

23 A. Well, because of the length of the truck and the length
24 of the trailer. He would have had to -- as he's maneuvering
25 and then backing up, I'm sure there would be a momentary time

1 that it would probably be blocking the street.

2 Q. Okay. And did you investigate what the commotion was
3 out on Flud Street?

4 A. I did.

5 Q. And what appeared to be the commotion?

6 A. I came around the trailer, and as I'm walking by, Lance
7 is in the driver's seat. And I said, "Lance, what's
8 happening?"

9 He says, "I don't know."

10 And I come around his truck, and then Mr. Rashtchian was
11 there, and he was complaining and yelling about blocking the
12 street and using that gate. And he -- as soon as he saw me,
13 his attention, his full attention turned to me.

14 And then at that point he began screaming at the top of
15 his -- very loud, top of his voice, screaming very
16 aggressively. And the first words out of his mouth were I
17 was an F'ing A-hole and I caused trouble, "What are you doing
18 using this gate? I told you you shouldn't use this gate."

19 I'm asking him -- I'm telling him to calm down, "What
20 happened here?"

21 And he said that somebody had drove over his yard.

22 I told him that he -- that Lance is going to back his
23 truck up and move it out of the way. And then he just tore
24 into me and continued to say things to the effect that first,
25 I didn't have a right to use that gate or Flud Street and

1 that nobody liked me in the neighborhood and that, you know,
2 "I know what kind of people you are," and just bizarre
3 statements like that, that "I know what kind of people you
4 are. I know who comes to your home when you're out of town.
5 I meet people that come in your back and I know that you look
6 in your neighbors' bedroom window with a telescope."

7 And at that point I was -- I asked him, "Who the hell
8 would tell you that, such a thing?"

9 And he pointed at the Mazells' home on Lot 4 and said,
10 "That woman."

11 I, you know --

12 Q. So you drew the inference from that that who had told
13 him, if anybody?

14 A. Exactly. It's pretty clear.

15 Q. I mean who?

16 A. That would have been Sofia Mazell. And at that point,
17 again, I told him, you know, I don't always -- "That's not
18 true, what you're saying here. I don't understand." You
19 know, I was just shocked. I don't understand somebody
20 reacting like that and for no reason, no good reason, in my
21 opinion. And he was continuing to yell.

22 And at this point, Lance was in the process of backing
23 up. I kind of retreated back into my yard, and as I'm
24 walking back to my yard, I see my wife coming out of the
25 home. And I believe our small dog was trying -- he tries to

1 get out of the door, so she picked him up and grabbed him,
2 and she's asking, "What's going on back there?"

3 And I said, "You've got to hear this guy. He's claiming
4 somebody's sneaking into our home when I'm out of town." And
5 as we're walking back, we can hear him screaming at the
6 landscapers, telling the landscapers that they shouldn't work
7 for me, that "You should know about these people, what kind
8 of people they are. They're bad people," that I'm an F'ing
9 racist and that I shouldn't work for them and that I stole my
10 money from my wife's family or something to that effect, that
11 I stole my money, and "They're bad people."

12 Just about then we came out of the -- by the trailer out
13 of the gate, and he was still yelling at the landscapers. I
14 walked up to him and asked him to stop. I said, "These men
15 are here to work for me. They have nothing to do with you."

16 And I believe at that point Lance had moved the truck
17 onto the right-of-way or was in the process of doing it. My
18 focus was you get this tunnel vision, I guess. You know,
19 when you're under attack you kind of feel -- you get this
20 tunnel vision.

21 And he continued on with a lot of the, "You're an F'ing
22 A-hole. You're an F'ing A-hole. Nobody likes you. You need
23 to move from this neighborhood. We're not going to stop
24 until you move. We're not going to stop. And I could tell
25 you about the people that come to your home when you're not

1 there," these type of comments.

2 My wife was very bothered. She began to ask
3 Mr. Rashtchian, "Where are you getting this? How do you know
4 my parents? How do you know my family?" And he wouldn't
5 talk to her.

6 And then she asked him again, "Who told you this?" And
7 he again pointed at the Mazells' home and didn't say
8 anything.

9 And he was walking back into his driveway, and at that
10 point Jennifer wanted to know, tell him that "That's not true
11 what you're saying, that we're good people, that did not
12 happen."

13 At that point Amy Rashtchian came charging down her
14 driveway and very aggressively and very loud in my wife's
15 face immediately, "You talk to me, you bitch. You talk to
16 me. You don't talk to him. Let's make this even. You don't
17 talk to him. You take me on."

18 And she was just right in front of Jennifer, very
19 aggressively as Jennifer's trying to move backwards and
20 almost like she wanted to fight her. She was just doing
21 anything to provoke her.

22 At this point Mansour Rashtchian was watching and
23 smiling, like it's some kind of show or something. And,
24 again, I was in a defensive mode, I guess, more or less. My
25 wife is there and I'm trying to, you know, stop this event,

1 if I can.

2 And they're continuing to scream. If it wasn't at us,
3 then it was directed at the landscapers, we're F'ing racists,
4 we're not good people, don't work for them. And then again I
5 had to order them to -- I ordered them -- I said, "Stop. Do
6 not come on my property. Do not trespass over here and leave
7 these people alone. They're here to work for me. Leave them
8 alone."

9 I believe at that point my wife said she was going to go
10 grab a phone, I guess, to call the police. And before she
11 could make it that way, Mansour again restated the same
12 thing, "I know who comes in your home when you're not there
13 and your wife cheats."

14 And that's when my wife turned around and said, "What
15 are you talking about?"

16 Amy Rashtchian again charged her. I stepped in front of
17 her with Amy Rashtchian to my back. She grabbed my arm,
18 turned me around, and she said, "I'm not afraid of you,"
19 pointing her finger in my chest. "I'm not afraid of you. I
20 know what you are. You're an F'ing racist."

21 And I told Jennifer, "Dont' -- just back off. Go back
22 to the house. This isn't worth it. Just back off."

23 And as we're walking back to the home, they're still
24 screaming at the landscapers, all of this, and using
25 profanity. And my wife was pretty upset, and she basically

1 went in.

2 And at that point they kind of gravitated down their
3 driveway. I guess they grabbed their trash can or something.
4 At the same time they're walking down the driveway I can hear
5 Amy Rashtchian saying, "Ask me all about it. I will tell you
6 who's coming to your home. Ask me all about it."

7 And after it was over, I was completely embarrassed,
8 humiliated. My wife, without question, and especially since
9 Lance was there. Lance worked with me for many years, and I
10 explained to him that this just wasn't true. That's what
11 happened.

12 Q. That what wasn't true?

13 A. That I was not a racist. I have never used language
14 like that in my life.

15 Q. Now, you've -- and to my sensibilities and so forth, you
16 have said F'ing racist, and that wasn't exactly what was
17 said. That was basically your testimonial abbreviation for
18 what was really said; is that true?

19 A. Yes, sir.

20 Q. Okay. And the same thing with F'ing A-hole; that's an
21 abbreviation or a sensible court presentation as to what was
22 actually said; is that correct?

23 A. Yes, sir.

24 Q. What did you assume Amy Rashtchian was talking about
25 when she or her husband, when they said, "You better watch

1 out what" -- basically the conversation was when you're out
2 of town as to what's going on or who comes to your property?

3 MR. CLEVELAND: Objection. Calls for speculation.

4 THE COURT: Can you rephrase the question? Sustained.

5 MR. STUCKEY: Thank you, Your Honor.

6 Q. How did that make you feel?

7 A. Pretty bad.

8 Q. Why?

9 A. It's humiliating, and I know my wife. She would never
10 do that. And I am definitely not what they said. I am not a
11 racist.

12 Q. Your wife would never do what?

13 A. Would have people come to the back of my home when I'm
14 not home.

15 Q. Was there an inferential purpose in your mind as to what
16 they would be doing at your home while you weren't there?

17 A. Well, it's like he said, that "Your wife cheats," is
18 what I heard, and it can't be any more clear than that.

19 Q. Well, what specifically, to try to be more clear, what
20 did that mean to you?

21 A. That my wife's cheating on me, that somebody's visiting
22 my home when I'm not in town.

23 Q. And you and Jennifer had been married how many years at
24 that time?

25 A. 23.

1 Q. Had a happy marriage?

2 A. Yes, sir.

3 Q. Any difficulties with you ever being separated or having
4 any serious marital problems between you?

5 A. No, sir. She's -- my wife's stuck by me in the Navy and
6 everything else I had to do. There was separation time when
7 I was in the Navy. My wife was always there.

8 Q. So what happened -- happened after that? Did the
9 Rashtchians remain on the scene or did they go inside or what
10 did they do?

11 A. They retreated, I guess, back into their driveway, and
12 we kind of did in ours. And my wife went inside and she -- I
13 believe she called her mother. She was pretty upset and
14 wanted to find out if she knew these people. And I was -- I
15 talked to Lance and his landscaping crew and, you know, I
16 explained to them, "You know that's not true," you know,
17 basically.

18 Q. And Amy Rashtchian, who was involved in this at that
19 time, is that the young lady over here who's present in court
20 with the horn-rimmed glasses on?

21 A. Yes, sir.

22 Q. And Mansour Rashtchian, who was involved at that time,
23 is that the gentleman seated over behind counsel table?

24 A. Yes, sir.

25 Q. Have you had any other contact with the Rashtchians

1 Mr. Stuckey.

2 MR. STUCKEY: Thank you, Your Honor.

3 THE COURT: Yes, sir.

4 Q. Bill, tell us, please, when these goings-on were going
5 on on April the 26th, 2011, who was in hearing distance of
6 the comments of Mr. Rashtchian and Mrs. Rashtchian?

7 A. Well, there was the landscaping crew, consisting of
8 three persons. And unfortunately my children, my daughter
9 and my son, heard everything that happened that day. They
10 were on the back porch. I believe my daughter was inside the
11 home at various times, and the yelling was so loud she could
12 hear it inside the home.

13 Q. How did that make you feel?

14 A. Pretty bad. My son was pretty upset, pretty torn up.
15 He wanted to defend his mother.

16 MR. CLEVELAND: Objection. Your Honor, hearsay.

17 THE COURT: Is there any exception that applies?

18 Otherwise it will be sustained. Unless there's an exception
19 you wanted to argue, it will be sustained, the objection.

20 Q. How did that make you feel?

21 A. It made me feel hurt, angry later. Again, the whole
22 thing made me feel humiliated and just embarrassed. Just the
23 whole thing is embarrassing. I don't know who else heard it
24 in the neighborhood. I mean, it was so loud, anybody could
25 have heard it.

1 Q. What made you feel humiliated?

2 MR. CLEVELAND: Objection. Calls for speculation. Move
3 to strike, Your Honor.

4 THE COURT: I'm sorry.

5 MR. CLEVELAND: Objection. Calls for speculation. Move
6 to strike.

7 THE COURT: Yes, sustained.

8 Ladies and gentlemen, the last answer, I would ask you
9 to disregard that response because it calls for speculation.

10 All right. You may proceed.

11 Q. Were the comments by the Rashtchians loud enough that if
12 persons were in houses or in the area around the streets
13 within, oh, say 100, 150 yards, that they could have, under
14 normal circumstances, have heard all of that?

15 MR. CLEVELAND: Same objection, Your Honor.

16 THE COURT: Sustained.

17 MR. STUCKEY: May we be heard on that later, Your Honor?

18 THE COURT: Indeed.

19 MR. STUCKEY: Thank you, Your Honor.

20 (Plaintiff's Exhibits 2-3 marked for identification.)

21 MR. CLEVELAND: May I see the document, please?

22 Thank you.

23 Q. Bill, I show you what's been marked Plaintiff's
24 Exhibit 2 for identification and ask you if you can tell us
25 what that is, please.

1 A. This is the back gate to my property.

2 Q. And your back gate on what?

3 A. On Flud Street.

4 Q. On Flud Street?

5 A. Yes, sir.

6 Q. Okay. And is that -- and what's the house in the
7 background?

8 A. The house in the background would be Lot 5, which would
9 be the Holcombes' home. That's looking into my property.

10 Q. Okay. So this is Lot 5, the Holcombes' home; is that
11 right?

12 A. Right --

13 Q. And that's Carlton Holcombe's home?

14 A. Yes, sir.

15 Q. And the gate is whose gate?

16 A. That would be my gate.

17 Q. That's your gate?

18 A. Yes, sir.

19 Q. Okay. And is that a fair and accurate representation of
20 it?

21 A. Yes, sir.

22 MR. STUCKEY: Your Honor, we would offer this as
23 Plaintiff's Exhibit 2.

24 MR. CLEVELAND: No objection, Your Honor.

25 THE COURT: Very well.

1 (Plaintiff's Exhibit 2 admitted into evidence.)

2 Q. Bill, show us which lot is the Holcombes' lot, please.

3 A. (Indicating).

4 Q. Now, would you give us his full name, please?

5 A. Carlton Holcombe.

6 Q. And what does Carlton Holcombe do?

7 A. For a living?

8 Q. Yes.

9 A. He's a mechanical contractor.

10 Q. And I show you Plaintiff's Exhibit 3 marked for
11 identification. Would you tell us what that is, please.

12 A. This appears to be a photograph of my property from the
13 Rashtchians' security camera.

14 MR. CLEVELAND: And I would object and move to strike,
15 Your Honor, for the reasons that we've discussed earlier.

16 THE COURT: Counsel, let me see you a second.

17 (Judge and attorneys confer.)

18 THE COURT: Ladies and gentlemen, please step to your
19 jury room. Do not discuss this matter or allow anyone to
20 discuss it with you. We will not be long.

21 (The jury retires to the jury room at 3:02 p.m.)

22 THE COURT: All right. Mr. McFarland.

23 THE WITNESS: Yes.

24 THE COURT: I need you to pay attention when I rule and
25 I exclude something, that's not an opportunity for you to get

1 THE COURT: I'm going to control it.

2 THE WITNESS: Okay.

3 THE COURT: Okay. Are we clear about that?

4 THE WITNESS: Sure, absolutely.

5 THE COURT: Okay. Thank you.

6 All right. Let me have the jury back.

7 THE WITNESS: Your Honor, I just was trying to answer.

8 THE COURT: No, sir. No, sir.

9 THE WITNESS: I apologize.

10 THE COURT: I got it.

11 (The jury enters the courtroom at 3:04 p.m.)

12 THE COURT: All right. Thank you, Mr. Stuckey. You may
13 continue.

14 MR. CLEVELAND: Thank you, Your Honor. Thank you.

15 Q. Mr. McFarland, I show you what's been marked Plaintiff's
16 Exhibit 3 for identification, which appears to be a
17 photograph. And would you tell us, please, what appears in
18 the photograph?

19 A. Yes, sir. It appears to be the back of my property, my
20 fence.

21 Q. The back of your property?

22 A. Yes, sir.

23 Q. And this street that appears to be in the back or near
24 the back of your property, what street is that?

25 A. That would Be Flud Street.

1 Q. That's Flud Street?

2 A. Yes, sir.

3 MR. STUCKEY: Okay. And, Your Honor, we would offer
4 this as Plaintiffs' 3.

5 THE COURT: And have you shown it to Mr. Cleveland?

6 MR. STUCKEY: I have, Your Honor.

7 THE COURT: All right.

8 MR. CLEVELAND: Your Honor, I have no objection.

9 THE COURT: Very well.

10 MR. CLEVELAND: Okay.

11 (Plaintiff's Exhibit 3 admitted into evidence.)

12 Q. And referring to Plaintiff's Exhibit 3, is that the
13 area --

14 MR. STUCKEY: If we could just put these up. Thank you
15 so much.

16 Q. Bill, looking at the gate and the paved portion off of
17 Flud Street, is that the area that we were speaking of when
18 Lance Johnson was backing his truck and trailer into your
19 property?

20 A. Yes, sir.

21 MR. STUCKEY: Okay. And could we show 2, please,
22 Ms. Collins.

23 Q. And you mentioned this is -- this is the wrought iron
24 gate. What gate is that?

25 A. That would be the back gate.

1 Q. That's your back gate?

2 A. Yes, sir.

3 Q. And is that basically the gate to the same entrance to
4 the back property as was shown on Exhibit 3?

5 A. Yes, sir.

6 Q. Okay. And you mentioned that the Holcombes' house was
7 present in that. Is there another house shown in that area?

8 A. With the exception of mine, just the Holcombes'.

9 Q. Oh, just the -- exception of yours? So yours is shown?

10 A. Yes, mine is shown.

11 Q. Okay. And is that the back portion of your house?

12 A. Yes, sir.

13 Q. Okay. Thank you.

14 MR. STUCKEY: If Your Honor will indulge me just a
15 moment.

16 THE COURT: Yes.

17 Q. Bill, you've explained to us about your dealings with
18 your father-in-law, Lou Moffa, and the business that you had
19 or the two of you had together; is that correct?

20 A. Yes, sir.

21 Q. And you heard Mr. Rashtchian. What did he say
22 concerning the way you obtained the business from Lou?

23 A. He said that I stole my money and I've stole money from
24 my family, and that's what he repeated over and over again,
25 to me, the landscaping crew and my wife.

1 Q. Okay. And was that in the -- who was that in the
2 hearing of?

3 MR. CLEVELAND: Objection. Calls for speculation, Your
4 Honor.

5 Q. Who was present in the immediate area when that was
6 said?

7 A. The landscaping crew, three members there; my wife;
8 myself; and my children were hearing that, heard that.

9 Q. Was it said in a loud voice?

10 A. Extremely loud voice.

11 Q. And how did that affect you, that you -- that statement
12 was made in the presence of those persons?

13 A. It's embarrassing. It's like I've stole what I've
14 worked for. Like I don't -- I feel like I don't -- I didn't
15 earn that money to buy that home or to live there.

16 MR. STUCKEY: That's all we have, Your Honor.

17 THE COURT: Very well. Cross-examination.

18 MR. CLEVELAND: Thank you, Your Honor.

19 CROSS-EXAMINATION BY MR. CLEVELAND:

20 Q. Mr. McFarland, I'd like to begin by discussing with you
21 your reputation in the community. You claim that other
22 people have defamed you in addition to my clients; is that
23 correct?

24 A. I believe I -- my wife claimed that.

25 Q. Well, you claimed that Mr. Morris and Mr. Hanneman

1 defamed you as well; is that correct?

2 A. I think in my deposition I felt that they did, yes, but
3 I don't believe I made a legal cause for that.

4 Q. Well, that wasn't my question. Now, just so that the
5 jury understands, so when you attended your deposition, you
6 raised your right hand, swore to tell the truth, right?

7 A. Correct, yes.

8 Q. And you admit that in your deposition you said that you
9 had been defamed by Mr. Morris and Mr. Hanneman, correct?

10 A. Yes.

11 MR. STUCKEY: Your Honor, we object to this line of
12 questioning. It has nothing to do with the fact that the
13 Rashtchians have libeled him.

14 THE COURT: In other words, you want it to end at this
15 point because of the allegations of the lack of relevancy; is
16 that correct?

17 MR. STUCKEY: That's correct, Your Honor.

18 THE COURT: Okay. All right.

19 MR. STUCKEY: Exactly.

20 THE COURT: All right. Let me see you all.

21 (Judge and attorneys confer.)

22 THE COURT: Ladies and gentlemen, please step to your
23 jury room. Do not discuss this matter or allow anyone to
24 discuss it with you. There's a matter I need to take up.

25 (The jury retires to the jury room at 3:14 p.m.)

1 THE COURT: All right. So the concern is that
2 Mr. Cleveland is concerned with regards to the ruling that my
3 ruling was that the two additional -- the testimony regarding
4 this witness's belief that he has been defamed by two
5 additional people isn't relevant to the issues at hand.
6 Mr. Cleveland's concern is that it goes to damages.

7 My question back to Mr. Cleveland is that we're talking
8 about defamation per se because he's being defamed in his
9 trade and occupation, and so damages are presumed. And as I
10 understand the position of the plaintiff, the plaintiff is
11 not going forward to show special damages but is relying on
12 the law as it relates to defamation per se is my
13 understanding. I could be wrong. If I am, please correct
14 me.

15 MR. STUCKEY: That's correct, Your Honor.

16 THE COURT: So yes, sir.

17 MR. CLEVELAND: Your Honor, I think it goes to the issue
18 of the extent and amount of his damages. While I was at the
19 bench, I used the illustration of if he had an automobile,
20 making a claim for property damage, the jury would need to
21 know whether there's damage to the vehicle from before the
22 accident, whether or not there was additional damage to the
23 vehicle after the accident in order to determine how much
24 damage was caused by this particular accident.

25 Same thing here, you know, and the case law supports, I

1 believe, that reputation is something that can be brought up
2 in a defamation case.

3 Now, you say it's defamation per se, and I understand
4 that, but still the extent of the damage. It's kind of like
5 negligence per se. If you get over the hump saying, "Yes,
6 you've proven your case," maybe even that they have to award
7 at least \$1, but still, I think we're entitled to defend that
8 \$1 to whatever enormous amount of money that Mr. Stuckey says
9 that he wants in his closing argument.

10 And feel that I'm being prevented from defending from
11 dollar one through however many million he may suggest that
12 he wants by not being able to talk about the problems with
13 the plaintiffs' reputation in the community for all other
14 reasons unrelated to this incident.

15 THE COURT: And you have case law that supports your
16 theory, sir?

17 MR. STUCKEY: Might I have the cite?

18 MR. CLEVELAND: Yes, Your Honor, looking at the case of
19 Smith versus Lafar, L-A-F-A-R, it's 40 -- oh, I'm sorry.
20 It's the *McLeod v. American Publishing Company*.

21 THE COURT: Okay.

22 MR. CLEVELAND: 120 Southeastern 70, South Carolina
23 Supreme Court. It says: "As a general rule, reputation,
24 good or bad, may not be pleaded or proved as a defense in a
25 civil action. Exceptions to this rule embrace actions for

1 breach of promise, seduction, malicious prosecution, libel
2 and slander, assault and battery."

3 THE COURT: Let me see the case, please.

4 MR. STUCKEY: I imagine that's a libel case, Your Honor.

5 THE COURT: I don't know. I'm going to let you know in
6 a second.

7 While I'm looking at this case, do you all want to come
8 up and look at the note?

9 Did you amend your answer or do you just have your
10 answer?

11 MR. CLEVELAND: I believe we just have the single
12 answer, Your Honor.

13 THE COURT: Okay.

14 All right. The 1923 case that I'm looking at says that
15 the only time that you can proceed as you propose to do
16 and -- I don't know. I have not Shepardized this case.
17 I've just read it when you cited it, but it gives -- Headnote
18 3 certainly gives some interesting information with regards
19 to provocation.

20 But it says -- it says that reputation may be pleaded
21 and proved as mitigating circumstance in an action for libel.
22 Reputation may be pleaded and proved as a mitigating
23 circumstance.

24 Now, it makes reference to a code provision, which I
25 wonder if it -- because obviously this is the 1922 code, and

1 it's Section 426. And it says that -- as the case goes on,
2 it says that when you're looking at whether there are
3 aggravating or mitigating circumstances, you have to look at
4 the circumstances that existed at the time of the
5 publication.

6 And this case limits the time to the moment or moments
7 surrounding the event, because what they attempt to do here,
8 basically, if you will, it was a tit for tat in terms of
9 publications because this is a libel case. You mentioned
10 that. It's a libel case.

11 And they said, well, that the libel of the defendant
12 cannot be -- or the libel, excuse me, of the plaintiff cannot
13 be provocation for the defendant unless it was very close in
14 time, such that it was very, as I understand it, a very quick
15 reaction. But then it goes on and talks about you look at
16 the aggravation and the mitigation as the circumstances that
17 existed at the time of the defamation. And let me find that
18 for you.

19 It says and they found that the reason that they found
20 the Court to be in error in this case in striking out the
21 alleged defamation, defamatory statements made by the two
22 other folks, that the Court had struck those alleged
23 defamatory statements by two other folks is because the
24 plaintiff pled conspiracy, civil conspiracy, not only
25 defamation but civil conspiracy.

1 So, in essence, I think what the court is saying is that
2 the court was in error in striking the defamatory statements
3 by the two additional defendants because of the allegation of
4 civil conspiracy, which is not what we have here.

5 It says, here's what it goes on to say: It says
6 defendant has a right, a perfect right to allege the
7 circumstances surrounding the publication of the alleged --
8 this is libel. This is a libel case, not a slander case --
9 defendants charge that McLeod composed the letters published
10 over the name of Hutto and charged McLeod with procuring for
11 publication the alleged libellous and defamatory matter. The
12 allegations are responsive to the issues and are material in
13 justification or mitigation of damages.

14 The plaintiff bases his action that the article
15 published was willful and malicious. All of, all of the
16 facts should be allowed to be introduced into evidence
17 showing lack of malice or in mitigation of damages.

18 And it goes on and says: "Evidence of a previous
19 publication by the plaintiff will not be received in
20 mitigation on the ground of provocation unless not only the
21 connection between the publications be manifest but also that
22 the provocation is so recent as to induce a fair presumption
23 that the injury complained of was inflicted during the
24 continuance of feelings and passions excited by the
25 provocation.

1 "A distinct and independent libel published by the
2 defendant is not mitigation but is just stated if the
3 publication by the plaintiff was so recent as to afford a
4 reasonable presumption that the libel made by the defendant
5 was published under the influence of the passions excited by
6 it or where it is explanatory of the meaning of or the
7 occasion of writing the libel complained of."

8 It may be given into evidence for that purpose. And
9 that really goes to the -- here it goes: "The cause and
10 manner -- the cause and manner of speaking the slander are in
11 all cases proper to be given in evidence in order to guide
12 the jury in the assessment of damages, and all the
13 circumstances of hearing the slander first published in the
14 manner of reaping it ought to be duly considered by the jury
15 in mitigation or in aggravating the damages.

16 And, again, the court was found to be in error because
17 of the allegations of conspiracy, which made them
18 independently relevant as opposed to just an additional --
19 what you would propose as -- because there are other
20 allegations of slander that that's somehow mitigation in
21 accordance with this case.

22 Have you got anything else? Got any other authority?

23 MR. CLEVELAND: Yes, I'm just looking at this statement.
24 It says all the facts should be allowed to be introduced into
25 evidence showing lack of malice or in mitigation of damages.

1 The courts of the land are more liberal in the admission of
2 evidence in cases of libel and slander than in other cases.

3 THE COURT: Right. That's right, but that comes on the
4 heels -- again, that's at the end of the paragraph that
5 begins that the defendant charges a conspiracy between
6 McLeod, Hutto and Morrison at the campaign meetings for
7 Congress, at which meetings Grace was not a candidate, to
8 wantonly, wrongfully and maliciously injure the good name of
9 Grace and hold him up to disgrace and ridicule.

10 Defendant has a perfect right to allege the
11 circumstances surrounding the publication of the alleged
12 libel. Defendants charge that McLeod composed the letters
13 published over the name of Hutto and charged McLeod with
14 procuring for publication the alleged libelous and defamatory
15 matter. The allegations are responsive to the issues and are
16 material in justification or mitigation of damages. The
17 plaintiff bases his action that the article published was
18 willful and malicious.

19 All facts should be allowed to be introduced into
20 evidence showing lack of malice or in mitigation of damages,
21 but all of this goes back to at the time of the publication
22 of the defamatory matter.

23 MR. CLEVELAND: And, Your Honor, Mr. Leech has handed me
24 another case of Schafer versus Time from the 11th circuit
25 Court of Appeals which deals with specific acts of misconduct

1 is the heading of the section. It says evidence of a
2 person's character is viewed with some suspicion under the
3 law --

4 THE COURT: Slow down a little bit.

5 MR. CLEVELAND: And generally is disfavored in the
6 federal rules of evidence. In an action for defamation or
7 libel, however, the issue of the plaintiffs' reputation and
8 character scarcely can be avoided because the plaintiff
9 typically seeks to recover compensation for damage to his or
10 her reputation.

11 Your Honor, it's -- the issue before the jury is
12 plaintiffs' reputation --

13 THE COURT: Yes.

14 MR. CLEVELAND: -- the damage to the reputation, and
15 these issues relating to their reputation being damaged due
16 to other events is relevant to the case.

17 THE COURT: Let me see that case.

18 MR. STUCKEY: What's the citation on it?

19 THE COURT: Oh, my gosh, it's spelled correctly.
20 Schafer.

21 MR. LEECH: Your Honor, the reason we went to the 11th
22 circuit was because there was little South Carolina case law
23 directly on point.

24 THE COURT: Now, I think the reason you went to it is
25 because they spelled Schafer correctly.

1 MR. LEECH: That's right.

2 THE COURT: Okay.

3 I've taken a little bit of time because we keep jumping
4 down the similar place and I would like to move us beyond
5 that. One of the things that I wanted to establish is what
6 do we mean when we talk about character. When we talk about
7 character, we are talking about generalized descriptions of a
8 person's disposition or the disposition in respect to a
9 general trait, such as honesty, temperance or peacefulness.

10 So in that as I understand it there are three -- we're
11 talking about whether or not plaintiffs are someone who --
12 the character trait would be one that involves stealing.

13 You agree with that, Mr. Stuckey, that's a character --
14 whether or not --

15 MR. STUCKEY: I do, Your Honor.

16 THE COURT: -- he steals.

17 MR. STUCKEY: I do.

18 THE COURT: Whether or not -- and I think you referred
19 to the character trait as whether or not plaintiff is chaste,
20 faithful to her husband.

21 MR. STUCKEY: Yes, that's correct.

22 THE COURT: And what are the character traits involving
23 the allegations of being a racist? What character trait will
24 we be talking about, do you believe, in that regard?

25 MR. STUCKEY: Of these three that you have named, Your

1 Honor, honesty, temperance and peacefulness --

2 THE COURT: Well, that is -- those are simply examples.
3 Those are examples that are given in the discussion of the
4 rule of character.

5 Yes, contemplate that for me. This last case that you
6 gave me from Georgia isn't helpful. It's got a paragraph
7 that you read, but what you didn't read is the fact that what
8 the court was dealing with, just as I struggled to go through
9 before, in Georgia libel is a, product of malice, which is
10 defined in the statute. This case dives back into their
11 statute time and time again.

12 At the end of the day, it does no more than talk about
13 the fact that if character evidence involves an essential
14 element, that there can be proof offered with regards to
15 specific instances of conduct on cross-examination, which is,
16 I gather, where you're going now.

17 The problem is is that what you're asking him is, "Did
18 you file a lawsuit against somebody else for slander?"
19 Please tell me what character trait that has to do with.

20 MR. CLEVELAND: Well, it goes to his reputation --

21 THE COURT: No, sir.

22 MR. CLEVELAND: -- Your Honor, in damages.

23 THE COURT: No, sir. Then you didn't read the Georgia
24 case that you passed up to me, because what it talks about is
25 that when you, when there are instances and you go back to

1 character under the federal rules, which is where you had me
2 go with the Georgia case, that talks about character,
3 character evidence. That gets you specific in answers of
4 conduct, which is what I gather you want to talk about with
5 him.

6 Well, what is the specific instance of character that is
7 in the essence of the claim, this claim for libel and
8 slander, whether or not he's a thief, whether or not she is
9 chaste and what character trait with regards to racism?

10 In other words, it's not just a wholesale, woo-hoo,
11 let's see if we can -- let's see how painful we can make
12 this. Let's see if we can destroy this person for unrelated
13 matters and embarrass him by taking the stand. That's not
14 appropriate cross-examination of specific instances of
15 conduct with regards to character.

16 The specific instances of conduct must relate to the
17 character item which is specifically at issue because he
18 brought a libel action. That's got to be with regards to
19 whether or not he's a thief, whether or not she is chaste.
20 And with racism, I'm listening to you. Those are your
21 specific instances.

22 And nowhere can I find where you can just ask him
23 anything. It has to be reasonably related to the character
24 which is at issue, which is whether or not he's a thief. And
25 with regards to the racism, I'm -- the character trait, is it

1 that he is a racist? Is that a character trait? It may be.

2 So those are the -- they have to relate to that. It's
3 not just some wholesale what, you know, did you kick the dog.
4 You know, did you fail to let the little -- help the little
5 old lady across the street. But by the same token,
6 Plaintiff, on redirect, if Plaintiff chooses to inquire into
7 other specific instances, it is certainly, on rebuttal, he
8 certainly couldn't ask him, "Did you help a little old lady
9 across the street," because that's not a character trait
10 that's at issue.

11 MR. CLEVELAND: If I could just place one thing on the
12 record, Your Honor.

13 THE COURT: Of course.

14 MR. CLEVELAND: You asked the question earlier whether
15 or not we had filed an amended pleading.

16 THE COURT: Yes.

17 MR. CLEVELAND: Under Rule 9(h) it indicates that we may
18 plead as a defense mitigating circumstances reducing the
19 amount of damages and, whether he proved the justification or
20 not, he may give evidence of the mitigating circumstances.
21 At this point we would move to amend our answer to include
22 that as a specific defense.

23 Also, I would just note, Your Honor, that looking at
24 South Carolina juris prudence, it indicates under character
25 of persons defamed that it's possible for a plaintiff to

1 be -- reputation to be so bad that the plaintiff is libel
2 proof.

3 To the extent that we have other people in the
4 neighborhood claiming that he has done things, whether it's
5 true or not, but his reputation is so bad that we have other
6 people who are claiming that he's stolen money through the
7 HOA and those types of things, I think it's relevant for
8 those purposes.

9 THE COURT: All right. Let me put this in the context
10 of the case that you passed up, the Schafer case. Just to
11 put it in context, the Schafer case talks about a gentleman
12 that Time Magazine began to publish his picture when Time
13 would talk about the terrorist bombing of Pan Am Flight 103,
14 of course which is the flight that exploded over Lockerbie,
15 Scotland, killing some 300-plus people. And we know now
16 clearly that it was a terrorist bombing.

17 And Time Magazine published an article that said that
18 part of the plot behind the bombing of Pan Am Flight 103
19 involved a double agent guy by the name of David Lovejoy and
20 that that was one of the reasons for the bombing of Pan Am
21 Flight 103.

22 Unfortunately, instead of publishing Mr. Lovejoy's
23 photograph, for whatever reason, they published Mr. Schafer,
24 who was a janitor, who objected to his picture being
25 published every time they talked about Lockerbie, the

1 Lockerbie bombing, Pan Am Flight 103. And so he objected.

2 Now, here's the type -- and he sued them. They printed
3 a retraction. He wasn't satisfied, sued them for libel. And
4 Time Magazine, in talking about whether, what was the
5 reputation, what was the -- whether he was, I gather,
6 libelled, aside from the fact now that nowhere do they talk
7 about -- in Georgia they do not talk about any defamation per
8 se, any damage to a person by virtue of the statement or the
9 photo being shown, but you have to prove actual malice.

10 There's a difference. There clearly is a difference
11 between Georgia law and South Carolina law, but in their
12 attempt to show malicious conduct, which is what they had to
13 do -- have to do in Georgia apparently, they offered up, as
14 specific instances of conduct, Mr. Schafer's record, which
15 was pretty bad.

16 Here they are. And they had a -- they actually had a
17 pretty extensive hearing pretrial. It says: "Before trial
18 the district court instructed the parties that Time would not
19 be permitted to introduce and explore a number of specific
20 acts and events in Schafer's life, as they were irrelevant to
21 the issues before the jury.

22 "At that time, however, the district court warned both
23 parties that the court would revisit the character issue to
24 the extent that particular acts and events were shown to be
25 relevant on the question of damages and how Schafer's picture

1 might have become associated with the Pan Am case.

2 "During the course of the trial, the district court made
3 a preliminary ruling permitting Time to explore selective
4 incidents and acts in Schafer's background but excluding
5 evidence of others. Specifically, the district court ruled
6 that Time would be permitted to question Schafer about a
7 felony conviction."

8 Well, obviously if you blow up Flight -- Pan Am Flight
9 103, that is a crime. It is a felony. They allowed them to
10 show evidence of a felony conviction; a possible violation of
11 his subsequent parole; convictions for driving under the
12 influence; an arrest for writing a bad check, those -- no
13 doubt the arrest for writing a bad check is because it's a
14 crime of dishonesty; failure to file tax returns, that's
15 another crime of dishonesty; failure to pay alimony and child
16 support; and evidence concerning Schafer's efforts to change
17 his name and Social Security number.

18 It says: "Schafer attacks the district court's ruling
19 and argues that these specific acts were inadmissible under
20 the federal rules of evidence, which details the
21 circumstances under which character evidence is admissible
22 and the methods available for presenting such evidence."

23 It says: "In all cases you can offer opinion or
24 replication only in cases in which a person's character is an
25 essential element of the charge, a party can offer evidence

1 of specific instances of conduct."

2 It says: "Character evidence does not constitute an
3 essential element of the claim or charge unless it alters the
4 rights and liabilities of the parties under the substantive
5 law."

6 Now they're back -- and then they begin, as
7 justification, they're back into talking about
8 specifically -- then they talk about the Georgia statutory
9 and common law, which is quite different, I think, from ours.

10 And then they say the instances where the -- there's an
11 essential element under the federal rules of evidence,
12 chastity of a victim under statute specifying chastity as an
13 element of or a violation of chastity as an element of the
14 crime of seduction or the competency of a driver in an action
15 for negligent supervision or negligent entrustment.

16 It says: "A charge of defamation or libel commonly
17 makes damage to the victim's reputation -- damage to the
18 victim's reputation or character an essential element of the
19 case."

20 It says the typical example is where -- of a case of
21 defamation is where injury to reputation must be proven.
22 That's not so. That's so in Georgia law, but it is not so in
23 South Carolina in the instances if the jury was to believe
24 the slander in this case because it is presumed. There is no
25 talk anywhere in this case about any damages to reputation

1 being presumed.

2 Clearly if what had happened in Georgia happened in
3 South Carolina, if you accuse somebody wrongfully by putting
4 up their picture implicitly that they were a terrorist and
5 had killed 300 and some people, I think that that would be,
6 under South Carolina law, defamation per se. That is not so
7 in Georgia, they obviously don't have defamation per se.

8 MR. CLEVELAND: Your Honor, I just want to make the
9 distinction that of the three claims the plaintiffs are
10 making, I don't believe that racism is a defamation per se
11 category either.

12 THE COURT: Right. We haven't argued that. You know
13 what I mean? Because we haven't been there yet. So hang
14 with me where we are.

15 So -- and the question was whether or not they were
16 entitled to cross-examine Schafer with regards to the
17 specific instances of his conduct, which is what you want to
18 do.

19 It would be my determination that you have got to -- the
20 specific instances have got to be relevant as to those three
21 areas. It's got to be relevant on the specific instances of
22 conduct that you want to ask him about. It has to be
23 relevant regarding whether or not he is a thief, whether or
24 not -- you can ask him whether or not his wife is chaste and
25 whether or not he is a racist, some form or fashion.

1 And that's -- that would be the ruling of the Court, and
2 those would be specific instances of conduct that you can ask
3 him about.

4 MS. LIETZOW: Your Honor, would that be limited to at
5 the time of the slanderous statement or the -- just the
6 parameters of at the time that was mentioned in the McLeod
7 case, we're past that, we're not that anymore.

8 THE COURT: It has to be the -- it has to be the
9 circumstances existing at the time of the alleged -- it may
10 be admitted -- slanderous event.

11 MS. LIETZOW: Sure. So subsequent events or subsequent
12 lawsuits that happened later on are obviously then not at the
13 time. I just want to make sure I understood the Court's
14 ruling.

15 THE COURT: Right.

16 MS. LIETZOW: Thank you.

17 THE COURT: Right. Yes.

18 MR. CLEVELAND: Your Honor, I think I'm going to need to
19 make a proffer, and I can do it very quickly if you'd like,
20 but I have a bunch of documents I need to mark as exhibits.
21 I'll be happy to go through it as quickly as --

22 THE COURT: Okay.

23 MR. CLEVELAND: -- you want me to.

24 THE COURT: Okay.

25 MR. CLEVELAND: And I also would like a ruling, if I

1 could, on my motion to amend our answer to specifically
2 include under Rule 9(h) the defense of mitigating
3 circumstances.

4 THE COURT: Let me tell you where my head is. It's now
5 4:20, and this jury -- we are keeping them out. I'm going to
6 let them go for the day while we finish this and get
7 straight. So let me have the jury.

8 (The jury enters the courtroom at 4:17 p.m.)

9 THE COURT: Ladies and gentlemen, I'm not finished doing
10 what I have to do. I don't want you in your jury room
11 anymore. I'm going to send you home for the day while I
12 continue to do what I must do. And there's some issues that
13 I have to continue to address, which I'm going to do when you
14 leave, but I need to know that you're taken care of so that I
15 can focus on what I need to focus on.

16 We are going to begin in the morning at 9:30. In the
17 morning at 9:30. Same admonitions, of course, apply: Do not
18 discuss this matter or allow anyone to discuss it with you;
19 no Columbo; no social media.

20 Oh, you're going to go home. Somebody's going to be
21 curious about what you did today. You can't talk about it.
22 Don't let anybody get upset with you. Put it on the judge.
23 Put it on the judge. Let them get upset with me. You must
24 not discuss this matter or allow anyone to discuss it with
25 you.

1 As I say, I want to begin in the morning at 9:30. Let
2 me say to you also, your notepads, I want you to know what's
3 going to happen with your notepads this evening. Leave them
4 in your chair. The moment you leave, they're going to be
5 collected and they're going to be secured over the evening,
6 and they will be either placed in your -- probably not
7 placed.

8 We'll give them to you right before you come out.
9 That's what we'll do. That's why I needed you to put the
10 numbers on the front, so they certainly will be secured the
11 moment that you leave us so that they will stay secured for
12 you.

13 Have a wonderful evening and I will see you in the
14 morning at 9:30.

15 (The jury retires to the jury room at 4:19 p.m.)

16 (Defendant's Exhibit 1 marked for identification.)

17 THE COURT: Okay. Now, before you go into making a
18 proffer, what are the specific instances of conduct?

19 MR. CLEVELAND: It has to do with the -- his reputation
20 in the community as it relates to telling lies.

21 THE COURT: Dishonesty?

22 MR. CLEVELAND: Defamatory statements. Part of
23 defamation is that it's not the truth, and that claim has
24 been made by Mazells.

25 THE COURT: You understand now that's a different issue.

1 That's truthfulness or untruthfulness. That doesn't -- that
2 character trait goes to the believability. That's a
3 different -- that doesn't arise out of defamation. That just
4 arises out of litigation. Do you see the difference?

5 Truthfulness or untruthfulness. You can always -- that
6 character trait is different. Do you understand what I'm
7 saying?

8 MR. CLEVELAND: I believe so, Your Honor.

9 THE COURT: Okay.

10 MR. CLEVELAND: It's also characteristics relating to
11 the fact that other people have defamed him and what the
12 reputation is in the community. I understand Your Honor's
13 ruling on that.

14 THE COURT: But you can -- three ways, three ways to
15 prove a reputation or character trait: Number one, by
16 reputation; number two, by opinion; and number three, by
17 specific acts. All three of them are available to you. So I
18 don't want you to think you're being excluded in any way
19 because you would offer it by reputation or opinion.

20 We were talking about specific acts and whether or not
21 those specific acts could be offered as specific acts. But
22 keep in mind you have three ways to offer proof: One is
23 opinion, one is reputation, the other is specific acts.

24 Having said that, then we get back to the individual
25 traits, the reputation, what reputation for what. It has to

1 have relevance for this cause of action. That's -- but when
2 you start to talking about truthfulness or untruthfulness,
3 that really takes you someplace else. That's different,
4 because he's testifying. Do you see the difference?

5 MR. CLEVELAND: I think so, Your Honor.

6 THE COURT: Okay. That's why I wanted to hear from you,
7 and you're prepared to do a proffer. But I want to hear from
8 you, just as they did in that Georgia case, I would like to
9 hear what are the specific acts that you would be inquiring
10 of, because they may or may not be appropriate. Clearly the
11 fact that he's brought a lawsuit is not a -- that's not a
12 specific act that I think touches and concerns that.

13 Now, now, because you want to ask him about the specific
14 act of bringing the lawsuit, there are a couple of problems
15 with that. What other specific acts? That doesn't mean that
16 whole topic necessarily is excluded, because, remember,
17 opinion, reputation evidence.

18 So talk to me about what other specific instances would
19 you cross-examine this witness regarding?

20 MR. CLEVELAND: It is others' opinion that he is a
21 racist, calling him Hitler. It is others' opinion that he
22 has lied because he defamed them. It is others' opinion that
23 he has stolen money.

24 THE COURT: Okay. Now, you've asked three things.
25 Others' opinions. Now -- now, stolen money. You can ask

1 him, "Did you steal money? Did you steal money? Have you
2 stole? Did you steal money?" And, you know, they're going
3 to want me to know when, so we need to talk about the when,
4 maybe. But I want to hear that from you, the when part. Did
5 you steal money? That is a specific act that you can ask,
6 okay? Are we straight on that one?

7 MR. CLEVELAND: Well, I would like to get it in through
8 these documents that I have, Your Honor.

9 THE COURT: All right. So you want to offer up
10 collateral sources to prove the specific act; you don't want
11 to just ask him about the specific act.

12 MR. CLEVELAND: Yes, Your Honor. I mean, I have, like,
13 emails from him --

14 THE COURT: Okay.

15 MR. CLEVELAND: -- where he states that people called
16 him Hitler. That goes to racism. That goes to reputation in
17 the community. And I just would like to make this an exhibit
18 in this case, whether it comes into evidence for the jury or
19 not, just so that I'll be protected, Your Honor.

20 THE COURT: I'm with you, but I'm not there yet.

21 MR. CLEVELAND: Okay.

22 THE COURT: I'm not there yet because these are the
23 specific acts that we're finally sort of getting down to that
24 I've got to make a determination. You want -- and what I'm
25 asking you to tell me is what are the specific acts that you

1 wish to ask this witness and how.

2 MR. CLEVELAND: And part of that I need to ask him on
3 the stand. Where he said that he had been defamed by others,
4 I need to know what those specific statements by others was
5 that damage his reputation.

6 THE COURT: We're not here to do discovery. You know
7 what I'm saying? You had a chance to do discovery. We're
8 not here to do that. So you think that you should be able to
9 ask him whether or not you have been defamed by others and
10 that you believe that that is a specific act that proves that
11 he doesn't have a good reputation because somebody else says
12 something ugly about him.

13 MR. CLEVELAND: Yes, Your Honor. Whether it's true or
14 not, I think it's still relevant.

15 THE COURT: All right. Now, having -- I don't think
16 that is an appropriate question to ask him on
17 cross-examination as to a specific act. A specific act is
18 something that you did, something that you said, something
19 that you were the actor, so that's a specific act, or
20 something in the nature of were you -- have you been
21 convicted of a crime.

22 And typically that would be crimes of dishonesty or
23 crimes that indicate -- obviously if he was convicted of a
24 crime that had anything to do with either dishonesty or
25 larceny, you would be good to go. Even if he had been

1 charged and not convicted, I think that you could ask him
2 that in terms of specific acts. I don't think it has to be a
3 conviction.

4 MR. CLEVELAND: Even if he denied that he did it and
5 somebody else said that he did it, that would be relevant and
6 admissible?

7 THE COURT: Well, you can ask him if you have a
8 good-faith belief that, in fact, it occurred. The question
9 then -- see, you're so smart, Mr. Cleveland, you're already
10 jumping to can you prove it. If he denies it, can you prove
11 it with collateral evidence?

12 It is my understanding, normally and typically, you have
13 to accept his answer as he gives it to you and you cannot
14 then prove it by collateral means. And the reason for that
15 is so that we try this case and not some other case, but I'm
16 going to have to look at it.

17 Your next inquiry, what if he denies it? Can you prove
18 it by collateral means? I don't know. I don't know.
19 Because -- because we're dealing with libel and slander,
20 which is a different area, I'm going to have to check myself
21 again on that one. But normally and typically you have to
22 take his answer as he gives them to you on cross-examination
23 with regards to specific acts.

24 Now, remember, there are three ways that you can prove
25 that, and I am -- with regards to -- let me stop you because

1 we were talking about the defamation and we're talking about
2 the reputation. You understand that it is a different
3 circumstance to ask him a question as a specific act and to
4 offer someone as a witness with regards to an opinion as to
5 reputation: Do you know, have you heard. You understand
6 the --

7 MR. CLEVELAND: I was hoping to avoid calling 20
8 witnesses as part of the defense's case.

9 THE COURT: Well, I'm going to tell you something, I
10 think it would have taken less time to call the 20 witnesses
11 than it would to be struggling on cases over Georgia law,
12 Georgia statutory law. To be quite frank with you, I'm not
13 sure that we're being more efficient.

14 But, okay. So "Did you take money? Did you take
15 money?" So -- and what is the time period that that event
16 occurred?

17 MR. CLEVELAND: I think Mr. McFarland claims that he was
18 defamed in the time period of -- this is an email dated
19 July 27, 2012.

20 THE COURT: Okay. July 27, 2012, okay.

21 And do you know, do you have a good-faith belief about
22 whether or not the taking of money was contemporaneous with
23 these events.

24 MR. CLEVELAND: I guess contemporaneous, it depends on
25 what you mean by that, Your Honor. This occurred

1 approximately -- this email is dated some 15 months after the
2 incident in April of 2011, if my math is correct.

3 THE COURT: And does he --

4 MR. CLEVELAND: So if contemporaneous is within the past
5 year, likely so.

6 THE COURT: And on 7/27/2012, whose email is that?

7 MR. CLEVELAND: It's from Mr. McFarland.

8 THE COURT: Okay. It's from Mr. McFarland. It says
9 that someone has accused him of taking money?

10 MR. CLEVELAND: Well, it says that he has been defamed.

11 THE COURT: Okay.

12 MR. CLEVELAND: And when I deposed him, he said that,
13 yes, that he was accused of misusing HOA funds, and he
14 equates that to stealing.

15 THE COURT: Okay. And did he, he is talking about it
16 7/27/2012, right? Did he give you -- did he give you an
17 approximate time of when that event supposedly occurred?

18 MR. CLEVELAND: I think at that point, Your Honor, we
19 had the pleadings from the HOA case. We did not have this
20 email since I got this email from his other attorney,
21 Mr. Shelbourne, after Your Honor was kind enough to order
22 them to produce that. They had not produced it before. So I
23 didn't have his email at the time that I took his first
24 deposition.

25 THE COURT: Okay. All right. But you would tell me --

1 obviously if he's emailing in July of 2012, you would argue
2 that clearly if it's reached that level by the middle of
3 2012, it probably was percolating in the spring of 2011.

4 MR. CLEVELAND: There's been a lot of unhappiness in the
5 HOA, sounds like, from at least 2009, Your Honor.

6 THE COURT: Okay.

7 MR. CLEVELAND: Maybe that contemporaneous time period
8 should span at least four, five years.

9 THE COURT: All right. Let me hear from you. You all
10 with me?

11 MR. STUCKEY: Your Honor, I just don't follow all this.
12 Obviously, I mean, what he's trying to do is impeach the
13 character, as I understand it, of the witness by specific
14 unfounded acts of just wild allegations from some disgruntled
15 individuals. And, I mean, that, in the essence of time, and
16 also in the essence of -- or in the interest of making sense
17 just doesn't make any sense.

18 I mean, basically you have to have -- you have to have
19 general reputation in the community. General reputation in
20 the community is what is generally believed by people. It's
21 not any specific acts. Now, Your Honor alluded to
22 have-you-heard or do-you-know kind of thing, but that's
23 proper cross-examination to do that, I guess:

24 "Have you heard?"

25 "No, I haven't heard."

1 And, "Do you know?"

2 "No, I don't know."

3 And I guess that all goes to the general reputation in
4 the community, but I just don't think you can prove or attack
5 general reputation by just specific acts.

6 THE COURT: I'm with you. I understand that. And
7 here's what makes this different: What makes a libel or a
8 slander case, a defamation case different is that the damage
9 to reputation is an essential element of the cause of action.
10 Now, what makes this a little bit different is that we have a
11 presumption that there has been damage to reputation.

12 MR. STUCKEY: General damage, absolutely. And it
13 doesn't have to be specific acts to show that it's been
14 general damage.

15 THE COURT: Yes. And, well, you don't have to prove any
16 special damage and you haven't offered, at least through this
17 witness, any evidence of special damage.

18 MR. STUCKEY: That's right.

19 THE COURT: You are relying on, if you will, slander per
20 se. In other words, by virtue of the fact that the words
21 were said, there is a presumed damage to reputation.

22 MR. STUCKEY: That's correct.

23 THE COURT: And so -- and that is the essential element
24 of the cause of action. What assists you is that you don't
25 have to prove special damages. They're presumed. You're

1 there. If you have defamation, you have damage.

2 MR. STUCKEY: That's correct.

3 THE COURT: Presumed.

4 MR. STUCKEY: Correct.

5 THE COURT: And the question then gets to be what about
6 the extent of the damage. Well, that's -- because it is an
7 essential element is why we have the case law that talks
8 about there being -- you can -- by virtue of fact that this
9 is a defamation case, character is an issue, because
10 reputation and character are an issue, if you will.

11 MR. STUCKEY: Right.

12 THE COURT: How do you prove that? How do you prove a
13 character trait? Well, you prove a character trait in three
14 ways: Opinion, reputation in the community and specific
15 acts. Those are the three ways under the law that you can
16 prove a character -- a relevant character trait.

17 Now, one of the places that Mr. Cleveland and I were
18 having a conversation is that he would like to have a
19 wholesale attack -- you know, you can come down, unless
20 you're comfortable. Come on back over here. You just can't
21 talk about your testimony.

22 THE WITNESS: Can I go to the restroom, Your Honor?

23 THE COURT: Yes. Absolutely.

24 One of the dialogues that I've had with Mr. Cleveland is
25 that he believes, and I think he generally in good faith

1 believes that if you don't have a good reputation in general,
2 then there can't be any damage to you.

3 It would be my opinion, unless over the night I find
4 something that changes my opinion, and I'm excited to have
5 that time. So is my law clerk. But it's my opinion that it
6 has to be a relevant trait. It has to be a relevant
7 character trait. It has to have -- that makes it relevant.

8 In other words, he hasn't been -- said that he's an
9 animal abuser. So the fact that he's an animal abuser isn't
10 relevant and I wouldn't admit it. "Did you kick your dog?"
11 I don't think that's relevant, and I wouldn't allow that to
12 be asked as a specific instance of conduct.

13 By the same token, I would not allow you to ask him on
14 redirect with regards to specific acts, "Do you help little
15 old ladies cross the street every single time you see them,"
16 because I don't think that that is a relevant --

17 Now, if you asked him something, interestingly enough,
18 if he was -- I think -- let me just stop there and say that I
19 think that even specific acts, even on redirect, would have
20 to be specific acts as they relate to the characteristics,
21 the traits associated with the slander per se, which is
22 obviously whether or not you were dishonest, whether or not
23 you're a thief, and I think those are the same under the law,
24 and whether or not Ms. McFarland is chaste, whether she is
25 faithful.

1 I think that those are the relevant character traits,
2 and I'm going to limit it unless I come across something that
3 says it's a free-for-all, but I don't think it's a
4 free-for-all because I don't think it -- I think relevance
5 must always be considered.

6 So where I am at this point is that specific acts, which
7 I think he can ask on cross-examination of the plaintiff,
8 have to relate to the slander, the alleged slander -- well,
9 slander per se with regards to stealing the business. I know
10 you've pled the truth as a defense -- no, wait. One of them
11 you conceded and said give him a dollar. Which one was that?
12 One of the comments.

13 MR. CLEVELAND: I think in my opening I said that he
14 showed poor judgment in saying that he did not steal his
15 in-laws' business.

16 THE COURT: Got it.

17 MR. CLEVELAND: Those were my client's words.

18 THE COURT: Got it. Got it. Yes, yes, yes.

19 So with regards to the slander per se, I think any
20 specific acts have got to be limited to those.

21 MR. STUCKEY: Yes. What I was thinking, in line with
22 Your Honor's thinking, I believe, is that regarding
23 dishonesty or being a thief or stealing, Mr. Cleveland, I
24 think, wants to ask him, "Did you steal from the HOA?" And I
25 think he -- if he says "no" --

1 THE COURT: He has to accept his answer.

2 MR. STUCKEY: -- then he has to accept his answer.

3 THE COURT: The question is --

4 MR. STUCKEY: I don't think -- that's the end -- that's
5 the end of it. I don't think he can go beyond that and say,
6 "Well, we're going to contradict you because Hanneman or
7 Morris or someone, whoever it was, charged you or accused you
8 of stealing." I think it needs something -- well, I'm not
9 even sure on cross-examination whether he could even go
10 beyond that.

11 THE COURT: Right. I understand what you're saying.
12 And the justification for that in the law is that so you try
13 the incident case, that you don't try other cases.

14 MR. STUCKEY: Yes, that you don't --

15 THE COURT: Right, right. And that's part of what I've
16 got to take a look at this evening, does the fact that this
17 is a defamation case change that? Because that is normally
18 the rule, without question, that if you ask a specific act,
19 you have to accept the answer --

20 MR. STUCKEY: That's right.

21 THE COURT: -- and you cannot -- you can't impeach that
22 answer with collateral evidence. I don't know whether or not
23 that is different in defamation, but I certainly will in the
24 morning know that. I know that that is the normal rule. I'm
25 going to take a look and make sure that that isn't altered.

1 MR. STUCKEY: I hope I can assist you on that, Your
2 Honor.

3 THE COURT: Me too. That would make lots of us. I'm
4 delighted.

5 But in terms of the specific acts, I'm confident that he
6 can ask on cross-examination. I just don't know if he has to
7 accept, but for the cross-examination, it doesn't really
8 matter because we are where we are.

9 Yes.

10 MS. LIETZOW: Your Honor, in light of your ruling,
11 tomorrow morning I think we may want to address the pile of
12 exhibits that Mr. Cleveland has that I have a feeling there
13 may be objections to some of them, and rather than have the
14 jury wait in the deliberation room while we do that, we may
15 want to calculate some time in in the morning, depending on
16 your ruling, to do that.

17 THE COURT: I think so too, I agree.

18 Hold on one second.

19 (Brief pause.)

20 THE COURT: Mr. Cleveland, 608 is -- when I was talking
21 about the credibility, truthfulness and untruthfulness,
22 that's 608(a).

23 (Brief pause.)

24 THE COURT: Couple cases I need you all to look at for
25 me, so I want your comments: *Foster v. GMC*.

1 MR. CLEVELAND: I'm sorry *Foster v. GMC?*

2 THE COURT: Uh-huh. 20 F3d.

3 MR. STUCKEY: What was at the beginning?

4 THE COURT: I'm sorry. *Foster v. General Motors Corp.*,
5 a/k/a GMC, 20 F3d 838. *United States v. Crockett, United*
6 *States v. Crockett*, 435 F3d 1305.

7 MR. CLEVELAND: 135?

8 MR. STUCKEY: 1305 or 135, you're right.

9 THE COURT: 1305.

10 MS. LIETZOW: What's the first, before the F3d?

11 THE COURT: 435 F3d 1305.

12 And finally *Bonilla*, B-O-N-I-L-L-A, v. *Yamaha Motors*
13 *Corp.*, 955 F2d 150, First Circuit 92.

14 And I just urge you to keep in mind there are a couple
15 of issues that are present. Number one, the issue that we've
16 been talking about now for a long time, character and
17 reputation as being an essential element of the claim, as
18 opposed to character evidence as it relates to truthfulness
19 and untruthfulness, which addresses credibility issues. One
20 is 608 and the other is 404.

21 THE COURT: Okay. Now the cases that I just -- I last
22 gave you under 608 address that extrinsic evidence very well
23 may be appropriate when there is a character trait which is
24 an essential element. That's the reason why that's
25 important. So that's the reason that I gave you all those,

1 because that's sort of the last piece of the issue, at least
2 for me, and I'll be looking at those as well.

3 However, I'm confident that the issues, the character
4 traits are going to be those of, again, the dishonesty,
5 theft, chasteness. And I'm going to ask you all to take a
6 look at the issue of racism and whether or not that is
7 appropriate for defamation, or slander rather, per se or not.

8 I know, Mr. Cleveland, that you believe it is not, but
9 we've got to get to the -- sort of the root of that issue,
10 because -- and what I would ask the plaintiff in the morning
11 is if it is not, if the Court is to make the determination
12 that it is not an element that is applicable to slander per
13 se, do you plan on offering any special damages with regards
14 to that allegation because it would be withdrawn. Follow
15 what I'm saying?

16 Okay. All right. Now, tomorrow, we are way behind, and
17 I apologize to you all that we are so far behind. Were you
18 able to at least get your deposition taken?

19 MR. CLEVELAND: Yes, Your Honor.

20 THE COURT: Okay. You finished that?

21 MR. CLEVELAND: Yes, Your Honor.

22 THE COURT: All right. So that's good to go.

23 Obviously I'm concerned about this jury, and you can cut
24 the panel loose. And we will have to pick up the pace. So,
25 yes, I probably need to see you all in the morning at 9:00.

1 Do this for me, Mr. Cleveland: In the event that
2 extrinsic evidence is admissible, the extrinsic evidence that
3 you might have that goes beyond dishonesty, theft,
4 chasteness, separate that for me, okay?

5 MR. CLEVELAND: Yes, Your Honor.

6 THE COURT: If it deals with racism, it may or may not
7 be in. There hadn't been any evidence of special damage.
8 And I realize we've finished direct examination, but I would
9 have anticipated that it would have been there, so separate
10 those out.

11 The other piece of it is I want you all to also address,
12 finally, because my research indicates that emotional damages
13 are different from damage to reputation. So I think they're
14 out, unless you all can tell me otherwise.

15 This is not an intentional infliction of emotional
16 distress. This is defamation, so please take a look at that
17 also, because my research indicates it's not an element to be
18 considered by the jury.

19 And you were asking, "How did you feel about that? How
20 did you feel about that," so you all focus on that for me.

21 MR. STUCKEY: Emotional damage is not being a part of?

22 THE COURT: Damage to reputation.

23 MR. STUCKEY: Okay. So emotional damages don't flow
24 from damage to reputation.

25 THE COURT: That I have come across -- in my research I

1 have come across that, yes. So take a look at that for me
2 tonight. Got it? All right. I want to get to the bottom of
3 that issue now sooner rather than later.

4 MS. LIETZOW: Also, Your Honor, we just want to make
5 sure we address before we leave court today when we'll be
6 receiving the tax returns.

7 THE COURT: Tomorrow morning you get the tax returns.

8 MS. LIETZOW: Perfect. And the passport dates on
9 Farima?

10 MR. CLEVELAND: And I have that information, Your Honor.

11 THE COURT: Great.

12 MR. CLEVELAND: Your Honor, she indicated that she
13 traveled to the United States on October 15, 2012, and stayed
14 for a maximum of two weeks. Her passport was stamped in
15 Atlanta on October 15, 2012, but there is no exit stamp.

16 THE COURT: Got it.

17 MS. LIETZOW: Convenient.

18 THE COURT: Okay. Good.

19 MR. CLEVELAND: Thank you, Your Honor.

20 MS. LIETZOW: And, Your Honor, I don't believe
21 Lance Johnson showed today, is that correct, under your
22 subpoena, Mr. Cleveland?

23 THE COURT: It's tomorrow morning, 11:30.

24 MR. CLEVELAND: Yes, the message I left for him was he
25 was supposed to be here tomorrow morning at 11:30.

1 THE COURT: So we'll know about that. I will share with
2 you what was shared with me this morning is the gentleman
3 that arrived by order of transport is not feeling
4 cooperative. I think neither one -- I think neither side is
5 shocked and amazed by that. He's not happy about being here.
6 They thanked him for the share and said, "Hush, sit down."

7 All right. 9 in the morning, and I'm going to outline
8 where we are and I want to hear about extrinsic evidence, I
9 want to argue extrinsic evidence. I want to argue whether or
10 not racism is slander per se. And then I want to talk about,
11 well, that was extrinsic. Already did extrinsic. And then I
12 want to talk about the emotional damages, okay? Quickly,
13 quickly, quickly, okay? Let's be efficient. Because I don't
14 want the jury getting upset. We need to move it along for
15 them. All right.

16 (Trial of the case adjourned at 5:00 p.m.)

17 (Trial of the case resumed on 12/10/14 at 9:15 a.m.)

18 THE COURT: Good morning. Did you all have an
19 opportunity to review those cases? Yes?

20 MR. LEECH: Yes, ma'am. And, Your Honor, I'd like to
21 hand up a couple of more cases before we start.

22 THE COURT: Okay. If they are from Georgia or a state
23 that's outside the fourth circuit, don't do that to me. I
24 played with you yesterday, I'm not --

25 MR. LEECH: I've got to on this one. I really do. The

1 one that I'm going to bring up is McBride. This is a South
2 Carolina case.

3 THE COURT: Okay. I'll take the South Carolina one.

4 MR. LEECH: I'll take a fourth circuit one. It's 389
5 S.C. 546.

6 THE COURT: Thank you, Mr. Leech.

7 MR. LEECH: And that goes to your first two questions
8 about damages and per se versus whether racism per se is an
9 issue.

10 MS. LIETZOW: Do you have a second copy of that case for
11 us?

12 MR. LEECH: I might over at the thing, over at my desk.
13 The second is 271 S.C. 276, and that's *Capps v. Watts*, and
14 that goes back to the issue of whether damages --

15 THE COURT: I've seen McBride, yes, good.

16 MR. LEECH: Okay. And then, Your Honor, with respect to
17 the issue of whether or not, this goes directly to the issue
18 of reputational damages. I will give you one case from
19 outside the circuit. It's a tenth circuit case, and it is
20 450 F3d 1132. The reason I'm giving it to you is that it's a
21 per se case and it involves other acts that are not related
22 to the specific act of defamation.

23 THE COURT: But is defamation in that state codified?

24 MR. LEECH: I do not know the answer to that question.

25 THE COURT: Then go sit down there and figure it out --

1 MR. LEECH: Okay.

2 THE COURT: -- because I don't want to do that. I did
3 that for you twice yesterday.

4 MR. LEECH: And the reason I bring it up is because they
5 also say it's well -- that reputation in a defamation case is
6 well settled, and they cite several cases, namely Alabama,
7 Mississippi. This is from Utah. And, again, we cited
8 Georgia. They also cite the Georgia case.

9 THE COURT: It's codified in Georgia, defamation. And
10 it has to be -- malice is an essential element that must be
11 proven. But take a look. I'm certainly happy for you to
12 take a look.

13 MR. LEECH: Your Honor, it appears that Utah has both
14 common law defamation and certain statutory defamation and in
15 the instances of labor disputes and criminal defamation, but
16 I don't believe that's what this case is about, and it's not
17 the proposition I'm going to present it for. And I can make
18 the same -- I mean, essentially I'm going to make the
19 argument they make in the case for -- with respect to
20 proximate cause of damages.

21 THE COURT: Okay. Well, hold on for me.

22 MR. LEECH: Sure.

23 THE COURT: General damages include injury to
24 reputation, mental suffering, hurt feelings, emotional
25 distress and similar types of injuries which are not capable

1 of definite money valuation.

2 MR. STUCKEY: Gertsch.

3 THE COURT: Ericson.

4 MS. LIETZOW: Gertsch too.

5 THE COURT: Is it Gertsch v. Ericson.

6 MS. LIETZOW: I know it's *Gertsch v. Welsh*, but it says
7 the same thing, Your Honor.

8 THE COURT: So tell me why you passed up McBride.

9 MR. LEECH: McBride was one, slander is actionable per
10 se.

11 THE COURT: I know that.

12 MR. LEECH: You asked us which one --

13 THE COURT: Yes, and we've got the five areas.

14 MR. LEECH: Only the five areas, so racism is not
15 actionable per se.

16 THE COURT: Yes, yes, exactly.

17 MR. LEECH: That was one of your questions.

18 THE COURT: That was one of my questions. The other
19 question with regards to racism is if you had to -- what is
20 the character trait that is associated with racism. I think
21 it's racism.

22 MR. LEECH: I think it is too.

23 THE COURT: Or an intolerance to racial differences.

24 MR. LEECH: And, Your Honor, the reason that it is is
25 because we haven't -- the complaint is characterized in the

1 sense of our clients have said, "You are racist," not you
2 made racist comments, and I think the distinction is
3 important because it goes -- it's saying that you have a
4 character for racism as opposed to you sometimes make racist
5 comments.

6 And so that's why I believe the racism is a character
7 trait in this instance. I haven't found any beautiful
8 support for it. I mean --

9 THE COURT: Okay. Yes, okay. All right.

10 Now, okay. So we've got McBride, we know we have
11 emotional damages, upset, etc., etc. Yes.

12 MR. LEECH: And with respect, that is only for the per
13 se damages.

14 THE COURT: Right.

15 MR. LEECH: Special damages, emotional damages does not
16 count, which is where the confusion is, because they
17 always --

18 THE COURT: It's implied. But in terms of the damages,
19 in terms of the damages, as I understand where we are at this
20 moment, there's not been any proof of special damages at this
21 moment.

22 MR. LEECH: Correct.

23 THE COURT: They are -- they're going to be associated,
24 at least at this moment, with slander per se.

25 MR. LEECH: Sure.

1 THE COURT: So damages are presumed.

2 MR. LEECH: And if damages are presumed, then any
3 evidence on -- any evidence on whether the hurt feelings is
4 duplicative because it's a presumed damages case.

5 THE COURT: Right. Got it. Okay.

6 All right. Now, Capps is important because?

7 MR. LEECH: That proves that special damages are not --
8 emotional damages don't count for special damages. You can't
9 get special damages for emotional damages, which shows mental
10 suffering is not an element of special damages. That's just
11 supporting that original proposition, I think --

12 THE COURT: The complaint alleges that the defendant's
13 remarks were libelous in that in addition to general damages
14 to the plaintiff's reputation, he has incurred special
15 damages in that his wife has suffered emotional distress and
16 was required to consult a physician and take prescription
17 medication.

18 MR. LEECH: Sure. And the case that -- the case later
19 goes on to discuss emotional damages are not an element of
20 special damages. They're only an element of, because the
21 idea is that it's damage to reputation, not damage to the
22 emotional sensibilities.

23 THE COURT: All right. So *Capps v. Watts* you cite again
24 because you think it says what?

25 MR. LEECH: That emotional damages are not special

1 damages. They're only in the category of general damages.

2 THE COURT: Okay. All right. Are you all good with
3 that?

4 MR. STUCKEY: Clear on that, Your Honor, sure.

5 THE COURT: Okay. Now, what else do you have?

6 MR. LEECH: Well, Your Honor, I'd like to address the
7 three cases that you brought up, the three cases.

8 THE COURT: Okay.

9 MR. LEECH: With respect to, and I'm going to try to see
10 if I can't do this properly.

11 THE COURT: First of all, tell me the topic that you're
12 talking about.

13 MR. LEECH: This would be specific acts, back to the
14 specific acts issue.

15 THE COURT: Okay.

16 MR. LEECH: Which I think is the most important issue
17 that we're discussing this morning.

18 THE COURT: Okay.

19 MR. STUCKEY: As to what issue? As to what point?

20 MR. LEECH: I'll get -- yes, to -- there's multiple
21 points.

22 THE COURT: Okay.

23 MR. LEECH: For instance, first we have two issues. One
24 is proving truth of the matter, which is with respect to the
25 racist -- racism, okay?

1 THE COURT: Yes.

2 MR. LEECH: So we have that as a part of our case. And
3 the other one is general reputation, okay?

4 THE COURT: Okay.

5 MR. LEECH: So those are two different instances.

6 THE COURT: Okay.

7 MR. LEECH: And with respect to 404, that's propensity
8 evidence.

9 THE COURT: Yes.

10 MR. LEECH: So saying that the specific act, proving,
11 using other specific acts to prove action and conforming
12 therewith. So in this case, and the reason I'm citing 405 as
13 my authority is because --

14 THE COURT: You should.

15 MR. LEECH: -- under specific cases, such as
16 defamation --

17 THE COURT: Yes.

18 MR. LEECH: -- we are permitted to use specific acts,
19 not to prove that they have a propensity, but to prove that,
20 in fact, they are that character trait.

21 THE COURT: Right. Because when the character trait is
22 an essential element of the claim --

23 MR. LEECH: Sure.

24 THE COURT: -- you may prove that character trait three
25 ways: Reputation, opinion, specific acts.

1 MR. LEECH: Okay. And with respect --

2 THE COURT: Okay, that's correct.

3 MR. LEECH: Okay. And with respect to -- so we're okay
4 with the racism specific acts?

5 THE COURT: Racism specific acts, yes.

6 MR. LEECH: And I don't believe that's limited in time.

7 THE COURT: Oh, now I think you have a problem. Go
8 ahead.

9 MR. LEECH: Okay. And the reason I don't believe it's
10 limited in time, and maybe we can look at this more closely,
11 but, I mean, I think it's an immutable characteristic whether
12 or not you're racist, not -- again, we're not saying you --
13 they made racist comments. We're saying you are racist,
14 which is the -- which is the statement that's made -- which
15 is the -- from the complaint, which is what we're arguing
16 about is the defendants made the statement that they are
17 racists.

18 So if they are racists, then it's immutable
19 characteristics, immutable characteristic, so it doesn't
20 matter when, if they are racist, they're always a racist.

21 THE COURT: Who's going to testify that racism is an
22 immutable characteristic? Who's going to do that?

23 MR. LEECH: I -- I mean, I'll --

24 THE COURT: Don't ask me to take judicial notice because
25 I'm certainly not going to do that.

1 MR. LEECH: Okay.

2 THE COURT: And the reason for that is that life is what
3 life is, and there absolutely could be someone who has --
4 that has never experienced a particular kind of person.

5 MR. LEECH: Sure.

6 THE COURT: They just simply haven't for whatever
7 reason. Where they live perhaps, they never have. And then
8 they experience that kind of person, and for whatever reason,
9 those interactions are very negative. And they develop --
10 albeit unreasonable, they develop a feeling towards all those
11 people, and -- but that begins at a point in time, and it can
12 ebb and it can flow.

13 MR. LEECH: Sure.

14 THE COURT: It could change very dramatically if you
15 were to fall in love with somebody of that exact'same
16 whatever.

17 MR. LEECH: Okay.

18 THE COURT: Either race, religion, ethnicity, and yet
19 you fall in love with somebody. So how can you say that's
20 immutable? You fell in love with that person, and all of a
21 sudden that person is the center of your universe, and that
22 absolutely happens.

23 So I disagree with your premise that racism is -- thank
24 God it is not immutable, I would tell you, because it gives
25 each and every person an opportunity to abandon really -- I'm

1 not thinking even about the -- I'm not even thinking about
2 these litigants. I'm thinking about the world at large. I'm
3 thinking about places that are in this country this day that
4 are grieving over race. I'm thinking about the riots in
5 Ferguson and I'm thinking about New York and Chicago and L.A.
6 where there's -- there's people who are expressing their
7 upset over that.

8 Everyone can change, and that's sort of the point. We
9 all can do better, be better. So how can you say that racism
10 is immutable? I mean, that's -- that is a very hopeless -- I
11 feel like I'm your mother lecturing you, Mr. Leech, but truly
12 you can never say that.

13 MR. LEECH: Okay. Well, with respect to the specific
14 facts of this case then.

15 THE COURT: Okay.

16 MR. LEECH: I don't believe we have any evidence --
17 well, I think our evidence would show that it has not
18 changed, meaning we believe he was racist in 2002. We
19 believe --

20 THE COURT: So why do I care? Why would I care?

21 MR. LEECH: Because it's truth.

22 THE COURT: What I care about is what was -- what
23 existed in April 2011. So tell me, what happened in
24 October 2012, why is that important? Now, we've got to
25 differentiate between provocation as opposed to truth.

1 MR. LEECH: Sure. And it's not -- and we're not talking
2 about provocation here.

3 THE COURT: I know. I know you're not.

4 MR. LEECH: But if for two years prior to the incident
5 he was making racist comments.

6 THE COURT: We're not talking about that.

7 MR. LEECH: I know --

8 THE COURT: We're not talking about two years prior;
9 we're talking about the two years after.

10 MR. LEECH: But it goes to proving -- it's at least
11 relevant to prove that he was also racist. He was racist at
12 that time, meaning he was racist two years prior to, and he's
13 racist two years subsequent to. Then during that four-year
14 period of time, he was racist.

15 And maybe we could limit it to racist with respect to
16 Middle Eastern folks. That would be specifically relevant to
17 this case.

18 THE COURT: I understand what you're saying. I got it.

19 Yes, sir.

20 MR. STUCKEY: Your Honor, here we are on Wednesday, and
21 we've had one witness, I think. And we --

22 THE COURT: I didn't -- yes, okay.

23 MR. STUCKEY: And we're getting a complicated issue I
24 think we're going to throw in here, so I think in the
25 interest of all concerned and proof and special damages as

1 opposed to general damages, etc., that we will drop the
2 racism cause of action, which is Cause of Action No. 3.

3 THE COURT: Okay. Okay. And you would simply go with
4 the -- what's considered to be slander per se and leave out
5 that issue?

6 MR. STUCKEY: Right.

7 THE COURT: Okay.

8 MR. STUCKEY: Slander per se being accused of a thief
9 and stealing.

10 THE COURT: Okay.

11 MR. STUCKEY: Slander per se as to imputation of being
12 unchaste and adultery.

13 THE COURT: Gotcha. Okay.

14 What about that?

15 MR. LEECH: If that's the issue, we've sort of got some
16 issues going on because we've already -- in our opening we've
17 obviously already talked about racism.

18 Also, you know, now we go back to general reputation and
19 the fact that I believe that if someone, at least in my mind,
20 if they're racist, that lowers my estimation of them as far
21 as their reputation in the community. So, again, still
22 racism is still a relevant topic because it's --

23 THE COURT: So the question is whether or not at this
24 juncture that the plaintiffs can take a voluntary nonsuit
25 with prejudice on that issue.

1 MR. CLEVELAND: Well, in addition to that, Your Honor,
2 if I may, the plaintiff opened the door yesterday. He said
3 on the stand -- I made a big old note in my notebook when he
4 said this -- that "I am not a racist." That's what he said
5 yesterday. I think he has opened the door from all time on
6 up until today, which would include the summer of 2011 when
7 he called Mr. Rashtchian's brother a sand N-word, including
8 October of 2012 when he said that to Mr. Rashtchian and his
9 sister.

10 In addition to that, relating to the issue of damages in
11 this case, like Mr. Leech said, if somebody's a racist, that
12 goes to their reputation. That goes to their damages. If
13 I'm understanding Your Honor's analysis in this case, it
14 sounds like if I'm a child abuser and somebody defames me by
15 saying that I robbed a bank, which is not true, my
16 reputation -- it really has no value if I'm a child abuser
17 already.

18 And it seems to me that that makes me libel- or
19 defamation-proof if I already have such a poor reputation
20 because of some other bad acts. And that's the reason why
21 we're trying to get into all these other things.

22 THE COURT: Right. I got it.

23 MR. CLEVELAND: In part.

24 THE COURT: We're not doing that. Hear me. It's not
25 happening in this case. I mean, it may give you a wonderful

1 appellate issue, but for this case, you're not going there.
2 You've got to have a relevant characteristic, a relevant
3 trait to get into it. We're not just going to have a
4 wholesale indictment of another human being. We're not doing
5 that.

6 You've got to have a relevant characteristic, got to
7 have a relevant trait to get into, and that's just going --
8 those are going to be the rules of this trial. And I may be
9 in error, but for today that's going to be the rule.

10 MR. CLEVELAND: So that I don't step across the line,
11 it's our position that Mr. McFarland opened the door
12 yesterday when he said, "I'm not a racist," such that I am
13 able to ask him questions about the statements that he,
14 according to my client, made to both his brother and sister
15 and also according to his brother and sister. Is Your Honor
16 in a position to rule?

17 THE COURT: Not if it's not an issue in the case
18 anymore.

19 MR. CLEVELAND: It goes to credibility.

20 THE COURT: Not if it is not -- not if it fails to be an
21 issue in the case anymore. What the plaintiff is telling me
22 he wishes to do is he wishes to dismiss that allegation of
23 defamation.

24 MR. CLEVELAND: And once again, Your Honor, it's our
25 position it goes to credibility. He's already testified that

1 he's not a racist; therefore, we should be allowed to impeach
2 him on that issue.

3 THE COURT: Okay. All right.

4 MR. STUCKEY: I think one of the cases Your Honor handed
5 up and asked us to peruse over the evening hours was the one
6 where some inadmissible evidence was admitted and sought to
7 be used to impeach, and they used it, and the Court said
8 that's clear error. That's got an error.

9 In other words, you can't go and ask something that's
10 inadmissible, that would be inadmissible and then try to
11 impeach their credibility and so forth. I understand that's
12 what counsel's trying to do.

13 THE COURT: All right. This is what we're going to do.
14 I understand from the plaintiff that the plaintiff had
15 three -- had allegations of three defamatory statements, the
16 plaintiffs. One was adultery, one was the -- you stole your
17 father-in-law's business, and the third was you're a racist.

18 Now, the allegation with regards to the racism, there is
19 a request that the plaintiff be allowed to withdraw that
20 cause of action, that allegation of defamation, with
21 prejudice, and there are no counterclaims.

22 I need to hear from the defendant whether or not there
23 is any prejudice at this point regarding the withdrawal of
24 that particular allegation. I'll hear from you in that
25 regard. Otherwise I'm inclined to certainly allow the

1 plaintiffs to withdraw that cause of action, if that's what
2 they wish to do, or that allegation of defamation, if that's
3 what they wish to do.

4 Yes, sir.

5 MR. CLEVELAND: Your Honor, in light of our earlier
6 position that we've stated on the record, I don't think that
7 I could consent.

8 THE COURT: Thank you. Thank you for that,
9 Mr. Cleveland.

10 Okay. I'm going to allow it, that allegation. Hear me,
11 though. It's withdrawn with prejudice. It will be dismissed
12 with prejudice.

13 Now, moving on to the opening of the door, at the moment
14 when the allegation -- that statement was made, "I am not a
15 racist," that allegation was in it. It's now out. I'm
16 not -- race is out of the case. We're out of it. Except in
17 terms of going into the depositions, going into the
18 name-calling, unless, unless that name-calling can meet the
19 definition of self-defense, provocation.

20 Now, I'm not limiting you with regards to that, but I'm
21 limiting you with regards to the -- this idea that the
22 general reputation is damaged.

23 And let me just say, Mr. Cleveland, with regards to the
24 child abuser, I don't want you to think that I accept that
25 as -- I think it's appropriate argument. I just don't

1 concur.

2 So with regards to race insofar as the defamation case,
3 insofar as the allegations regarding characteristic
4 reputation, that is out with regards to racism. It may be in
5 with regards to provocation and self-defense, but, however,
6 please keep in mind that self-defense is a heat of passion,
7 and I just don't know at this point whether or not there was
8 heat of passion or not. Okay.

9 Now, emotional damages are in but not a part of special
10 damages, but we're out. We're only negligence per se. We're
11 either -- it either occurred or it didn't occur. If it's
12 occurred, if it occurred, we're in the realm of negligence
13 per se. Then the question is provocation, self-defense.

14 I'm ready to go.

15 MS. LIETZOW: And for a clear record, Your Honor, you
16 mean slander per se not negligence per se?

17 THE COURT: I'm sorry.

18 MS. LIETZOW: I just want to make sure.

19 THE COURT: And you know what that's about. This is
20 rare, slander per se. Negligence per se is every day. Every
21 civil day, I should say. Thank you so much for that. You
22 know, it's funny, I didn't even hear myself say negligence
23 per se. Slander per se.

24 MR. STUCKEY: Your Honor, for guidance of the Court.

25 THE COURT: Yes.

1 MR. STUCKEY: We've got two witnesses: Lance Johnson
2 and Stephon Johnson. I have them or Mr. Cleveland has them.

3 THE COURT: I think you both have them.

4 MR. STUCKEY: And the testimony is that Mr. Rashtchian,
5 to them, ran out there and says, "How in the world can you
6 work for this racist," attacking Mr. McFarland. And I guess
7 with provocation and the heat of the moment and all of that,
8 that's admissible?

9 THE COURT: Oh, yes.

10 MR. STUCKEY: Okay. Clear. That's fine.

11 THE COURT: Because in my mind, in my mind, if you will,
12 the moment has to do with this -- the episode of the trailer
13 being on Flud Street. I mean, that -- because that clearly
14 was in the context when whatever conversation, if you can
15 call it that, whatever communications if they, in fact,
16 occurred, occurred in the context of this episode. So, yes,
17 if that was -- yes, if that was a part of the provocation.

18 But don't keep that -- let that keep him from objecting
19 at the point in time, but, sure, that's the moment of the
20 provocation rather than two years after or two years before,
21 yes. Okay?

22 MR. STUCKEY: Second thing, begging the Court's
23 indulgence, so we're dealing with general reputation as far
24 as Mr. McFarland is concerned.

25 THE COURT: We are.

1 MR. STUCKEY: So I guess the -- any purported
2 impeachment by Mr. Cleveland would be as familiarity with his
3 general reputation as far as perhaps bringing in witnesses
4 and not asking him any specific acts. Is that what we're
5 talking about?

6 THE COURT: Yes, he can do that. He can do that, but it
7 has to be regarding two traits -- well, whether or not he is
8 a thief, but in that is dishonesty, just because of the way
9 that our law characterizes larceny, dishonesty and larceny.
10 And so I would go so far as to say dishonesty, larceny and
11 adultery, lack of chasteness, faithfulness to one's spouse
12 and truthfulness and untruthfulness.

13 But with regards to truthfulness and untruthfulness
14 that's 608. That can't be specific acts. That can only be
15 opinion, reputation with regards to -- with regards to
16 truthfulness and untruthfulness. Okay?

17 MR. STUCKEY: Okay. And what about that counsel is
18 required to take his answer, "Are you a thief? Did you steal
19 money from the HOA?"

20 "No, I did not."

21 And he's bound by that answer, is he not?

22 THE COURT: No.

23 MR. STUCKEY: He's not?

24 THE COURT: He is not as to adultery and theft and
25 dishonesty. He is with regards -- if there's

1 cross-examination on truthfulness or untruthfulness. In
2 other words, I guess you could ask him reputation.

3 And if specific acts come in with regards to
4 truthfulness and untruthfulness in this case, then you
5 must -- and specific acts are asked on cross-examination,
6 then you have to take the answers as it is given with regards
7 to specific acts, truthfulness, untruthfulness.

8 With regards to the characteristic traits, because it is
9 an essential claim, part of the essential claim, I believe
10 that because those characteristic traits are a part of the
11 claim, two things can happen. You can prove it one of three
12 ways: Reputation, opinion, specific acts. And the specific
13 acts are allowed to be proven by extrinsic evidence, but the
14 specific acts have to be relevant. They have to be relevant
15 vis-à-vis the characteristics: Dishonesty, adultery,
16 stealing, larceny.

17 MR. STUCKEY: What about time limitation? After --
18 things that occur after April the 26th, 2011.

19 THE COURT: I don't care.

20 MR. STUCKEY: You don't care? It's wide open then for
21 specific acts?

22 THE COURT: No. No.

23 MR. STUCKEY: No, it's out.

24 THE COURT: It has to be true in the time that the
25 statement was made.

1 MR. STUCKEY: Okay.

2 THE COURT: It has to be true at the time the statement
3 was made.

4 Now, if there's some sort of reliability, let me give
5 you an example. He has an email, okay? And that email says,
6 "Boy, did I pull one over on them back in 2004 because I
7 stole all that money from them. Woo-hoo," okay? And the
8 feeling on behalf of the defendants, "We knew it. We knew
9 it. Now we got this email. We knew he was taking the
10 money," okay?

11 While that email may have arisen in 2012, it relates
12 back to the time before and there's a connection because it's
13 like, "We knew it. Now we have the proof," although the
14 proof of what occurred earlier came later.

15 MR. STUCKEY: Fine. That's fine. Thank you, Your
16 Honor.

17 THE COURT: All right. Anything further?

18 MR. CLEVELAND: I'm afraid so, Your Honor. Relating to
19 the tax returns, I do have them, but my clients have
20 requested that there be a written order consistent with the
21 verbal order that you gave.

22 THE COURT: No. No. My oral order is fine.

23 MR. CLEVELAND: Thank you, Your Honor.

24 THE COURT: Turn them over. Thank you.

25 MR. CLEVELAND: And also, Your Honor, I think yesterday

1 THE COURT: All right. Any concern for the plaintiffs?

2 MS. LIETZOW: No, Your Honor.

3 THE COURT: From the defendants?

4 MR. CLEVELAND: No, Your Honor.

5 THE COURT: Thank you. All right. Ask her to step back
6 in.

7 (Juror returns.)

8 THE COURT: Thank you so much. Thank you for disclosing
9 that, and you can have your seat or you can go back and come
10 out with the jurors, because they're coming in right now.

11 JUROR NO. 83: Okay.

12 THE COURT: Go ahead, grab a chair.

13 Yes, sir.

14 (The jury enters the courtroom at 10:02 a.m.)

15 THE COURT: All right. Very well. Yes, sir,
16 cross-examination.

17 MR. CLEVELAND: Thank you, Your Honor.

18 THE COURT: Yes.

19 I should say good morning. Good morning.

20 Please proceed. Thank you, Mr. Cleveland.

21 MR. CLEVELAND: Thank you, Your Honor.

22 Q. Mr. McFarland, I'd like to direct your attention to the
23 incident that occurred in 2002 when you'd first moved into
24 your home, and that was when Mr. Rashtchian and his sons were
25 shooting fireworks on Flud Street. Do you remember that?

1 A. Yes.

2 Q. Okay. And police did, in fact, come to the scene after
3 that incident; is that correct?

4 A. I believe so, yes.

5 Q. But it's your position that you didn't call the police
6 yourself?

7 A. Yes, sir.

8 Q. It's not in your nature to call the police on your
9 neighbors all the time?

10 A. I had just moved in. I was only there a month so, no.

11 Q. I'm just saying in general, is it your nature to call
12 the police on your neighbors all the time?

13 A. It is not my nature unless something's very necessary.

14 Q. And something has become very necessary on numerous
15 occasions when you've lived in Live Oak Village; is that
16 correct?

17 A. There's been some occurrences, yes.

18 Q. You've called the police relating to Mr. Mazell?

19 A. I believe my wife did.

20 (Defendant's Exhibit 2 marked for identification.)

21 MR. CLEVELAND: Your Honor, may I approach the witness?

22 THE COURT: You may.

23 Q. Let me hand you Defendants' Exhibit No. 2, and that is a
24 no trespass notice that you filed relating to Mr. Mazell; is
25 that correct?

1 MS. LIETZOW: Object, Your Honor. Relevance.

2 THE COURT: Sustained.

3 MR. CLEVELAND: Thank you.

4 Q. You say that your wife has also called the police
5 relating to Mr. Mazell?

6 MS. LIETZOW: Objection, Your Honor. Relevance.

7 MR. CLEVELAND: He opened the door, Your Honor.

8 (Judge and attorneys confer.)

9 (Defendant's Exhibit 3 marked for identification.)

10 Q. Mr. McFarland, I'm now handing you Defendants' Exhibit
11 No. 3. Is that another --

12 THE COURT: Let me ask you to do this for me: When you
13 hand a document, don't publish the document until it's in
14 evidence to include the name of the document. When you hand
15 him a document, just say, "Do you recognize that?" And that
16 gives counsel an opportunity to object and you're not
17 publishing the document to the jury before it's in evidence.
18 Thank you.

19 MR. CLEVELAND: Yes, Your Honor.

20 Q. Mr. McFarland, do you recognize your signature on
21 Defendants' Exhibit No. 3?

22 A. Yes.

23 Q. And you recognize that document?

24 A. Yes.

25 Q. And what is that document?

1 A. This is a notice of trespass against a Padget, and it
2 was filed with 104 and 105.

3 Q. And that was back in 2009; is that correct?

4 A. Yes.

5 (Defendant's Exhibit 4 marked for identification.)

6 Q. And I'm handing you now Defendants' Exhibit No. 4. Is
7 that your signature on that document?

8 A. Yes.

9 Q. And that is also a no trespass notice against another
10 person; is that correct?

11 A. It looks like the same one. It's the same name.

12 Q. If you would, take a look at Exhibit No. 3 and No. 4 and
13 compare the names of the suspect for both.

14 A. Oh, yes, yes. Sorry.

15 Q. That's okay. And so it's two different people that you
16 were obtaining no trespass notices against; is that correct?

17 A. Yes, they were both Padget.

18 Q. Also 2009; is that correct?

19 A. Yes, same day.

20 THE COURT: Those were Defendants' Exhibit 4,
21 Defendants' 3 for identification purposes.

22 Q. And have you also called the police relating to a
23 Mr. William Rombilus?

24 A. I believe so.

25 Q. In 2010, does that sound familiar?

1 A. I believe, yes, sir.

2 Q. So I'm trying to keep count of that. How many times is
3 that that the police were called to your house before this
4 incident?

5 A. This was one event and this was another (indicating),
6 so --

7 Q. Then in 2002, the fireworks incident?

8 A. I didn't call the police on them.

9 Q. Well, do you admit that back in 2002 you spoke with
10 Mr. Rashtchian?

11 A. I didn't know Mr. Rashtchian in 2002, and it was very
12 dark. All I saw is a group of people launching bottle
13 rockets and asked them to please be careful not to hit the
14 house. That was it.

15 Q. Do you admit telling Mr. Rashtchian to go back where he
16 came from?

17 A. I did not say that.

18 Q. And then you admitted on direct examination, I believe,
19 that you were in a dispute with the Mazells, your next door
20 neighbors in 2009?

21 A. There was some HOA issues, yes.

22 Q. Well, would you agree that there is a lawsuit now
23 between you and the Mazells?

24 A. Not with me. I represent the HOA, so I filed as
25 president of the HOA.

1 (Defendant's Exhibit 5 marked for identification.)

2 Q. I'm going to hand you now --

3 MR. STUCKEY: Your Honor, can we give a speaking
4 objection, or would you prefer that we come up to sidebar?

5 THE COURT: Oh, there's an objection to this exhibit?

6 MR. STUCKEY: We do, Your Honor.

7 THE COURT: Okay. And it's Exhibit?

8 MS. LIETZOW: Marked as Defendants' 5, Your Honor.

9 THE COURT: For ID? Okay, sure, come on up.

10 (Judge and attorneys confer.)

11 MR. CLEVELAND: May I continue, Your Honor.

12 THE COURT: Thank you, Mr. Cleveland. Thank you, yes.

13 Q. Mr. McFarland, handing you now Defendants' Exhibit
14 No. 5, if you would, look at the caption of that lawsuit.
15 You would agree that the top of it says, "*Live Oak Village*
16 *HOA, Inc., et al. v. Tom Morris, et al*"; is that correct?

17 A. Yes.

18 Q. And then down below that it says, "*Sofia Mazell and*
19 *Michael Mazell v. William McFarland, third-party defendant*";
20 is that correct?

21 A. Yes.

22 Q. So, in fact, you are a party in the lawsuit with the
23 Mazells personally; is that correct?

24 A. As a third-party defendant, correct.

25 Q. And let's go back to 2009 when you had this dispute with

1 the Mazells, your next-door neighbors. Do you remember the
2 day when you and your wife were meeting with or having a
3 conversation with Ms. Mazell?

4 A. No, I do not.

5 Q. You don't remember Ms. Mazell crying while she was
6 talking to you and your wife?

7 A. No, I do not.

8 Q. You don't remember Mansour coming over and putting his
9 hand on Ms. Mazell's back and leading her away and comforting
10 her?

11 A. No, I do not.

12 Q. You don't remember your wife following Mansour with her
13 finger after him going across the yard?

14 MS. LIETZOW: Objection, Your Honor.

15 THE COURT: Sustained. Sustained.

16 Q. Do you admit that you have any animosity against
17 Mr. Rashtchian because he was assisting the Mazells in
18 obtaining a survey?

19 A. No.

20 Q. Do you admit to making obscene gestures to
21 Mr. Rashtchian after that 2009 incident up until the incident
22 that occurred in this matter?

23 A. Absolutely. I did not do that.

24 Q. Do you deny mouthing obscene words to Mr. Rashtchian
25 after the 2009 incident with Ms. Mazell up until this

1 incident in 2011?

2 A. Absolutely. Did not happen.

3 Q. You would agree that if you used the expression sand
4 N-word that that would be a racist comment?

5 A. I do agree.

6 Q. That would be offensive?

7 A. Absolutely.

8 Q. Do you admit to calling Mr. Rashtchian a goddamn
9 Iranian?

10 A. That might have occurred in 2013.

11 Q. And you said that in a loud voice?

12 A. In my normal voice, distressed voice, I suppose.

13 Q. You said it in an angry voice?

14 A. I would disagree.

15 Q. And that was with police officers present; is that
16 correct?

17 A. Yes, the police officers came to my front door. The
18 Rashtchians had called them to my home.

19 Q. And they were wearing uniforms?

20 A. Of course, yes.

21 Q. With badges?

22 A. Yes.

23 Q. Weapons on their side?

24 A. Yes.

25 Q. And even with police officers there in that type of

1 setting, you were using that type of language in a loud
2 voice?

3 MS. LIETZOW: Objection, Your Honor. I think the
4 testimony was this was in 2013, which is two years after the
5 date of incident in the complaint.

6 THE COURT: Sustained.

7 Q. Do you admit that you were yelling and cursing at
8 Mr. and Mrs. Rashtchian on April 26, 2011, the day that this
9 incident occurred?

10 A. Yes, I was, in defense of my wife.

11 Q. And the profanity that you used included the F-word,
12 right?

13 A. Perhaps. Maybe once.

14 MR. CLEVELAND: Your Honor, may I open his deposition?

15 THE COURT: You may.

16 (The Court's Exhibit 7 marked for identification.)

17 Q. Mr. McFarland, if you would, please turn to Page 97 of
18 your deposition.

19 A. 97?

20 Q. Yes, Page 97, please. If you would, Page 97, Line 2:

21 "Question: Tell us about the bad language that you
22 used."

23 "ANSWER: Well, I did say to him that is all -- I did
24 say to him, 'What is all this bullshit you're talking about?
25 This isn't true,' etc., the same thing, 'Where did you hear

1 this shit from?' I told him to stay the hell away from my
2 family. Then he kept using the F-word, I'm a fucking
3 asshole, this and that. I probably turned to him and told
4 him the same thing."

5 Was that your sworn testimony?

6 A. Yes.

7 Q. Next question: "Just to make sure I understand then,
8 you think that you also said to Mr. Rashtchian that he was a,
9 quote, fucking asshole, end quote."

10 "ANSWER: Probably, yes. I think I said, 'I'm not a
11 fucking -- you're a fucking asshole,' whatever typical
12 childish stuff."

13 Was that your response?

14 A. Yes.

15 Q. And once again, when you were yelling and cursing at
16 Mr. and Mrs. Rashtchian, you were not doing it in a quiet,
17 calm voice like you testified in yesterday; it was in a loud,
18 angry voice, correct?

19 A. It was in a defensive mode, yes.

20 Q. Now, yesterday on the witness stand, I think you told
21 the jury, upon questioning by Mr. Stuckey, that you're not a
22 racist?

23 A. That's correct.

24 Q. And you also said that you've not said anything to
25 Mr. Rashtchian since April 26, 2011; is that correct?

1 A. That's correct.

2 MR. CLEVELAND: May I approach the bench, Your Honor?

3 THE COURT: You may.

4 (Judge and attorneys confer.)

5 Q. Let me ask you about your reputation in the community.

6 Do you believe that you have a good reputation for honesty in
7 the community?

8 A. Yes.

9 Q. Would you --

10 A. A little too honest sometimes maybe.

11 Q. Would you agree, though, that one of the things that you
12 are being accused of is mismanaging HOA funds?

13 A. I believe they used the word "converting funds."

14 Q. And that's the same thing as stealing to you; is that
15 correct?

16 A. Well, they said that about the whole board, not just
17 me --

18 MR. STUCKEY: Your Honor, objection. Specific acts, is
19 that what he's trying to go into? Okay.

20 THE COURT: You withdraw any objection?

21 Okay. You may proceed.

22 Q. Just so that we have a clear question and answer, the
23 claim of conversion of HOA funds that's asserted against you
24 in the lawsuit, that's the same thing to you as stealing; is
25 that correct?

1 A. Yes. And they claimed that against the whole board for
2 that period of time.

3 Q. And they're specifically including that against you and
4 your wife; is that correct?

5 A. And Mr. Holcombe, that's correct.

6 Q. And do you believe that you have a good reputation in
7 the community for being truthful?

8 A. Yes, I do.

9 Q. Isn't it true that you're also being sued for defamation
10 by the Mazells? One of the elements of defamation being that
11 it's an untrue statement that you made?

12 MS. LIETZOW: Objection, Your Honor.

13 THE COURT: Sustained.

14 MS. LIETZOW: We discussed this earlier.

15 Q. Now, going back to the incident that occurred in this
16 case, Mr. Lance Johnson was the primary landscaper that you
17 used; is that correct?

18 A. Yes.

19 Q. And he had with him, I think, a cousin, Stéphon Johnson,
20 maybe one other gentleman?

21 A. That's correct.

22 Q. And when Mr. Lance Johnson parked his truck with the
23 trailer behind it, he was about one to 2 feet away from the
24 edge of the Rashtchian yard; is that correct?

25 A. No, that's not correct. He was backing up his truck.

1 Q. If you would, please turn to Page 11.

2 THE COURT: What have you just handed the witness so
3 that I may keep up?

4 MR. CLEVELAND: I'm sorry. That's the second deposition
5 that Your Honor allowed us to take, Your Honor.

6 THE COURT: Okay.

7 MR. CLEVELAND: The one dated --

8 THE COURT: Well, we need to mark it as a Court's
9 exhibit.

10 MR. CLEVELAND: Yes, Your Honor. And that is his
11 deposition dated November 13, 2014.

12 THE COURT: Thank you so much.

13 (The Court's Exhibit 8 marked for identification.)

14 Q. Mr. McFarland, if you would, please turn to Page 11 of
15 your deposition, Line 8:

16 "QUESTION: Mr. McFarland, would you please tell us how
17 much distance there was between the front of Mr. Johnson's
18 truck and the edge of Flud Street closest to Mr. Rashtchian's
19 house."

20 "ANSWER: Okay. From the edge to the front bumper to
21 the edge of the grass at the right-of-way, I'd say it was
22 maybe a couple of feet, maybe a foot. I don't know."

23 Was that your sworn testimony?

24 A. Yes, I believe it was referring to when Lance first
25 pulled in and he backed his truck up into my gate.

1 Q. And it was about five to ten minutes after Lance backed
2 up and parked the truck before he unhitched the trailer; is
3 that correct?

4 A. No. Lance backed the truck up into my gate area and
5 then he unhitched the truck.

6 Q. If I could get you to turn to Page 11 of your
7 deposition, please, Line 17:

8 "QUESTION: And how much time elapsed between the time
9 that the incident began and when you say that Mr. Johnson
10 unhitched the trailer?"

11 "ANSWER: Oh, I don't know. Maybe from the time it
12 began he asked him to move the truck back, you know, just as
13 quickly as he could. So I was focused again on Rashtchian
14 coming at me, so I'm not exact about the time. Maybe five or
15 ten minutes maybe."

16 Was that your sworn testimony?

17 A. Yes.

18 Q. And during that period of time when Mr. Johnson's truck
19 was 1 to 2 feet from the edge of the -- edge of the road on
20 the Rashtchians side, any cars that wanted to pass on Flud
21 Street would have to go into the Rashtchian yard?

22 A. I don't believe Lance's truck was there for five or ten
23 minutes. He momentarily pulled to that position as he was
24 backing the trailer back.

25 Q. And you deny directing cars to travel into

1 Mr. Rashtchian's yard while Lance's truck was there in the
2 street?

3 A. Yes, sir.

4 Q. And you're not sure one way or another as to whether or
5 not vehicles actually drove into the Rashtchian yard?

6 A. No, I didn't see any.

7 Q. You're just not sure?

8 A. I didn't see any.

9 Q. Do you admit to telling Mansour that you were not going
10 to move the truck until the job was finished?

11 A. I absolutely didn't say that.

12 Q. Do you admit to telling Mansour to go get his green
13 card?

14 A. I did not say that.

15 Q. Would you admit that saying something like that would be
16 offensive?

17 A. I suppose in certain circumstances it would be.

18 Q. Especially for somebody that's been a naturalized
19 citizen for over 20 years?

20 MR. STUCKEY: Your Honor, he's answered the question as
21 to that he didn't say it, and now counsel is hypothetically
22 trying to impose other questions on him. Speculative.

23 THE COURT: Speculative, sustained.

24 Q. Do you admit telling Mansour that you knew all about
25 him?

1 A. I did not say that.

2 Q. Do you admit telling Mansour that you knew what type of
3 shoddy contractor he was?

4 A. I did not say that.

5 Q. You do admit, though, saying that, "What if someone said
6 your houses are no good? How would that make you feel?"

7 A. No, I did not.

8 Q. If you would please turn to Page 97 of your deposition,
9 the first deposition you gave, Page 97, Line 14. Do you have
10 it, sir?

11 A. Yes.

12 Q. "QUESTION: Did you tell Mr. Rashtchian that you had
13 heard what kind of contractor he was?"

14 "ANSWER: What I exactly said to him was that 'I can't
15 believe that you're saying these types of things.' I said,
16 'You build houses or you do something of that sort. What if
17 somebody went around and told and said that you -- your
18 houses were no good? How would you feel about that?' and he
19 didn't answer me."

20 Was that your sworn testimony?

21 A. Yes, it was.

22 Q. And it's at that time that Mr. Rashtchian said that he
23 was a self-made man?

24 A. I can't remember. He talked something to that effect.
25 I'm not sure.

1 Q. And Mr. Rashtchian went back inside his house shortly
2 after that; is that correct?

3 A. I'm not sure. I don't believe so.

4 Q. And then your wife came out during the incident; is that
5 correct?

6 A. Yes, she did.

7 Q. And she approached Mansour and his driveway?

8 A. She did not enter his driveway. She was in the street
9 with me.

10 Q. And after your wife came out, then Ms. Rashtchian came
11 out as well; is that correct?

12 A. That's correct. She rushed out at her. That's correct.

13 Q. And all of you ended up in the street?

14 A. Yes.

15 Q. Yelling?

16 A. They were doing the yelling. I was defending my wife.
17 My wife was not yelling.

18 Q. So you're suggesting that you were using the F-word in a
19 quiet, soft, kind manner?

20 A. No. I'm saying that if somebody's cussing me and
21 aggressively pursuing me in my face, and then especially in
22 front of my wife, yes, I probably raised my voice, yes.

23 Q. So going back to my question: Do you agree that all
24 four of you were in the middle of Flud Street yelling and
25 cursing?

1 A. Not all four of us, no. My wife did nothing wrong.

2 Q. You don't admit that your wife used profanity as well?

3 A. I do not admit that, no.

4 Q. Okay. Now, during this period of time, all the
5 landscapers were off to the side laughing; is that correct?

6 A. No, that's not correct.

7 Q. I think you said yesterday that -- strike that.

8 Do you admit that while you were in the middle of Flud
9 Street using profanity, speaking with Mr. and
10 Mrs. Rashtchian, that your spittle was hitting Ms. Rashtchian
11 in the face?

12 A. I don't think so, but --

13 Q. I think you said that she touched your arm yesterday on
14 the stand. Do you agree that she did not injure you?

15 A. No, she did not.

16 Q. And the defendants never entered your yard, did they?

17 A. No, they did not.

18 Q. Now, when Mr. Rashtchian said, "I did not steal my
19 in-laws' business," did you stop and think, "Wow, did I steal
20 my in-laws' business"?

21 A. No. Mr. Rashtchian said I did steal my in-laws'
22 business, that I stole my money.

23 Q. And did that make you pause, though, and think, "Well,
24 did I steal my in-laws' business? Did I steal money?"

25 A. No. It made me perplexed at how in the world could this

1 man say that? He doesn't know me and I don't know him.

2 Q. You knew that it was not true, correct?

3 A. Of course it's not true.

4 Q. And when Ms. Rashtchian said that you and your wife need
5 to be concerned about who comes to your house when you're not
6 home after you all had said, "We know all about you," you
7 didn't believe that your wife was unfaithful to you, did you?

8 MS. LIETZOW: Objection, Your Honor.

9 THE COURT: Sustained.

10 Q. When the incident occurred on April 26th, 2011, did you
11 believe that your wife was being unfaithful to you?

12 A. Did I believe that? No.

13 Q. And after this incident occurred, you were able to speak
14 to the landscapers, and you told them that you didn't think
15 anything that was said was true, correct?

16 A. I spoke to the landscapers because it really, really
17 bothered me that he went to them and said I was racist, and
18 that really bothers me, and I told them that wasn't true. I
19 wanted Lance to know that because he's known me for many
20 years. I've never done anything or said words to that
21 effect. I don't know how they can accuse me for something
22 like that.

23 Q. Just to make sure I understand your testimony then,
24 after this incident occurred, immediately after it occurred,
25 you were able to speak to the landscapers and tell them that

1 what was said was not true; is that correct?

2 A. Of course. We were embarrassed.

3 Q. And to the extent that you claim that your children may
4 have heard part or all of it, you were able to tell them that
5 none of it was true, correct?

6 A. My children were pretty upset. I had had -- me and my
7 wife had a long talk with them.

8 Q. And you were able to tell them that nothing that was
9 said was true, correct?

10 A. That's correct. Of course.

11 Q. And you did not call the police on the day of the
12 incident, did you?

13 A. No.

14 Q. In fact, you went to speak to a lawyer first; is that
15 correct?

16 A. We did the next day.

17 Q. And then you called the police about two weeks later
18 when the landscapers were back at your home; is that correct?

19 A. That's correct.

20 Q. And the reason for doing that was so that you would have
21 the landscapers there so that your wife could help them
22 prepare statements; is that correct?

23 A. They had to come back to do some more work, and my
24 attorney suggested we document this event, so we waited until
25 they arrived. They were supposed to arrive sooner, but they

1 didn't come back for about a week and a half.

2 Q. And your wife told the officer that you planned to file
3 a lawsuit; is that correct?

4 MS. LIETZOW: Objection, Your Honor. Hearsay.

5 MR. CLEVELAND: She's a party in the case.

6 THE COURT: Overruled.

7 Q. Let me repeat the question.

8 Your wife told the officer who came to your home about
9 two weeks after this incident that you planned to file a
10 lawsuit; is that correct?

11 A. If my wife said that, you'd have to ask her.

12 Q. Okay. I'm going to ask you, if you would, to turn to
13 Page 96 of your deposition, Line 14:

14 "QUESTION: And it indicates that McFarland said her
15 attorney has already advised this incident will be handled in
16 civil court, so you and your wife had already decided to file
17 a lawsuit against my clients as of May 10, 2011; is that
18 correct?"

19 MS. LIETZOW: Your Honor, there's an objection in the
20 transcript, which I think would probably need to be addressed
21 prior to the publishing to the jury. The attorney at the
22 time has an objection on the record in this transcript, and I
23 think that would need to be addressed first.

24 THE COURT: Okay. Let me see you.

25 (Judge and attorneys confer.)

1 THE COURT: You may proceed, Mr. Cleveland.

2 MR. CLEVELAND: Thank you, Your Honor.

3 Q. Mr. McFarland, if you would, please turn to Page 96 of
4 your deposition, Line 14:

5 "QUESTION: And it indicates that McFarland said her
6 attorney has already advised this incident will be handled in
7 civil court, so you and your wife had already decided to file
8 a lawsuit against my clients as of May 10, 2011; is that
9 correct?"

10 "ANSWER: Let's just say my wife decided. I wasn't sure
11 what I wanted to do at that point."

12 Was that your sworn testimony?

13 A. Yes.

14 Q. And you would agree that your son and daughter were not
15 identified as witnesses to the officers when they came to
16 your home two weeks after the incident?

17 A. Yes.

18 Q. And you didn't identify them in any of your discovery
19 responses to us; is that correct?

20 A. I guess, yes.

21 Q. And, in fact, when you spoke with the officers, you
22 specifically told them that there were no other witnesses?

23 A. I didn't tell them that.

24 Q. Is it your experience that officers, when they're
25 investigating an incident, usually ask, "Are there any

1 witnesses to this incident?"

2 MS. LIETZOW: Objection, Your Honor.

3 THE COURT: Sustained.

4 Q. And you filed suit exactly two years after the incident
5 on April 26, 2013; is that correct?

6 A. I believe so, yes.

7 Q. And your wife prepared a three-page statement, a typed
8 statement for Lance Johnson to sign in June of 2013; is that
9 correct?

10 A. Lance Johnson asked her to prepare that statement, yes.

11 Q. I need to make sure I understand your testimony. Your
12 wife prepared a three-page typed statement for Lance Johnson
13 to sign over two years after this incident occurred; is that
14 correct?

15 A. Yes. She typed up a statement for Lance; that's
16 correct.

17 Q. And Lance had already prepared a one-half page
18 handwritten statement to the officers just two weeks after
19 the incident; is that correct?

20 A. Yes.

21 Q. And you saw the statement the day that it was prepared
22 back in June of 2013?

23 A. The one Lance signed? Did I see it? Yes, I've seen it.

24 Q. And you did not produce that statement through discovery
25 to us, did you?

1 A. That statement was given to our attorney in June of
2 2013.

3 MS. LIETZOW: Your Honor, for the record, we were not
4 attorneys as of June of 2013.

5 THE COURT: Okay.

6 Q. And you would agree that you did not produce that to us
7 through the course of discovery; is that correct?

8 MS. LIETZOW: Objection, Your Honor. Asked and
9 answered.

10 THE COURT: Sustained.

11 MR. CLEVELAND: It's our position he didn't respond
12 directly to our question, Your Honor.

13 THE COURT: I will sustain it as to that question. You
14 can certainly rephrase it.

15 MR. CLEVELAND: Sure.

16 Q. Would you agree that the defense was not provided with a
17 copy of the statement from Lance Johnson that your wife
18 prepared, three pages, typed, in June of 2013 through the
19 course of discovery?

20 MS. LIETZOW: Objection.

21 THE COURT: Mr. Cleveland, here's what happens when you
22 do that: I have to go back and see in my head to remember
23 whether or not any of the pieces that you put in your
24 question, when they're that lengthy, because you're putting
25 so many items that you've already asked, I have to go back in

1 my head to see if there were any objections that were
2 sustained.

3 I would ask you to be mindful of that. You must be very
4 careful that as you go back and you add those items that
5 you've already asked that have been responded to that they
6 can't be anything in there that somehow I have sustained an
7 objection. Are you with me?

8 You've done that repeatedly. If you want to approach, I
9 don't mind giving you an explanation.

10 MR. CLEVELAND: If you don't mind, Your Honor.

11 (Judge and attorneys confer.)

12 Q. Would you agree that Lance Johnson's three-page
13 statement which was done in June of 2011 -- excuse me, June
14 of 2013, was not provided to the defense?

15 A. I would say that I'm not sure what our attorney did with
16 it, but it's my understanding that he did not.

17 Q. Thank you.

18 And at the top of the statement that your wife prepared
19 for Lance Johnson, she put, "Confidential and privileged
20 information for Lance Johnson"; is that correct?

21 A. Yes.

22 Q. And the reason for your wife preparing that three-page
23 statement for Lance Johnson over two years after the
24 accident -- excuse me, after this incident occurred was to
25 try to help get Mr. Johnson to give favorable testimony in

1 this lawsuit?

2 MS. LIETZOW: Objection. Speculation.

3 THE COURT: If he knows. If he knows.

4 You may respond if you know.

5 THE WITNESS: I'm sorry, can you repeat the question?

6 Q. Sure.

7 And the reason for your wife preparing the three-page
8 statement for Lance Johnson over two years after this
9 incident occurred, the statement that you saw, was to help
10 you get him to give favorable testimony in this lawsuit?

11 A. No, I wouldn't agree. Our attorney asked us to get any
12 statements from people who witnessed the events, that's all
13 that was.

14 Q. And Lance Johnson had already provided a half-page
15 written statement just two weeks after the incident?

16 A. Right. It was pretty short, though. It didn't give a
17 very good description.

18 Q. And your daughter has had boyfriends over the years?

19 A. Yes.

20 Q. And they've come to your house?

21 A. On occasion, yes.

22 Q. Even perhaps when you were not home?

23 A. With my wife home, yes.

24 Q. And you don't do any business in Summerville, do you?

25 A. No.

1 Q. In fact, you don't even associate with anybody in
2 Summerville, do you?

3 A. I wouldn't say that.

4 Q. If I could get you to turn to Page 89 of your
5 deposition, Page 89, beginning with Line 23:

6 "QUESTION: Can you tell me the names of other good
7 friends who may have come over to your home?"

8 "ANSWER: Really nobody. I don't do any business in
9 Summerville or South Carolina, so I don't really associate
10 with anybody there."

11 Was that your sworn testimony?

12 A. Yes.

13 Q. And you're not making any type of claim for lost wages
14 in this case?

15 A. No.

16 Q. You haven't gone to the doctor relating to this suit,
17 have you?

18 A. No.

19 Q. You haven't sought any counseling?

20 A. No.

21 Q. Don't take any medication because of this incident?

22 A. No.

23 Q. And no one has told you that they've heard that your
24 wife was unfaithful to you?

25 A. Excuse me?

1 Q. No one has told you that they've heard that your wife
2 was unfaithful to you?

3 A. No.

4 Q. No one's told you that they had heard that you'd stole
5 your in-laws' business?

6 A. No.

7 Q. No one's told you that they heard that you were a
8 racist?

9 A. No.

10 Q. I think you said earlier that it's your opinion that
11 your reputation for honesty in the community is high?

12 A. Yes.

13 Q. Was it lowered any by the statements that were made by
14 others other than Mr. and Mrs. Rashtchian, such as
15 Mr. Morris?

16 MS. LIETZOW: Objection. Relevance, Your Honor.

17 THE COURT: Sustained.

18 Q. And your father-in-law had a business that you owned
19 together called L & B Manufacturing; is that correct?

20 A. It was casual, yes.

21 Q. And once again, your father-in-law was in the printing
22 business for, what, 40 years?

23 A. I don't know. 40, probably 30 something, yes.

24 Q. I mean, that's what he did for a living?

25 A. That's correct.

1 Q. And so printing -- the printing business was all new to
2 you when you got out of the Navy, correct?

3 A. Exactly, yes.

4 Q. And both of you put 15- to \$20,000 into the business; is
5 that correct?

6 A. Yes.

7 Q. And your father-in-law didn't get any money out of the
8 business, did he?

9 A. No.

10 Q. That is correct?

11 A. I suppose -- I mean, there was -- he might have wrote
12 himself a check here or there. I don't know. You'd have to
13 ask him.

14 Q. I think your testimony before was that neither one of
15 you got any money out of the business, is that --

16 A. Exact return, yes.

17 Q. And, in fact, it was your father-in-law's patent that
18 you used to start your business?

19 A. No, it was my patent.

20 Q. So you -- the patent dealt with a printing machine,
21 right?

22 A. No -- well, not a printing machine. It's an apparatus
23 used to open plurality of paper, so to be clear.

24 Q. It's used in a printing machine?

25 A. Not a printing machine, no, an automatic feeding

1 machine.

2 Q. And that was the type of business that your
3 father-in-law had been involved in for 30 to 35 years?

4 A. Not related exactly, but it's an offshoot sort of say.

5 MR. CLEVELAND: Your Honor, I think that's all that I
6 have at this time. I would like to make a proffer later on,
7 if I may.

8 THE COURT: You've finished your cross-examination?

9 MR. CLEVELAND: Yes, Your Honor.

10 THE COURT: All right. Very well.

11 Redirect.

12 MR. STUCKEY: Thank you, Your Honor.

13 REDIRECT EXAMINATION BY MR. STUCKEY:

14 Q. Good morning, Mr. McFarland.

15 A. Good morning.

16 Q. Good morning.

17 A. Good morning, sir.

18 Q. Thank you. Thank you.

19 Mr. Cleveland has handed up to you two notices of
20 trespass, which have been marked depositions Exhibit 3 and 4,
21 or at least Defendants' Exhibit 3 and 4.

22 A. Yes, sir.

23 Q. Do you have those in front of you?

24 A. Yes, sir.

25 Q. Oh, good. Okay. Would you refer to No. 3, please. And

1 that was -- I believe that was against one
2 Willy O. Padget, Jr.; is that correct?

3 A. Yes, sir.

4 Q. And the complaint there when the police were called,
5 this notice of trespass -- so let me ask you this: You can
6 file -- you can call the police and have them come and
7 prepare a notice of trespass; is that correct?

8 A. Yes, sir.

9 Q. And your understanding of that is for what? What does
10 that document do?

11 A. It instructs people not to come on our property anymore.

12 Q. Okay. Now, at this time you were president of the Live
13 Oak Village Homeowners Association; is that correct?

14 A. Yes, sir.

15 MR. CLEVELAND: I object to leading, Your Honor.

16 THE COURT: It's leading, but it's certainly harmless.
17 It will move things along. I will allow that.

18 You can proceed.

19 MR. STUCKEY: Thank you, Your Honor.

20 Q. Tell us at that time, if you would, Mr. McFarland, did
21 you have any position of responsibility concerning the Live
22 Oak Village Homeowners Association at the time this notice of
23 trespass was prepared by the police?

24 A. Yes, sir, I was HOA president.

25 Q. Okay. And as HOA president, homeowners association

1 president, what duties and responsibilities did you have?

2 A. Regarding this specific event?

3 My duties and responsibilities are to look after the
4 corporation, to do all the duties associated with being
5 president.

6 Q. Okay. And what are those?

7 A. For example, carrying on any projects that the
8 association wanted to do, other duties were to pay the bills,
9 to collect dues, assign any type of liens on folks who didn't
10 pay their dues, that type stuff.

11 Q. Okay.

12 A. Enforce the bylaws, basically, make sure they're being
13 enforced.

14 Q. Okay. What about taking action if someone was illegally
15 parking in the property operated by the homeowners
16 association?

17 A. That would be one of the duties; yes, sir.

18 Q. And could you go to No. 3, please.

19 A. Yes, sir.

20 Q. And I believe the comments on that, "Do not park in
21 circle between 104, 105" --

22 MR. CLEVELAND: I'm going to object to hearsay, Your
23 Honor.

24 MR. STUCKEY: Excuse me?

25 MR. CLEVELAND: I think that's hearsay if he's reading

1 someone else's handwriting.

2 MR. STUCKEY: It's been put in evidence as I understand
3 it, Your Honor. And I'm asking --

4 THE COURT: It has not been put in evidence. It's only
5 marked for identification purposes.

6 MR. STUCKEY: Oh, only for ID then?

7 THE COURT: Identification purposes, yes, sir.

8 MR. STUCKEY: Oh, I'm sorry. Okay. Okay. This is 3
9 and 4 is just for --

10 THE COURT: For ID.

11 MR. STUCKEY: Just for ID, okay.

12 THE COURT: Yes, ID.

13 MR. STUCKEY: So Mr. Cleveland has not moved in or we
14 haven't admitted it. I understand.

15 THE COURT: Yes, sir.

16 MR. STUCKEY: Okay. Okay.

17 THE COURT: Of course you can show him anything to
18 refresh his recollection if you need to.

19 Q. Well, by way of explanation, Mr. McFarland, as to both
20 Exhibits 3 and 4, which have been mark for identification,
21 okay, were they -- these actions taken concerning --

22 MR. STUCKEY: I don't really think I can ask any
23 questions about them if they haven't been admitted, can I?

24 THE COURT: You may proceed to ask the question. If
25 there's an objection, there will be an objection.

1 MR. STUCKEY: Okay. Thank you, Your Honor.

2 Q. I don't want to belabor the point with you, although I
3 am, Mr. McFarland, with both Exhibits 3 and 4, the police
4 were notified because these persons were illegally parking in
5 the area of the homeowners association; is that correct?

6 MR. CLEVELAND: Object to leading.

7 THE COURT: Sustained.

8 THE WITNESS: Can I answer?

9 THE COURT: You cannot, but he can rephrase it.

10 Mr. Stuckey will rephrase the question.

11 MR. STUCKEY: Your Honor, we would offer them as
12 Plaintiffs' Exhibits 4 and 5.

13 THE COURT: 4 and 5, all right. Any objection?

14 MR. CLEVELAND: No, Your Honor.

15 THE COURT: All right, very well. They're in evidence.

16 (Plaintiff's Exhibits 4-5 marked for identification.)

17 (Plaintiff's Exhibits 4-5 admitted into evidence.)

18 MR. STUCKEY: Thank you.

19 Q. You've got those in front of you?

20 A. Yes, sir.

21 Q. Okay. Now, Mr. McFarland, Plaintiffs' Exhibits 4 and 5,
22 which I believe were marked for identification as Defense
23 Exhibits 3 and 4, do you have those in front of you?

24 A. Yes, sir.

25 Q. Okay. Let's go now to, I guess, the one that was

1 reported to be Defendants' Exhibit 3 is now Exhibit 4.

2 THE COURT: Well, Plaintiffs' Exhibit 4.

3 MR. STUCKEY: Plaintiffs' Exhibit 4, thank you, Your
4 Honor.

5 Q. And that appears to be, if you refer to that --

6 A. Yes.

7 Q. And tell us what that is, please.

8 A. That was a police report that -- if you recall
9 yesterday, I explained that we were proceeding with an HOA
10 project, putting a drainage line in. We had hired -- the HOA
11 had hired a survey crew to install markers or lines down the
12 property line to be sure that the company installing the
13 drain line would not encroach on the Mazells' property.

14 These two landscapers were working for Mr. Mazell, had
15 come there on two occasions and cut the survey lines, which
16 required the HOA to have to pay again for the survey company
17 to come back and reinstall those lines. So when I observed
18 them cutting the lines, I had called the police officer to
19 come, and he asked them not to come in there anymore.

20 And Mr. Holcombe also asked them not to come in there
21 anymore as they were blocking his driveway.

22 MR. CLEVELAND: I would object to that last part on
23 hearsay and move to strike, Your Honor.

24 THE COURT: Sustained.

25 Q. And so what this was is -- Defendants' Exhibit 4, I

1 believe, is a notice of trespass that they not come on the
2 homeowners' property anymore, right?

3 A. Yes, sir.

4 Q. And those actions were taken on behalf of whom?

5 A. The HOA.

6 Q. On behalf of the HOA?

7 A. Yes, sir. It was costing us money.

8 Q. And if you would look at Plaintiffs' Exhibit 5, which
9 appears to be another notice of trespass, and this appears to
10 be issued to a one Billy Shawn Padget, and would you tell us
11 what that is.

12 A. Yes, sir, it's the same occurrence. It was his -- I
13 believe they were related. It was on the same landscaping
14 team working for the Mazells.

15 Q. Okay. And there was another incident mentioned by
16 Mr. Cleveland, and I don't think he made a proffer or offer
17 on that, and that sounded like it was -- you were asked a
18 question about a William Rombilus; is that right?

19 A. Yes, sir.

20 Q. What was that?

21 A. That was an incident again with the HOA where a
22 treescaper [sic] was pulling out of our gate we just
23 installed and he had hit it and he caused the gate to come
24 off the hinges. He caused damage to the front gate. It was
25 necessary to have a police report to give to the insurance

1 company.

2 Q. So basically the same thing; is that right?

3 A. Same thing, HOA, yes, sir.

4 Q. And that was taken -- those actions were taken on behalf
5 of what entity?

6 A. The HOA.

7 Q. HOA?

8 A. The homeowners association, yes.

9 Q. And was it in your position as president of the HOA that
10 you did that?

11 A. Yes, sir. For insurance we needed to have that done.

12 MR. CLEVELAND: Your Honor, may we approach the bench?

13 THE COURT: Sure.

14 (Judge and attorneys confer.)

15 Q. Mr. McFarland, we spoke yesterday and we indicated on
16 the plat of the subdivision the locations of the home where
17 Sofia and Michael Mazell lived; is that correct?

18 A. Yes, sir.

19 Q. And there's been some questions to you today by
20 Mr. Cleveland about certain actions that the Mazells were
21 taking against you; is that correct?

22 A. I believe so, yes, sir.

23 Q. Okay. Tell the ladies and gentlemen of the jury,
24 please, what went on between the Mazells and the homeowners
25 association and Bill McFarland.

1 A. In March of 2009, the homeowners association, in an
2 annual meeting with all the homeowners, voted unanimously to
3 have a assessment done to install a drainage project and
4 front fencing and gate. At that time all the finances were
5 discussed and an assessment was passed.

6 The very next day, Mr. Mazell objected and changed his
7 vote. He had voted affirmative in the first meeting and then
8 changed it. We then were bombarded with letters from his
9 attorney objecting to the assessment, objecting to --

10 Q. Now, the assessment -- if I might interrupt you, the
11 assessment was how much?

12 A. Somewhere around 7800, \$7800, each home.

13 Q. That was for each homeowner; is that correct?

14 A. Seven homes, yes, sir.

15 Q. And did it appear later or did it come to light later
16 that apparently Sofia and Michael Mazell were having some
17 financial problems?

18 MR. CLEVELAND: I object to the leading, Your Honor.

19 THE COURT: Sustained.

20 Q. Well, tell us what you know about the financial
21 condition of the Mazells.

22 A. I could only tell you that later the HOA was served with
23 papers as a defendant that their home went into foreclosure
24 in 2010.

25 Q. So their home went into foreclosure?

1 A. Yes, sir.

2 Q. And was it sold -- as president of the homeowners
3 association, did you follow those proceedings?

4 A. Yes, sir.

5 Q. And did the homeowners association have a claim or lien
6 against the Mazells' home at the time the foreclosure was
7 instituted?

8 A. Yes, sir.

9 MR. CLEVELAND: Object to the leading, Your Honor.

10 THE COURT: Don't lead.

11 Q. Okay. Tell us, please, what amount was owed, if any, by
12 the Mazells at the time that their home was foreclosed on?

13 A. I would have to look at the accounting, but when it was
14 all over and done with, when they did their short sale, we
15 were still owed an outstanding balance of somewhere around
16 \$4800.

17 Q. Okay. So what was -- as president of the homeowners
18 association, how did you get along with Sofia and
19 Michael Mazell?

20 A. I would say that after the meeting and the assessments
21 everything changed, everything that we did was being a
22 problem.

23 Q. You say "we" --

24 A. Not very good.

25 Q. -- that "we" did. Who is "we"?

1 A. I'm saying as homeowners, me and my wife, but as the
2 association, any moves that we made were questioned.

3 Q. Okay. Was it a happy relationship between you as
4 president of the homeowners association and Michael and
5 Sofia Mazell?

6 A. No, it was not. It was contested often with letters
7 from attorneys sent to us.

8 Q. So litigation ensued -- did litigation ensue between you
9 and the Mazells?

10 A. With the HOA and the Mazells eventually, yes, for not
11 following bylaws.

12 Q. Okay. And what was the -- and would you elaborate on
13 that, please, as to the litigation for not following the
14 bylaws?

15 A. There was an issue with them renting out the bottom
16 portion of their home to a nonfamily member that was living
17 there. And the property manager, not me, had looked into it
18 and assessed a fine with them, and that ensued a battle with
19 the property manager.

20 Q. Okay. Now, if I might call your attention to an
21 incident that occurred in 2009, and this concerns
22 Sofia Mazell, and I believe it also concerns Mr. Rashtchian
23 in some form or fashion. And tell us, please, tell the
24 ladies and gentlemen of the jury what that was.

25 A. From my wife's explanation as she told me about it, she

1 was having a conversation --

2 MR. CLEVELAND: I would object, Your Honor, if he
3 doesn't have personal knowledge.

4 MR. STUCKEY: And I concede that, Your Honor.

5 Q. And so let me ask you this then: So when Mr. Cleveland
6 asked you, you don't remember that incident, do you,
7 concerning Ms. Mazell; is that right?

8 A. Yes, sir.

9 Q. And why don't you remember it?

10 A. I wasn't there.

11 Q. Okay. And he asked you, "Weren't they mouthing obscene
12 words at that time?"

13 And you said you -- he said didn't you know or something
14 I believe that you might agree that they were mouthing
15 obscene words at that time? And you said what, "no"?

16 A. Yes, sir, I wouldn't know that.

17 Q. Okay. And why wouldn't you know it?

18 A. Because I was not there.

19 Q. Okay. And that -- I believe he asked was the -- was a
20 certain word used, and you said you didn't know that because
21 you -- for what reason?

22 A. I believe you're referring to that day I was not there.

23 Q. Okay. You weren't there. Okay.

24 And have you -- has all of this been told before in
25 discovery in this case, in taking your deposition and asking

1 you questions and so forth?

2 A. Yes, sir.

3 MR. CLEVELAND: Object to leading, Your Honor.

4 THE COURT: I will allow that.

5 MR. STUCKEY: Thank you, Your Honor.

6 THE COURT: You may proceed.

7 Q. Okay. And I believe, and I'm not going to use the term,
8 that there was some question to you as to Mr. Rashtchian, I
9 believe, being called a GD Iranian; is that right?

10 A. Yes, sir.

11 Q. And do you know anything about that?

12 A. I believe he's referring to an incident that occurred in
13 2014, March 2014.

14 Q. March 2014, which is, what, three or four -- that wasn't
15 arising from the 2009 incident?

16 A. No, sir. That had to do with something where
17 Mr. Rashtchian accused me of driving on his grass and he sent
18 the police to my home.

19 Q. Okay. And then we go back to the incident of April.
20 You weren't there. Let's go back to 2009, and you've been
21 asked about an incident between -- I guess between your wife
22 Jennifer and Sofia Mazell; is that right?

23 A. Yes, sir.

24 Q. So since you weren't there, what do you know about it,
25 if anything?

1 A. I know what my wife said to me.

2 Q. Okay. But you don't have any personal knowledge of it?

3 A. No, sir.

4 Q. You did not -- you weren't engaged in it; you weren't
5 there; you didn't talk to anybody; you didn't see anybody?

6 A. Right.

7 Q. Okay. So let's fast-forward to April the 26th of 2011,
8 that incident. That's the one that brings us here today.

9 A. Yes, sir.

10 Q. And this is the incident where Mr. Rashtchian came out
11 of his property, came out into the street, confronted the
12 lawns keepers or --

13 MR. CLEVELAND: I would object. I'm not sure there's a
14 question here, Your Honor.

15 MR. STUCKEY: Landscapers.

16 Q. Confronted the landscapers, and you all engaged in this
17 colloquy out on the street; is that right?

18 MR. CLEVELAND: I'm going to object to the leading as
19 well.

20 THE COURT: Yes, don't lead, please.

21 Q. And you all were out on the street. That's the --
22 Mr. Rashtchian, you were there, the landscapers were there;
23 is that correct?

24 A. Yes, sir.

25 Q. Okay. And Mr. Cleveland asked you about certain things

1 that were said. And I understood your answer to be that you
2 responded, yes, in a defensive mode; is that correct?

3 MR. CLEVELAND: Object to leading.

4 MR. STUCKEY: Well --

5 THE COURT: I'll allow that because he's directing him
6 to a particular statement. And I gather there's a follow-up
7 question, so we sort of have to get to the statement.

8 Q. Okay. And either Mr. Cleveland or you, I believe, said
9 that you were not responding in a calm voice; is that
10 correct?

11 A. Yes, sir.

12 Q. And then I believe he read you certain things, and the
13 question was, "Tell us about the" -- and this is -- if you
14 might go to Page 97 of your deposition. Do you have that?

15 A. Yes, I do.

16 Q. And that was the one that Mr. Cleveland referred to.
17 And the question to you was: "Tell us about the bad language
18 that you used."

19 And your answer was what?

20 A. I used some bad language. My answer was it was very
21 defensive. We were being under attack. I viewed that
22 incident as an attack. It was very, very intense.

23 MR. CLEVELAND: And I would object, Your Honor. He's
24 not reading the response that he gave in the deposition to
25 the question in the deposition as asked by Mr. Stuckey.

1 MR. STUCKEY: It's true. Would you read -- would you
2 read your answer.

3 THE WITNESS: Yes, I will.

4 Q. Starting with Line 3.

5 A. "Well, I didn't say to him" --

6 Q. No, "I did say to him..."

7 A. I'm sorry. "Well, I did say to him, 'What is all this
8 bullshit you're talking about? This isn't true. The same
9 thing'" --

10 Q. "This isn't true, etc."?

11 A. "'Etc. The same thing. Where did you hear this shit
12 from?' I told him to stay the hell away from my family.
13 When he kept using the F-word" -- I'm referring to him --
14 "I'm an F'ing A-hole, this and that, I probably" --

15 MR. CLEVELAND: Your Honor, I would request that he read
16 it as it is verbatim in the deposition.

17 THE COURT: Yes.

18 Q. Would you try to read it verbatim just as your answer
19 appears, if you would, Mr. McFarland.

20 A. Okay. "When he kept using the F-word, I'm referring to
21 me, I'm a fucking asshole, this and that it, I probably
22 turned to him and told him the same thing."

23 Q. Okay. And was that in a calm voice as you said earlier
24 in response to a question from Mr. Cleveland?

25 A. At the time of the incident? Yes -- I'm sorry, no, it

1 was probably not in a calm voice. I was very upset that day.

2 Q. Okay. And the question was, just to make sure I
3 understand then, you think that you also said to
4 Mr. Rashtchian that he was a, quote, fucking asshole, end
5 quote. And your answer was, beginning at Line 12, what?

6 A. "Probably, yes. I think I said, 'I'm not a fucking --
7 you're a fucking asshole,' whatever typical child, childish
8 stuff."

9 Q. Well, I gather then that you were -- when you were
10 saying this, was that in a calm, calm voice, as you stated
11 earlier?

12 A. No. I would have been upset and, you know, trying to
13 fend this person off of us, so I would have been very -- in a
14 very excited state of mind, I would say.

15 Q. Okay. And you heard what he said about your wife; is
16 that right --

17 MR. CLEVELAND: Object to leading.

18 THE COURT: It is leading. Can you rephrase?

19 MR. STUCKEY: Thank you, Your Honor.

20 Q. Were you present when Mr. Rashtchian made certain
21 comments or insinuations concerning your wife, Jennifer?

22 A. Yes, sir.

23 Q. And basically what was that that you heard?

24 A. He said that people were coming into my home when I was
25 out of town to visit my wife and that my wife -- on other

1 occasions my wife was cheating, words to those effect.

2 Q. Okay. How did that make you feel?

3 A. Terrible.

4 MR. CLEVELAND: Objection, Your Honor. That's outside
5 the scope of cross, I believe.

6 THE COURT: Thank you, sir. Overruled.

7 THE WITNESS: It made me feel pretty bad. It made my
8 wife feel terrible. It's the worst thing you could say, I
9 think, about someone. Just about everything you could say
10 bad about somebody was said that day.

11 Q. And so did you respond to Mr. Rashtchian in, as you said
12 earlier, a calm, calm, voice?

13 A. No, I did not.

14 Q. And this lawsuit by the Mazells I believe you said was
15 maybe filed on behalf of and against whom?

16 A. Referring to the Mazells, they third partied me in, but
17 they filed against the HOA.

18 Q. Okay. And who were the officers of the HOA at that
19 time?

20 A. They made claims against former officers but also me, my
21 wife was a board of director, and Mr. Carlton Holcombe, who
22 was secretary at the time.

23 Q. Okay. Now, after this encounter with Mr. Rashtchian on
24 April the 26th, 2011, you were asked, I believe, about that
25 you went the next day to an attorney?

1 A. We did. We just -- we spoke with our attorney, Brandt,
2 and -- because we'd been doing business with him many, many
3 years, and we conferred with him about this event, and you
4 know, what we should do.

5 Q. And why did you do that?

6 A. What was said that day was just unacceptable, and we
7 wanted to speak with him. It was more advice, I would say.
8 We've known him for some years, and we wanted, you know, his
9 advice, you know, what he thought about this, what we could
10 do. You know, it's just not tolerable. We can't accept that
11 type stuff, you know.

12 And my wife was pretty upset. I think she needed to
13 talk to somebody, too, you know, to let her know, you know,
14 that this is okay, you know, and we're going to do something
15 about it maybe. I just wanted her to have a feeling that if
16 we're -- you know, that I'm doing something about it, that
17 I'm -- you know, that I'm behind her. She's behind me.
18 We're not going to allow this. Let's go talk to Brandt.
19 Let's see what he says, that type thing.

20 Q. Okay. And when this rumble on Flud Street was going on
21 on April the 26th, 2011, did the police respond or were the
22 police called?

23 A. No, sir. My wife was in the process, in the middle of
24 that, I believe, to go get a phone to do it, but she didn't
25 have an opportunity. She was --

1 Q. Okay. And so two weeks later, were the police notified?

2 A. Approximately one and a half weeks. We wanted to
3 document the event. One of the suggestions made is that we
4 should document --

5 MR. CLEVELAND: I would object to hearsay, Your Honor.

6 THE COURT: Sustained.

7 Q. Okay. So what was the reason that the police were
8 called?

9 A. To document the event, to record it, I guess, to see if
10 anything else additionally happened after that.

11 Q. Okay. And at that time, what did you tell the police
12 when you had notified or put them on notice maybe two weeks
13 later after this incident?

14 A. What did I tell the police?

15 Q. Mm-hmm.

16 A. The statements were given from my wife and the
17 landscapers. I just spoke -- basically I was there. I spoke
18 with him, but -- and --

19 Q. Okay. And some two years later, there's been some
20 questions, I believe, and answers that your wife prepared a
21 statement and labeled it personal and confidential, and that
22 was for Mr. Lance Johnson, who was one of the landscapers; is
23 that correct?

24 A. Yes, sir.

25 Q. Okay. And was that presented to Mr. Johnson -- to your

1 knowledge, was that presented to Mr. Johnson for his review
2 and signature?

3 A. Yes, sir.

4 Q. Were you present when it was?

5 A. Yes, sir.

6 Q. Did Mr. Johnson read over it?

7 A. Yes, he did.

8 Q. And was any, did he sign the statement, three-page
9 statement?

10 A. He did. He -- one of the pages he scribbled a little
11 something out, I believe, and then he read it and he signed
12 it.

13 Q. So he agreed to it?

14 A. His comment was that's pretty much what happened, yes.

15 MR. CLEVELAND: I would object and move to strike, Your
16 Honor. Hearsay.

17 THE COURT: Sustained.

18 Q. Was there any -- at that time what was your relationship
19 with Mr. Johnson?

20 A. Fine at that time. I mean, he was still doing some work
21 for us, and it was fine.

22 Q. So this was two years after the event, basically two
23 years; is that correct?

24 A. Yes, sir.

25 Q. And during that period, during that two-year time, did

1 Mr. Johnson, doing business as Strictly Business, his
2 company, continue to do landscaping work for you?

3 A. Yes, he did.

4 Q. What was your relationship, how did you get along?

5 A. Very well.

6 Q. Okay.

7 A. And Lance worked for me for years before, so absolutely
8 very well.

9 Q. Okay. Now, Mr. Cleveland asked you a series of
10 questions. He asked you do you do business and, I assume we
11 mean a great deal of business, in Summerville; is that right?

12 A. Yes, sir.

13 Q. And so have you lost -- as a result of this, have you
14 lost any business in Summerville?

15 A. No, sir. I don't do business in Summerville, so no.

16 Q. So what claim are you making in this lawsuit from the
17 ladies and gentlemen of the jury as to since you haven't lost
18 any business?

19 A. It would be for the events that occurred on that day,
20 April 26th, 2011, it's the statements made that were shouted
21 to the entire neighborhood, the embarrassment of it, the
22 humiliation of it. I don't think you can say anything worse
23 about an individual than what was said that day.

24 THE COURT: We'll pause there.

25 MR. STUCKEY: Thank you, Your Honor.

1 I feel sometimes I can't travel. I feel uncomfortable
2 leaving my wife. My wife feels uncomfortable, and it often
3 means changing meetings, and I travel overseas often. It
4 causes some problems there, but it just depends on what's
5 happening at the time that I have to make a lot of
6 concessions and make sure my wife feels comfortable and my
7 family.

8 And we've installed big locks on our back gates and my
9 family to feel comfortable and things like that. They don't
10 feel like they can use the backyard for reasons. And it's
11 just been -- it's been difficult three years, very hard.

12 MR. STUCKEY: That's all we have, Your Honor.

13 THE COURT: All right. Recross.

14 MR. CLEVELAND: Thank you, Your Honor.

15 RECROSS-EXAMINATION BY MR. CLEVELAND:

16 Q. Mr. McFarland, I want to start off with what you just
17 said, something about problems with travel. Isn't it true
18 that you also took the position that you had -- you were
19 concerned about your ability to travel due to a restraining
20 order that was placed against you?

21 A. There was some concern with international travel.
22 That's right.

23 Q. I mean, you had a restraining order placed against you
24 and you appealed it and through your attorneys took the
25 position that your concern was that you wouldn't be able to

1 travel, right?

2 A. There's some concern, yes.

3 Q. And the restraining order that was placed against you
4 was not by my clients, correct?

5 A. That's correct.

6 Q. It was by somebody else?

7 A. The Mazells, that's correct, for an HOA matter.

8 Q. That's right. You were telling us in great detail about
9 your relationship with the Mazells and how it was all through
10 the HOA as you as president, right?

11 A. That's correct.

12 Q. If I could sneak up here real quick and take a look at
13 the exhibit number. If you would, take a look at Exhibit
14 No. 5. Once again, on the front page you were listed
15 personally as a third-party defendant; is that correct?

16 A. That's correct.

17 Q. And if you would, please, turn to Page 3 of that. Down
18 here at the bottom, it's numbered Page 3. Do you see that?

19 A. Yes.

20 Q. And it says that that is --

21 MS. LIETZOW: Your Honor, you've already ruled that the
22 contents of the lawsuit is inadmissible.

23 MR. CLEVELAND: They opened the door, Your Honor.

24 THE COURT: I don't know, let me see it. May I borrow
25 your copy?

1 MR. STUCKEY: Could we have a copy, Mr. Cleveland?

2 MR. CLEVELAND: Unfortunately I only have two copies.

3 MS. LIETZOW: I may not have an objection if I know what
4 you're going to ask.

5 MR. CLEVELAND: Sure (indicating).

6 THE COURT: And tell me the part that you wish to
7 publish.

8 MR. CLEVELAND: I wanted to ask him about the fact
9 that --

10 THE COURT: Don't publish it, just tell me.

11 MR. CLEVELAND: Sure. On Page 3 --

12 THE COURT: Okay.

13 MR. CLEVELAND: -- the first cause of action against him
14 personally. May I approach the bench, Your Honor?

15 THE COURT: Yes.

16 MR. CLEVELAND: Make sure we're looking at the same
17 thing.

18 (Judge and attorneys confer.)

19 THE COURT: Okay.

20 Q. Mr. McFarland, you will agree that the Mazells brought
21 claims against you individually in addition to as your -- in
22 your role as president of the HOA?

23 A. All those claims have been removed. Those claims are
24 all dismissed.

25 MR. CLEVELAND: Your Honor, may we approach the bench?

1 THE COURT: Sure.

2 (Judge and attorneys confer.)

3 Q. Mr. McFarland, let's try this again. You would agree
4 that you are being sued personally by the Mazells in addition
5 to relating to the HOA; is that correct?

6 A. My understanding is those claims have been removed, but
7 that's what they filed, yes, they third partied me in.

8 Q. Okay. You personally?

9 A. Or counter-claimed, yes.

10 Q. Okay. And when you said that the claims had been
11 dismissed earlier, what you really meant to say was that you
12 had settled those claims against you, correct?

13 A. I believe the insurance company called it a nuisance
14 settlement.

15 MR. CLEVELAND: And I would object and move to strike,
16 Your Honor.

17 THE COURT: It's nonresponsive, ladies and gentlemen,
18 and I'll ask you to disavow that last response.

19 When you get asked a "yes" or "no" question.

20 THE WITNESS: Yes, ma'am.

21 THE COURT: If at all possible, please answer it "yes"
22 or "no," and then if you need to explain, explain.

23 THE WITNESS: Yes, ma'am.

24 Q. Let's try this again. You would agree that the Mazells'
25 lawsuit against you personally has been settled?

1 A. It's been settled, and if I could explain.

2 Q. I don't need an explanation. Thank you.

3 THE COURT: Would the explanation be what you just --

4 THE WITNESS: Yes, ma'am. And I would just add that the
5 plaintiff claim still remains, so they settled the case.

6 THE COURT: Okay.

7 Q. And the plaintiff's claim, that's your wife's claim for
8 defamation against the Mazells, correct?

9 A. Yes, sir.

10 Q. Okay. Where she's claiming defamation where supposedly
11 she's a racist, correct?

12 MS. LIETZOW: Your Honor.

13 MR. CLEVELAND: He opened it, Your Honor.

14 THE COURT: I would like to try this case. Sustained.
15 I'd like to try this case. Just this case. Thank you.

16 Q. Now, Mr. Stuckey was asking the question earlier about
17 you saying or calling Mr. Rashtchian a -- I'm going to
18 abbreviate -- GD Iranian. Do you admit that you, in fact,
19 said that?

20 A. I do recall that I even refer to myself that way as a
21 veteran also, and it's possible I may have said that also.

22 Q. So you're just saying it's possible that you may have
23 referred to Mr. Rashtchian as a GD Iranian?

24 A. I said that I said it, yes. I referred to him and
25 myself in the same term as a veteran.

1 Q. I'm not sure that I understand your response. Let me
2 try again.

3 Do you admit that you called Mr. Rashtchian a GD
4 Iranian?

5 A. Yes.

6 MR. STUCKEY: Your Honor, it's been asked and answered.

7 THE COURT: He just responded. We'll move on. Thank
8 you.

9 Q. And moving to 2011 when this incident occurred, April of
10 2011, you went to see the lawyer the day after the incident
11 you testified about earlier, correct?

12 A. Yes.

13 Q. Then after that called the police to come back to your
14 house some two weeks later, correct?

15 A. Approximately, yes.

16 Q. And you did not give a statement to the officers two
17 weeks after the incident, did you?

18 A. No.

19 Q. That was very smart on your part to not tie yourself
20 down to any type of statement shortly after the incident?

21 MS. LIETZOW: Objection, Your Honor. Smart to tie
22 himself down?

23 THE COURT: Yes, he can respond.

24 Q. Do you want me to ask the question again?

25 A. Yes, please.

1 Q. Do you think it was very smart on your part, from a
2 legal perspective, to not tie yourself down with a statement
3 two weeks --

4 MR. CLEVELAND: Objection, Your Honor. He's not an
5 attorney.

6 THE COURT: Sustained, from a legal perspective.

7 MR. CLEVELAND: Thank you. Those are all the questions
8 I have.

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

10 Call your next witness.

11 MR. CLEVELAND: Your Honor, I'd like to make a proffer
12 when it's appropriate.

13 THE COURT: We will do it when our jurors are dining.
14 We will be working.

15 You can come down still.

16 Call your next witness, please.

17 MS. LIETZOW: Your Honor, I believe the bailiffs are
18 escorting him up.

19 THE COURT: All right. Ladies and gentlemen, I'm just
20 going to share with you, there's a little bit of a delay just
21 because we have a general sessions term that's ongoing. And
22 you now know that general sessions means criminal court. And
23 so what that means is that there's going to be a little bit
24 of a delay as folks are moved around, and that's why there's
25 a delay at this point.

1 So I apologize to you for that, but these lawyers, they
2 can't help that, that -- they don't play in that role, but
3 the witness should be here very shortly, right?

4 COURT OFFICER: Yes, ma'am.

5 THE COURT: He's coming up? Very well.

6 STEPHON JOHNSON,
7 being first duly sworn, testified as follows:

8 THE COURT: Mr. Johnson, how do you spell Stephon?

9 THE WITNESS: S-T-E-P-H-O-N.

10 THE COURT: And Johnson is Johnson?

11 THE WITNESS: Yes, ma'am.

12 THE COURT: No "T" anywhere.

13 THE WITNESS: No, ma'am.

14 THE COURT: Thank you, Mr. Johnson.

15 Your witness.

16 DIRECT EXAMINATION BY MR. STUCKEY:

17 Q. Mr. Johnson, good morning, sir. I am Jimmy Stuckey, and
18 I represent the two folks who are sitting right here in a
19 case we have brought before the ladies and gentlemen of the
20 jury here today.

21 Do you recognize the two folks sitting here behind
22 counsel table?

23 A. Yes, sir.

24 Q. And would you tell us their names, please.

25 A. Bill and Ms. Jenn.

1 Q. Okay. Bill and Jenn?

2 A. Yes, sir.

3 Q. Last name?

4 A. I couldn't tell you. I just know them by their first
5 names.

6 Q. Okay. And what's been -- what's been your association
7 with them in the past, the reason you know them?

8 A. I work for them.

9 Q. Okay. And what kind of work did you do?

10 A. Landscaping.

11 Q. Okay. And that was at their home on Oak Tree Village
12 [sic] is that right?

13 A. Yes, sir.

14 MR. CLEVELAND: I object to the leading, Your Honor.
15 Move to strike.

16 THE COURT: Okay. All right. Sustained. Be careful
17 not to lead. That's preliminarily. I don't have a problem
18 with that. You may proceed. Although it's Live Oak Village.

19 Q. And who did you work with when you worked with the
20 McFarlands or worked for for the McFarlands?

21 A. My cousin, Lance Johnson.

22 Q. Okay. And Lance Johnson, he -- was he the owner of the
23 company?

24 A. Yes, sir.

25 Q. Okay. And he -- his business was called what?

1 A. Strictly Business.

2 Q. Okay. And that was -- where was Strictly Business
3 working out of, what town?

4 A. We go everywhere.

5 Q. Go everywhere?

6 A. Mm-hmm.

7 Q. Okay. And what kind of work did you do?

8 A. Landscaping.

9 Q. And who, other than you and Lance Johnson, your cousin,
10 was anybody else who worked with you?

11 A. Off and on we have several people.

12 Q. Okay. And let me direct your attention, Mr. Johnson, to
13 the date of April the 26th, 2011. And to refresh your
14 memory, this is when you all were on Flud Street --

15 MR. CLEVELAND: I would object to the leading, Your
16 Honor.

17 THE COURT: Very well. See if that is sufficient, if he
18 knows what you mean with where you are at this point.

19 MR. STUCKEY: Okay.

20 Q. Are you familiar basically with the background of that,
21 Mr. Johnson, where you were at that time?

22 A. Yes, sir.

23 Q. Okay. And would you tell us, please, with Strictly
24 Business on that date, what people did you have working?

25 A. It just was me, Lance and my brother, Terrion.

1 THE COURT: How do you spell that?

2 THE WITNESS: T-E-R-R-I-O-N.

3 Q. Now, tell us, please, what you all were doing at that
4 particular time, and if you would just sort of walk through
5 it, when you arrived and what actions you took concerning
6 your work.

7 A. Well, when we first arrived, we went on the back of the
8 street, on the back of my clients' yard. And how we parked
9 the trailer, we parked the trailer on the concrete close to
10 the grass, and the truck was facing the roadway. And at that
11 time, we just were doing mulch on the inside and the outside
12 of the yard.

13 Q. And what is mulch that you were putting on the inside
14 and the outside of the yard?

15 A. Basically ground up trees.

16 Q. Okay. And where were you placing those?

17 A. Around the perimeter of the house.

18 Q. And the mulch was -- how was it transported to the
19 property? How did you have it?

20 A. On a trailer.

21 Q. Okay. And what action did you take with the trailer as
22 far as trying to place the trailer?

23 A. We basically just had to pull up close as we can to the
24 yard, not to get on the grass, because we were doing the
25 outside and the inside, came on the outside, so we back up

1 far as we can on the concrete.

2 Q. Okay. So you backed up the trailer as far as you could
3 into the McFarlands yard; is that correct?

4 A. The concrete, not the yard exactly, grass, but correct.

5 Q. And at that point, were you blocking the road? Was your
6 trailer or your -- what kind of vehicle did you have moving
7 the trailer?

8 A. Well, my cousin had his truck at the time.

9 Q. A truck?

10 A. Yes, sir.

11 Q. Okay. Was any of that blocking Flud Street so that cars
12 could not pass?

13 A. No, sir.

14 Q. Okay. And so what happened after that?

15 A. Basically we was working, then the next door neighbor
16 came out, told us move the truck. He said move, "The truck
17 out the road," so we continued working. Then he said, "Move
18 the F'ing truck out the road." That's when Bill came and
19 asked what was going on and it started altercation from
20 there.

21 Q. Now, you said move the F'ing truck. I mean, he didn't
22 say F'ing. For the sensitivities of the folks, you have
23 used -- just sort of abbreviated that; is that correct?

24 A. Yes, sir.

25 Q. Okay. And he said that to Bill McFarland? Who did he

1 ask to move --

2 MR. CLEVELAND: Objection to the leading, Your Honor.

3 MR. STUCKEY: Excuse me.

4 THE COURT: The question is not finished yet.

5 Q. And so who did he say that to, the gentleman who came
6 out?

7 A. Well, he first said it, it just was me, my brother,
8 Terrion, and Lance out there, so I guess he was directing it
9 to us.

10 Q. Okay. Now, I ask you, Mr. Johnson, the ladies and
11 gentleman, the gentleman sitting here on the front row, do
12 you recognize him? I realize it's been about three years or
13 so.

14 A. Yes, sir.

15 Q. Okay. And who is that?

16 A. I couldn't tell you his name, but that's the next door
17 neighbor.

18 Q. Okay. That's the gentleman who came out?

19 A. Yes, sir.

20 MR. CLEVELAND: Object to leading, Your Honor.

21 THE COURT: It's been established.

22 MR. STUCKEY: Thank you, Your Honor.

23 THE COURT: I wouldn't strike it.

24 Q. And so to pick it up there, Mr. Johnson --

25 THE COURT: I need to stop you, though, sir, because I

1 need the record to indicate to whom he was pointing. The
2 gentleman, can you identify?

3 MR. STUCKEY: Yes. Let the record indicate that the
4 witness, Mr. Stephon Johnson, pointed to and indicated that
5 the gentleman, the defendant in this case,
6 Mr. Mansour Rashtchian, was indicated as the one who came out
7 on the street.

8 THE COURT: All right. You may proceed.

9 MR. STUCKEY: Thank you, Your Honor.

10 Q. And so, Mr. Johnson, what happened after that?

11 A. Basically it just was words going back and forth. First
12 Bill came out there and he was like asking us what's going
13 on. That's when we told him what was going on. He come out
14 cursing, telling us move out the street. That's when his
15 wife, Rashtchian wife came, and then Jenn joined Bill, and
16 that's when they just started going back and forth.

17 Q. Okay. Did you hear Mr. Rashtchian say anything about
18 Mr. McFarland?

19 A. Yes, sir.

20 Q. What did you hear?

21 A. Well, he asked -- he was like -- first he said, "You
22 need go and mind your own business and worry about why" --
23 the main thing I remember he saying, "You need to worry about
24 why you stealing your father-in-law business, and you need to
25 worry about who go in and out your house when you ain't

1 there."

2 Q. Okay. So what happened after that?

3 A. Basically they just -- well, they came close. They came
4 close, and that's when Bill said, "Get out my F'ing face."
5 He said, "Get out my F'ing face and go back where you come
6 from," basically telling him to go back to his yard. And
7 that's when they start getting loud, cursing, use profanity,
8 and Jill [sic] said she was gonna call the police.

9 MR. STUCKEY: If Your Honor would indulge me just a
10 moment.

11 THE COURT: All right.

12 MR. STUCKEY: That's all we have, Your Honor.

13 THE COURT: All right. Cross-examination.

14 MR. CLEVELAND: Thank you, Your Honor.

15 CROSS-EXAMINATION BY MR. CLEVELAND:

16 Q. Good afternoon, Mr. Johnson. How are you today?

17 A. All right. And you?

18 Q. Doing well, thank you.

19 I have the pleasure of representing Mr. and
20 Mrs. Rashtchian. You saw them from time to time while you
21 were working at the plaintiffs yard, and they were always
22 polite and waved at you; is that correct?

23 A. That's correct.

24 Q. And I think you indicated earlier that the trailer was
25 backed up onto the concrete pad in the plaintiffs' backyard;

1 is that correct?

2 A. That's correct.

3 Q. And that was how long of a trailer?

4 A. I'm not too sure the size of the trailer.

5 Q. 16, 18 feet?

6 A. I mean, I couldn't tell you.

7 Q. And there was also a full-sized truck that was pulling
8 the trailer?

9 A. Yes, sir.

10 Q. And the truck was still attached to the trailer when
11 this incident occurred?

12 A. Yes, sir.

13 Q. And you didn't back the trailer up any further into the
14 McFarlands' yard because you didn't want to get on the grass,
15 correct?

16 A. Correct.

17 Q. And you would agree that Flud Street is not wide enough
18 for two cars to go down at the same time?

19 A. If my memory correct, that's correct.

20 Q. And isn't it true that when Mr. Rashtchian came out, he
21 asked, "Would you move your truck off the road? You're
22 blocking the road"?

23 A. Yes.

24 Q. And he said that to Lance?

25 A. Yes.

1 Q. And when he said that, he was not yelling, was he?

2 A. Yes, he was loud. He wasn't saying it in a nice tone at
3 all.

4 Q. And you heard Mr. McFarland curse; is that correct?

5 A. Correct.

6 Q. He used the F-word?

7 A. Correct.

8 Q. And you didn't see anybody touch anybody, did you?

9 A. No.

10 Q. And during this incident, you were laughing; is that
11 correct?

12 A. Correct.

13 Q. Because it was amusing to you?

14 A. Correct.

15 Q. And, in fact, the other landscapers were also laughing?

16 A. Correct.

17 Q. Because whatever it was that was being said, you didn't
18 believe any of it, did you?

19 A. It's not that I didn't believe it, it's just that I
20 wonder what caused it. I mean, we work there all the time.
21 He just come out the blue out of nowhere, start cursing and
22 making accusation.

23 Q. Listen to my question. See if you can answer it, okay?
24 Whatever it was that you heard during this incident, you did
25 not believe it, did you?

1 A. It's not that I didn't believe it, it's just that I was
2 wondering what caused it.

3 MR. CLEVELAND: Your Honor, would you please ask the
4 witness to answer my question?

5 THE COURT: Well, Mr. Johnson, if you can answer, if you
6 can answer it --

7 THE WITNESS: There's no other way I can answer it,
8 ma'am.

9 THE COURT: Very well. If you want to approach, I'll
10 certainly discuss it with you.

11 MR. CLEVELAND: Let me try it one more time.

12 THE COURT: Okay.

13 Q. Whenever you heard whatever was said at the incident,
14 you didn't believe anything that you heard, did you?

15 A. I don't know. I barely know the people I work for, and
16 I don't know the next-door neighbor, so I can't say if I
17 believed it or not.

18 Q. Okay. So you admit that you're biased in favor of the
19 plaintiffs?

20 A. No.

21 Q. Now, you take the position that you did not speak to the
22 officers after the incident in this case; is that correct?

23 A. That's correct.

24 Q. And why was that?

25 A. Why was that? Because I was on probation at the time.

1 Q. Would you please share with us what crimes you've been
2 convicted of where the possible punishment would be death or
3 imprisonment in excess of one year that has occurred within
4 the last ten years?

5 A. Say that again.

6 Q. Yes. Would you please share with us the convictions
7 that you have where the possible punishment would be
8 imprisonment in excess of one year or death within the last
9 ten years?

10 A. Can I ask if that's related to this case?

11 MR. CLEVELAND: I would ask that he answer the question,
12 Your Honor.

13 MS. LIETZOW: Your Honor --

14 THE COURT: All right. Stop. Come here.

15 (Judge and attorneys confer.)

16 Q. Now, during this incident, you heard Mr. McFarland say,
17 "Go back where you came from"?

18 A. That's correct.

19 Q. Did you hear him say, "Go get your green card"?

20 A. No, sir.

21 Q. And Mr. Rashtchian didn't say anything about anybody
22 coming to the McFarland house that you heard, did you?

23 A. Well, he said, "You need to worry about who's coming in
24 and out your house while you ain't there." His correct words
25 was, "All the people."

1 Q. Did you ever hear Ms. Rashtchian say anything about
2 anybody going to the McFarland house?

3 A. Well, her -- she was in Jill [sic] face also saying --
4 basically she was repeating, saying the same thing as her
5 husband was saying.

6 MR. CLEVELAND: Your Honor, I believe that you have his
7 deposition. May I show it to him, please?

8 THE COURT: Okay. Yes, I do. I'll pass it to him. And
9 I'll tell you what, if you need some help, you just let us
10 know.

11 THE WITNESS: I'm good. Appreciate it.

12 THE COURT: You got it?

13 Q. If you would, please turn to Page 82 of your deposition.
14 Line 20 you were asked the question, "Did Ms. Rashtchian say
15 anything about anybody coming to anybody's house?"

16 "ANSWER: Who? The wife?"

17 Was that your answer?

18 A. Correct.

19 Q. Next question: "Yes."

20 "ANSWER: No, sir."

21 Was that your sworn testimony?

22 A. Correct.

23 Q. Now, I think you said earlier that you were laughing
24 during this entire situation; is that correct?

25 A. Correct.

1 Q. And the reason for that is because that everybody was
2 making a big deal out of nothing; is that correct?

3 A. Correct.

4 Q. And --

5 (Defendant's Exhibit 6 marked for identification.)

6 Q. Let me show you Defendants' Exhibit No. 6. Do you
7 recognize this as being a diagram that you prepared for us in
8 your deposition?

9 A. Correct.

10 Q. Okay. And you have the trailer and the truck attached;
11 is that correct?

12 A. Correct.

13 Q. And you have the truck basically at a right angle to the
14 trailer; is that correct?

15 A. Correct.

16 Q. And do you know whether or not it's physically possible
17 for a trailer to be at a complete right angle with the
18 trailer?

19 A. I'm not too sure.

20 Q. Because if it were not at a right angle, if it's at like
21 at a 45 degree angle, then it would be out crossing the road,
22 wouldn't it?

23 A. I'm not too sure. You told me to draw the picture. I
24 let you know I wasn't a good drawer at all, so I just drew
25 what came to my mind.

1 Q. Very well, thank you.

2 MR. CLEVELAND: This is Defendants' Exhibit No. 6. We'd
3 offer it into evidence, Your Honor.

4 THE COURT: Any objection?

5 MS. LIETZOW: No objection.

6 THE COURT: No? Very well.

7 (Defendant's Exhibit 6 admitted into evidence.)

8 Q. And I think you told us in your deposition that
9 Mrs. McFarland was very quiet during this entire incident; is
10 that correct?

11 A. Correct.

12 Q. You don't remember her using the F-word?

13 A. No, sir.

14 Q. You don't remember her using the F-word in a loud voice?

15 A. No, sir.

16 Q. And you didn't hear anybody say anything about cheating,
17 did you?

18 A. No, sir.

19 Q. That's a correct statement?

20 A. Correct.

21 Q. And anything that you saw did not change your opinions
22 relating to the plaintiffs, did it?

23 A. No, sir.

24 Q. And the McFarlands daughter was not present when this
25 incident occurred; is that correct?

1 A. I hadn't -- I ain't seen her that day.

2 Q. And, in fact, the McFarlands had to go and leave after
3 this incident occurred to pick up their daughter; is that
4 correct?

5 A. If I'm not mistaken, correct.

6 Q. And their son was inside the house when the incident
7 occurred?

8 A. I'm not too sure, but nine time out of ten correct.

9 Q. And if I could get you to turn to Page 81 of your
10 deposition, Page 81, Line 6:

11 "QUESTION: Mr. Stuckey was asking about Bill and Jenn's
12 son."

13 "ANSWER: Correct."

14 Was that your testimony?

15 A. Correct.

16 Q. Next question: "Do you know where he was?"

17 "ANSWER: He probably been in the house."

18 Was that your response?

19 A. Correct.

20 Q. Now, it's your testimony that the police --

21 MS. LIETZOW: Your Honor, it's not impeachment, it's
22 exactly what he just testified to.

23 THE COURT: Yes, sir, it's not impeachment. It's
24 duplicative.

25 MR. CLEVELAND: I'm sorry, I didn't understand that was

1 his response earlier, Your Honor.

2 MS. LIETZOW: I believe he answered your question as to
3 whether he was in the house. I think he said, "I don't
4 recall nine out of ten."

5 THE COURT: It was not impeachment. You may proceed.

6 Q. And it's your testimony that the police came to the
7 house shortly after this incident occurred?

8 A. Correct.

9 Q. On that same day?

10 A. Correct.

11 Q. And it was about 15 to 20 minutes after the incident
12 occurred that the police arrived?

13 A. Correct.

14 Q. And it's your testimony that you did not give a
15 statement to the officers; is that correct?

16 A. Well, I seen the paper, so I wrote a statement. At the
17 time I was asked a question when you seen me I said "no," I
18 couldn't remember.

19 Q. Just so that we're clear then, initially in your
20 deposition you said that you did not give a statement to the
21 officers; is that correct?

22 A. Correct.

23 (Defendant's Exhibit 7 marked for identification.)

24 Q. Mr. Johnson, let me show you what's been marked as
25 Defendants' Exhibit No. 7. Do you recognize that document?

1 A. Yes, sir.

2 Q. And is that a statement that you gave?

3 A. Correct.

4 Q. And would you just read the statement for us, please?

5 A. It say: "We was working and a man came out yelling and
6 talking lot of stuff that was not needed to be said, all
7 because we was -- all because we were working parked on the
8 other side of the road."

9 Q. That was your entire statement that you gave?

10 A. Correct. On this sheet of paper, correct.

11 Q. And when you prepared that statement,

12 Ms. Jennifer McFarland was there with you; is that correct?

13 A. Correct.

14 Q. And she helped you with that statement?

15 A. No, sir.

16 Q. Look at the date on that statement, if you would. What
17 is the date?

18 A. It say 5/10/2011.

19 Q. And it's your position that you have not been back to
20 Mr. and Mrs. McFarland's house since the date that this
21 incident occurred; is that correct?

22 A. Not that I recall, correct.

23 Q. And you would agree that you were not able to identify
24 my client, Mr. Rashtchian, when your deposition was taken in
25 this case?

1 A. When you came to see me at Berkeley County?

2 Q. That's right, when we came to Berkeley County Detention
3 Center.

4 A. I say he look like the dude next door, but I'm not too
5 sure. That's correct.

6 Q. And during this incident, everyone was in the road?

7 A. Correct.

8 Q. You would agree that the statement that you gave to the
9 officers on May 10, 2011 doesn't say anything about anybody
10 making any racist comments; is that correct?

11 A. Correct.

12 Q. Doesn't say anything about anybody coming to the house
13 or yard?

14 A. Correct.

15 Q. Doesn't say anything about anybody stealing anything?

16 A. Correct.

17 Q. And, in fact, you don't even remember writing it, do
18 you?

19 A. No, I don't remember writing this.

20 Q. Because it's been over three years?

21 A. Correct.

22 Q. And Mr. and Mrs. McFarland asked you to be a witness in
23 this case so that they could bring it to court and get money;
24 is that correct?

25 A. No, no, sir.

1 MR. STUCKEY: I'm sorry, I didn't hear the question. I
2 was talking, Your Honor. What was the question?

3 THE COURT: Do you want the court reporter to read it
4 back?

5 MR. STUCKEY: No, I'll pick it up later. I was just
6 sort of astounded.

7 Q. Do you agree that Mr. McFarland asked you to be a
8 witness for them in this case?

9 A. Correct.

10 Q. And, in fact, Mr. Stuckey sent you a letter before your
11 deposition was given; is that correct?

12 A. Correct.

13 Q. And he said that he could provide you with some useful
14 information?

15 A. Correct.

16 MR. CLEVELAND: Thank you, sir. Those are all the
17 questions I have.

18 MR. STUCKEY: Just a couple of more, Mr. Johnson.

19 REDIRECT EXAMINATION BY MR. STUCKEY:

20 Q. How did you get along with Bill and Jenn when you were
21 working that period of time that you were working in their
22 home?

23 A. We never had no problem --

24 MR. CLEVELAND: That's outside of cross-examination,
25 Your Honor.

1 THE COURT: Overruled.

2 THE WITNESS: I never had no problems with them.

3 Q. Okay. Now, counsel was asking you, Mr. Cleveland, about
4 the position of the truck and the position of the trailer and
5 so forth. While you were there, did you see any cars pass by
6 on Flud Street?

7 A. Just two.

8 Q. Just two of them?

9 A. Correct.

10 Q. And did they have any difficulty getting by? And by
11 that I mean did the trailer or the truck block the road?

12 A. No, sir.

13 Q. And Mr. Cleveland asked you when you took your
14 deposition if everyone, and he didn't define everyone, was
15 there?

16 A. Correct.

17 Q. And I believe that I was there; is that right?

18 A. Correct.

19 Q. Okay. And Mr. Cleveland was there; is that right?

20 A. Correct.

21 Q. And the gentleman you've identified in the front row and
22 the lady sitting behind him, were they there?

23 A. Behind him?

24 Q. No, I mean, sitting beside him. I'm sorry.

25 A. Correct.

1 Q. Okay. And were Bill and Jenn McFarland there?

2 A. No, sir.

3 MR. STUCKEY: Okay. That's all we have, Your Honor.

4 THE COURT: All right.

5 MR. CLEVELAND: No more questions, Your Honor.

6 THE COURT: All right. Call your next witness, please.

7 MS. LIETZOW: Your Honor, may we relieve this witness
8 from his subpoena and have him --

9 THE COURT: Indeed.

10 MS. LIETZOW: Thank you.

11 THE COURT: Call your next witness, please.

12 MR. STUCKEY: Your Honor, our next witness, we plan to
13 call Jennifer McFarland. Can we take a break?

14 THE COURT: Yes, we'll go ahead and break for lunch.

15 Ladies and gentlemen, we'll now take our lunch break.

16 It is a quarter 'til 1. We will reconvene at 2:00. Please
17 be in your jury room at that time, ready to continue with
18 this matter. Please be mindful. Do not discuss this matter
19 or allow anyone to discuss it with you. No Columbo. No
20 social media. Do not do any research. You must receive all
21 the information for which you'll make up your mind here in
22 Court while Court is in session. Have a great lunch.

23 (The jury retires to the jury room at 12:43 p.m.)

24 THE COURT: Okay. You wanted to put on the record
25 something about something. I'm not quite sure I remember at

1 this juncture what it was you wanted to put on the record.

2 MR. CLEVELAND: Yes, Your Honor. I just wanted to make
3 a proffer, if you'd allow me to, in front of the jury. I
4 would have asked Mr. McFarland whether or not he referred to
5 my client and his brother in the summer of 2011 as being sand
6 N-word. And I anticipate that he would have denied that he
7 said that.

8 And then of course we would offer the testimony of
9 Mr. Rashtchian's brother, which we have videotaped, which at
10 this time we'd proffer that testimony as well, for the
11 purpose of contradicting Mr. McFarland's testimony.

12 Likewise, given the opportunity, we would ask him to
13 admit that he called Mr. Rashtchian and his sister sand
14 N-word when he saw them in October of 2012. I anticipate
15 that he would deny that. And once again, we would offer her
16 video deposition for the purpose of impeaching him on those
17 issues and also relating to the issue of damages. And I
18 think this is something you've already ruled on, Your Honor.
19 I'm not asking for any discussion of it. I'm just stating it
20 on the record.

21 THE COURT: Okay.

22 MR. CLEVELAND: And let me go through. There may be
23 additional things, but I can wait until after lunch, if you'd
24 like.

25 THE COURT: I appreciate that. There was something else

1 "That defense counsel should provide an affidavit to the
2 Court within 30 days of taking the depositions of the
3 plaintiff setting forth the fees and costs associated with
4 it."

5 We took the depositions on November 14, if memory serves
6 me.

7 THE COURT: Okay.

8 MR. CLEVELAND: And since the 14th -- the 13th, which
9 probably runs the next couple of days, I'm just requesting an
10 additional ten days, since we just got the order, to provide
11 an affidavit to Your Honor.

12 THE COURT: Okay.

13 MR. CLEVELAND: Thank you.

14 And then also, Your Honor, I indicated that we would
15 like to make a proffer relating to Mr. McFarland. We have
16 marked as Exhibits 1 an email from Mr. McFarland dated July
17 27, 2012, in which he indicates that malicious and defamatory
18 comments have been made against him, and this is sent to
19 David Hanneman and Tom Morris. Given the opportunity, we
20 would ask him to admit that this is his email and get him to
21 admit that he made the statement that other people had
22 defamed him.

23 Also have marked as Defendants' Exhibit No. 9 a letter
24 from Mr. Hanneman and Mr. Morris dated February 30th, 2012,
25 which is addressed to Mr. McFarland and to Ms. McFarland.

1 And he -- his testimony in his deposition, and I assume would
2 be here at trial, is that he was defamed by this letter.

3 This letter copied Norbert Cummings, Mr. and
4 Mrs. Michael Knight, Mr. and Mrs. Carlton Holcombe and
5 Mr. and Mrs. Michael Mazell as well as Ms. Kathleen Green.

6 THE COURT: Okay.

7 MR. CLEVELAND: And then the last document we would
8 proffer is marked as Defendants' Exhibit No. 8, it is an
9 email from Mr. McFarland dated August 23, 2012, in which he
10 talks about being likened to Hitler.

11 Once again, it's our position that if he were on the
12 stand, he would admit that this is his email, that he -- his
13 reputation in the community is that he's been called Hitler,
14 which, of course, goes to the racism as well as his
15 reputation in general. So that's our proffer, Your Honor.

16 THE COURT: You need to mark those for identification
17 purposes so they don't go back to the jury.

18 MR. CLEVELAND: Yes, Your Honor.

19 THE COURT: All right.

20 MR. STUCKEY: And could you furnish me copies of them?

21 MR. CLEVELAND: Sure.

22 THE COURT: Okay. Yes.

23 MR. CLEVELAND: Also, Your Honor, earlier this morning
24 when we were discussing whether or not the plaintiffs should
25 be allowed to dismiss, withdraw their claim relating to

1 didn't think we needed both of them.

2 THE COURT: Got it. So we need him in your case. Okay.

3 So we need him tomorrow. We need him tomorrow.

4 Mike, can you go and tell Ryan we need him tomorrow,
5 because otherwise Smitty will have him here at 8 tonight.

6 Okay. All right. Let us have the jury. Thank you,
7 Ms. Irene.

8 (The jury enters the courtroom at 2:20 p.m.)

9 THE COURT: All right. Ladies and gentlemen, at this
10 time we will continue with the plaintiffs' case.

11 Please call your next witness.

12 MR. STUCKEY: Thank you, Your Honor, may it please the
13 Court, we call one of the plaintiffs, Jenn McFarland.

14 THE COURT: All right. Clerk.

15 THE WITNESS: Jennifer McFarland.

16 JENNIFER MCFARLAND,
17 being first duly sworn, testified as follows:

18 THE WITNESS: Jennifer McFarland.

19 THE COURT: Your witness.

20 MR. STUCKEY: Thank you, Your Honor.

21 DIRECT EXAMINATION BY MR. STUCKEY:

22 Q. Where do you live, Ms. McFarland?

23 A. **REDACTED** in Summerville.

24 Q. Okay. And what subdivision or --

25 A. Live Oak Village.

1 Q. Live Oak Village. Who lives there with you?

2 A. My husband, Bill; our daughter, Marissa, who -- when
3 she's not in college; and our son, M [REDACTED].

4 Q. Basically how old is Marissa?

5 A. 21.

6 Q. And where does she go to school?

7 A. College of Charleston.

8 Q. And prior to that, where did she go to elementary school
9 and high school?

10 A. She went to Catholic school through eighth grade and
11 then to Summerville High School.

12 Q. Did she graduate from Summerville High?

13 A. Yes, she did.

14 Q. And what course of study did she have there?

15 A. Just general studies.

16 Q. AP?

17 A. Yes. I'm sorry.

18 Q. What about M [REDACTED]? How old is M [REDACTED]?

19 A. M [REDACTED] is 11.

20 Q. What is his status of education?

21 A. He's in fifth grade at Summerville Elementary, and he's
22 in the Gateway Program.

23 Q. And what business or profession is your husband in?

24 A. He's a consultant for the bookbinding industry or book
25 manufacturing.

1 Q. And you graduated from high school?

2 A. I did.

3 Q. And did you have any further education after graduating
4 from high school?

5 A. I went to a two-year business school.

6 Q. And following that would you outline for the ladies and
7 gentlemen of the jury, please, some of your work positions.

8 A. Primarily I would work at doctor's offices or maybe
9 therapist's office or even a retina eye doctor, but I did the
10 billing, medical billing mostly.

11 Q. Did you do medical billing for basically all the three
12 or four or five physicians you worked for?

13 A. Yes, exactly.

14 Q. And did you work for a couple of businesses here in
15 Summerville?

16 A. I did.

17 Q. And do you recall the names of them?

18 A. I do. Palmetto Primary Care was one of them, and
19 another one was Trident Speech Therapy and I think, you
20 know -- yes, those were the two.

21 Q. Okay. And at some point did you stop work to try to
22 raise your children?

23 A. Yes. Yes, I think it was '95.

24 Q. Okay. Now, tell me a little bit about -- tell the
25 ladies and gentlemen of the jury about Live Oak Village, what

1 kind of, I guess, subdivision it is and so forth.

2 A. It's a community with seven homes, and that's really
3 basically it. There's just seven homes in there.

4 Q. Okay. And did your husband have any positions of
5 leadership with the homeowners association?

6 A. Yes, he's the HOA president.

7 Q. When did he become HOA president?

8 A. In 2009.

9 Q. And how long did he serve or is he still serving?

10 A. Currently he's still serving.

11 Q. And what about you? Did you hold any positions with the
12 homeowners association?

13 A. I did for, I think, two years. I was a board of
14 director, at one point, for a short period of time, I was
15 elected the treasurer, but the bylaws had some question in
16 there whether two people can be officers on the association
17 board. So I resigned as treasurer, but I was allowed to keep
18 my position as a board of director.

19 Q. Okay. And did you have another position in the -- not
20 you personally, but was there another elected officer for the
21 homeowners association?

22 A. Yes. There is Mr. Carlton Holcombe. He was the
23 secretary when we were on the board together.

24 Q. So you, your husband -- your husband served as
25 president, you served as treasurer, and Mr. Carlton Holcombe

1 served as secretary; is that correct?

2 A. That's correct. I was treasurer for a short period, but
3 yes, I was a board of director.

4 Q. And how did things go with the Live Oak Village
5 Homeowners Association?

6 A. Well, we were trying to improve our community and also
7 at the same time address a problem with water retention.
8 They -- the people who developed the subdivision didn't put
9 anything for water retention, and so every home that they
10 built, the water had nowhere to go.

11 And so one of the projects was for drainage to take the
12 water from our community back to the towns, you know,
13 assigned drainage easement, and then the other one was to put
14 a security fence up.

15 Q. Okay. And a security fence, did that surround the seven
16 homes?

17 A. Yes. Well, it surrounds the front of it. And then on
18 the side that's on Flud Street, the three homes on Flud
19 Street have their own gates basically. You know, it was our
20 backyard, so the community would not have paid to put a gate
21 or, you know, something down there. So it really was just
22 the front to enclose it.

23 Q. So your home is one of the three homes in Live Oak
24 Village that open out or have an opening or an entrance onto
25 Flud Street; is that correct?

1 A. That is correct.

2 Q. And tell us about Flud Street.

3 A. It's a dead-end street coming off of Central. And as
4 far as I know, I've never counted, but there's not that many
5 homes there, so I'd say nine, maybe eight. I'm not sure.

6 Q. Now, Mr. and Mrs. Rashtchian, who are involved in this
7 lawsuit, they live in close proximity to you?

8 A. Yes. They live, I guess, across the street from the
9 rear of our home.

10 Q. Okay. Now, your husband mentioned briefly about when
11 you built your home and when you moved into Live Oak Village.
12 When was that?

13 A. Yes, I believe it was -- we purchased in March of 2002,
14 and we moved in just after Thanksgiving weekend, actually, of
15 November 2002.

16 Q. And at that time, were you the first home, the second
17 home, third or whatever?

18 A. We were the only home in there.

19 Q. At that time?

20 A. Mm-hmm, yes.

21 Q. And were Mr. and Mrs. Rashtchian occupying in their home
22 at that time?

23 A. I assume so. I mean, I knew there were people living
24 back there, but of course I did not know them.

25 Q. Did the Rashtchians ever make any overtures to you as a

1 neighbor to welcome you into the neighborhood or come meet
2 you, anything like that?

3 A. No.

4 Q. So when do you recall or what contact, if any, did you
5 ever have with the Rashtchians as far as seeing them or
6 bumping into them on the street, things like that?

7 A. This is, you know, a minor thing, but one time I was
8 taking my son for a walk. There's a dead-end road, as I
9 said, that Flud Street is. It goes into another neighborhood
10 that has a pond. And when my son was three or four or five,
11 we would take --

12 MR. CLEVELAND: I would object based on relevance, Your
13 Honor.

14 THE WITNESS: Well, I --

15 MR. STUCKEY: What was the objection, Your Honor?

16 THE COURT: Relevance. Taking the child, walking to the
17 pond.

18 MR. CLEVELAND: I concur with that. I don't know what
19 she's going to say, so --

20 THE COURT: I gotcha. I will sustain it.

21 MR. STUCKEY: Thank you, Your Honor.

22 Q. Now, what do your friends call you?

23 A. Jenn.

24 Q. Jenn?

25 A. Mm-hmm.

1 Q. Okay. Jenn, let me direct your attention to the year of
2 2009. There's been some -- you've been present here in
3 Court; is that correct?

4 A. Correct.

5 Q. And there's been some mention from the stand about the
6 Mazells, who supposedly lived in the neighborhood; is that
7 correct?

8 A. Yes.

9 Q. Now, in about that time in 2009, did you and your
10 husband, as president of the homeowners association, have any
11 dealings with Sofia and Mike Mazell?

12 A. Yes.

13 Q. And would you describe that, please. Tell us about
14 that.

15 A. Okay. Well, primarily we're going back to the -- where
16 the community of seven homes decided that we needed to
17 address the areas of drainage. And I believe it was shown on
18 the plat yesterday that the only place that the -- the lowest
19 place was right in the middle of the subdivision, and the
20 only way for the water to be removed from the subdivision was
21 to utilize the town's easement which ran along the back side
22 of the Mazells' property.

23 And they -- they were not happy about that. Although
24 they voted for it, but they just decided that they were going
25 to do everything possible to prevent that from happening.

1 Q. Did they indicate why they didn't like it?

2 MR. CLEVELAND: Objection. Hearsay.

3 THE COURT: Sustained.

4 Q. Did you have any other dealings with the Mazells other
5 than the homeowners association drainage situation?

6 A. Well, I mean, yes. They had some people living in their
7 home, but the last time is when the property manager -- they
8 were leasing it out, and the property manager did her
9 investigation and, you know, she told him you must leave or
10 you're going to be -- I guess the covenants will be enforced.
11 And they didn't like that either. They -- they just didn't
12 want to follow the bylaws. And so they were fined and they
13 haven't paid it.

14 Q. Okay. So the property manager was a property manager
15 for whom?

16 A. For Live Oak Village.

17 Q. And what was the difficulty with the property manager
18 not wanting the Mazells to rents their property?

19 A. Well, it's against the bylaws, you're not allowed to --

20 MR. CLEVELAND: Objection. Relevance, Your Honor.

21 THE WITNESS: -- lease your property.

22 THE COURT: Overruled.

23 You may continue.

24 MR. STUCKEY: Thank you, Your Honor.

25 Q. Okay. So moving on, then did you and Sofia Mazell get

1 together sometime during 2009 on an incident that's been
2 previously described from the witness stand?

3 A. Yes.

4 Q. And tell us about that, please.

5 A. Okay. Well, I was standing on -- in my yard somewhere
6 or in my driveway, and she came out and was questioning
7 something about the drainage. And she just was asking me
8 some questions, and I was answering them as best I could.
9 And Mr. Rashtchian then came up. And at this time I still
10 did not know him. I just knew he was the neighbor from
11 behind our house.

12 And he was delivering what I later found out to be was
13 the survey of her property. I guess they were planning on,
14 you know, taking a look at it and seeing where the actual
15 easements were and just where the lines were. And they just
16 walked away.

17 And at one point I went over to him and asked him,
18 because I had not seen him before outside, and I went over
19 and I asked him if he would please lower his garage flood
20 lights, because they were pouring into my home. And he just
21 looked at me and he didn't say anything specific, and then he
22 just said --

23 I said, "Look," I said, "we're good people. We're not
24 trying to cause any problems with you. I just was wondering,
25 as a courtesy, would you please lower your garage lights."

1 And he just looked at me said something to the effect,
2 "Well, we'll let somebody else judge if you're good people."

3 And I just walked away. I didn't know what else to say.

4 Q. Was your husband, Bill McFarland present then?

5 A. No.

6 Q. Did Bill McFarland at that time have any dealings with
7 either Messrs. Mazell or Mr. Rashtchian or you?

8 A. No. At that day, no.

9 Q. And so you left at that point and walked away, right?

10 A. Of course, yes.

11 Q. And Mr. Rashtchian did he leave and walk away?

12 A. I assume so. I mean, I didn't -- I didn't look back. I
13 just walked to my property and came inside.

14 Q. And was that basically the extent of what happened?

15 A. Yes.

16 Q. Any voices raised or hard feelings or anything of that
17 type that you knew of?

18 A.. I don't -- I don't think so. I thought it was odd that
19 he would say that let somebody else be the judge of if we're
20 good people or not, but I -- I didn't really understand it, I
21 mean, but no, there was no voices raised or anything like
22 that.

23 Q. Do you recall, I think this is probably brought on
24 Mr. Rashtchian's deposition, that you said something like,
25 "We're good people. We're good people. We're good people"?

1 A. Yes, I said, "We're good people. We're not trying to
2 cause a problem. I'm just simply asking if you would please
3 lower your lights a little bit," because they were shining
4 directly into my bedroom.

5 Q. And Mr. Rashtchian's response to that was what?

6 MR. CLEVELAND: Objection. Asked and answered, Your
7 Honor.

8 THE COURT: Very well.

9 THE WITNESS: Was I suppose to answer? I'm sorry.

10 THE COURT: Another question coming in just a minute.

11 Q. Let's go back to the year 2002, after you all have sort
12 of first moved in, I believe, Jenn. And there's been some
13 testimony about -- well, tell us about that. To whet your
14 memory, something about some bottle rockets and
15 Mr. Rashtchian?

16 A. Yes, I really wasn't involved in that. I just heard
17 about them talking about it afterwards. I mean, I was
18 upstairs with my friend, Karen, and our two daughters. And I
19 think her son was there as well, and we were just -- I don't
20 know what we were doing upstairs, sitting in the sun room or
21 something, but I don't --

22 Q. So you didn't witness that or hear anything about that?

23 A. No, sir.

24 Q. And your friend, Karen, was Karen who?

25 A. Evans.

1 Q. Karen Evans?

2 A. Mm-hmm.

3 Q. And your husband had mentioned, I believe, that one of
4 his friends, I believe named Joe Evans, was there at the
5 time. And what was the relationship, if any, between
6 Karen Evans and Joe Evans?

7 A. Oh, that's her husband.

8 Q. Husband and wife?

9 A. Mm-hmm. Yes.

10 Q. Now, let's fast-forward, Jenn, until April the 26th,
11 2011. And at that time, tell us the age -- ages of Marissa
12 and the ages of M. REDACTED and just that, please.

13 A. Okay. M. REDACTED would have been 7 and Marissa would have
14 been 16.

15 Q. And both of them were living at home?

16 A. Correct.

17 Q. Okay. And what happened around -- during that
18 afternoon? I won't state the time, but during the afternoon
19 what happened?

20 A. Well, I only know from being downstairs, I was
21 downstairs with my son, and he was -- I think he was doing
22 homework or something, and I heard a very loud, angry voice.
23 I could hear the tone of somebody speaking very loudly and it
24 was angry sounding. And so I went to the door to go see what
25 I -- what was going on outside.

1 And as I was going outside, I had my puppy with me and I
2 picked him up because I didn't want him to escape with the
3 gate open for the mulch trailer. And at that time I looked
4 up and I saw my husband walking quickly back into the yard,
5 and so I walked out to meet him.

6 And he just started telling me that the man from behind
7 our house was saying all sorts of crazy things about us
8 stealing our money and people coming in my house and things.
9 So he was telling me this as we were walking towards the
10 gate, you know, to go and see what was going on and --

11 Q. Let me ask you, if I might interrupt you at that point.

12 A. Sure.

13 Q. When you went toward the gate, what did you see around
14 the gate?

15 A. Well, at the gate was the trailer with the mulch on it,
16 and then as we walked around the trailer, the truck was
17 parked on the right-of-way on this -- on our side of the
18 road, the landscaper's truck.

19 Q. Okay. Did it appear to be blocking Flud Street so that
20 vehicles could not pass by or navigate through Flud Street?

21 A. No, no, not at all.

22 Q. Okay. And did you see any gentlemen present there other
23 than your husband?

24 A. Yes, whom I now know as Mr. Rashtchian was there.

25 Q. Okay. And what about any workers?

1 A. Oh, of course, Lance and Stephon were there, and I
2 believe the other one was there as well at that time.

3 Q. Now, what had been your relationship with -- is it
4 Lance Johnson?

5 A. Correct.

6 Q. And Stephon Johnson?

7 A. Yes.

8 Q. And Stephon, were you present when he testified here in
9 court today?

10 A. Yes.

11 Q. Okay. And how long had you had a working relationship
12 with them?

13 A. Oh, five or six years I would say. Well, yes, mm-hmm.

14 Q. Were they good workers?

15 A. Yes.

16 Q. Ever have any problems with them?

17 A. No.

18 Q. Have they ever had any problems with you?

19 A. No.

20 Q. Okay. And so -- and I'll have you pick up when you were
21 walking toward the vehicle, I believe, and toward the gate.

22 A. Yes. My husband had come out to meet me, or I had come
23 out to meet my husband, excuse me, and we were walking
24 around, and I could hear Mr. Rashtchian yelling very loudly
25 at -- towards the landscapers, "Why are you working for these

1 people? They're bad, bad people. They steal their money.
2 She cheats on her husband, and I can't see why you would work
3 for people like those people at all."

4 And we came around the corner, and I went up to
5 Mr. Rashtchian, because he was in the street, and I asked
6 him, "Why are you saying these things about me and my family?
7 You don't know us. I don't know you. Why would you say such
8 terrible things about us?"

9 And he just didn't say anything. He just looked at me
10 and pointed over in the direction of the Mazells' house and
11 nodded his head like that. And pretty much right after, his
12 wife came running out and waving her arms in the air --

13 Q. Now, could you identify her in court, the one you said
14 was the wife?

15 A. Yes. She's the one sitting on the left-hand side of --
16 well, from my perspective.

17 Q. That's the lady with the glasses on Mr. Rashtchian's
18 right; is that correct?

19 A. Yes. Yes, sir.

20 MR. STUCKEY: Let the record reflect, Your Honor, that
21 she indicated the defendant, Amy Rashtchian.

22 THE COURT: Very well.

23 Q. Had you seen Amy Rashtchian before?

24 A. On a couple of different occasions, yes.

25 Q. Had you had any contacts or dealings with her before?

1 A. I would say once or twice. I would maybe be out back
2 with my son getting ready to take a walk and she might be
3 outside and she would wave "hello" and I would, you know,
4 wave "hello" back. I never had any other, like, real
5 conversations with her, though.

6 Q. Okay. So what happened next?

7 A. Well, she came out of her house with her hands in the
8 air, you know, waving, and she started yelling at me,
9 "Bitch," you know, "don't talk to him. Talk to me. Let's
10 make it fair. Let's go." Just "bitch." She just kept
11 calling me a bitch, and I just -- I didn't understand it, not
12 ever having any dealings with her before.

13 But regardless, I looked at her and I just said, "What
14 is wrong with you?" I said, "I don't understand. What is
15 wrong with you?" Why are you doing this?"

16 And she just didn't say anything.

17 And then I turned back to Mr. Rashtchian and I asked
18 him, "Why are you saying these things? We don't know you.
19 Why would you say these things about me specifically and my
20 family?"

21 And he just looked at the Mazells' house and did this
22 again and pointed (indicating).

23 And then at that time, my husband came up and said,
24 "Jennifer, come on. This is -- this is no good. We don't
25 need to be doing this."

1 And he got, I guess, basically in between me and Amy
2 because she was getting so close and aggressive with me. And
3 at that point she grabbed his arm, turned him around and
4 said, you know, I forget exactly what she said. She said
5 something to the effect that you don't scare me or, you know,
6 I'm not afraid of you.

7 And he just said, "Don't touch me." I think he told her
8 twice not to touch me, and then we started to walk away, and
9 they -- my husband turned around to them and said, "Don't
10 come near us. Just don't come near us again. Don't come on
11 our property. Don't talk to the people who are working for
12 us," and just saying, "Leave us alone. Just leave us alone."

13 And at that point we started to walk into our property,
14 because clearly this was not a normal situation, you know,
15 and it didn't make any sense to us.

16 And they just said -- I heard them yelling at my
17 husband, "Just ask me all about it. I'll tell you who comes
18 in your house when you're out of town to see your wife. She
19 cheats on you. I'll tell you all about." And they said,
20 they're not going to stop until you move. "We're not going
21 to stop until you move."

22 And we just went away, and I heard him say basically the
23 same thing to the landscapers, "Why do you work for them?"
24 You know, "She steals" -- or, "He steals and she cheats."
25 And then I believe they went in their home and I went into my

1 home to get my children off the back porch from seeing all of
2 this. Excuse me.

3 Q. Just if you'll describe for the record, Jenn, you said
4 that when Amy Rashtchian came toward the street out of her
5 property --

6 A. Mm-hmm.

7 Q. -- that she waved. I mean, was that a friendly wave or
8 be more descriptive of that, please, as to --

9 A. I didn't interpret it as anything other than, you know,
10 this as kind of a wave. I mean, it could have been a
11 dismissive wave, I guess. I didn't really pay any attention
12 to it. You know, they seemed to keep to themselves and we
13 did the same. I don't -- that's why all this is so bizarre.

14 Q. Okay. And you mentioned that you, that Mr. Rashtchian
15 gave a gesture toward the Mazells' house. What kind of
16 gesture was that?

17 A. More like this (indicating).

18 Q. And you are indicating with your right hand, pointing
19 your finger -- with your finger --

20 A. Well, it would have actually been this one, you know.
21 To be accurate, it would have been his left hand.

22 Q. Okay. So what happened after that?

23 A. After that I was just very, very upset. I couldn't
24 understand it. I felt like I was a deer in the headlights.
25 I had no idea what had just happened. It made no sense, and

1 Q. And when you called your mother, what did you tell your
2 mom?

3 A. Basically the same thing, what had happened, and I just
4 asked her if they knew these people, you know, if they had
5 ever had any, you know, way to know these people. And of
6 course they didn't know them --

7 MR. CLEVELAND: Objection. Hearsay.

8 THE COURT: What she said is not hearsay but what the
9 response is is hearsay.

10 MR. STUCKEY: I understand.

11 THE WITNESS: Well, I asked her if she knew these
12 people, and they didn't.

13 Q. Okay. Okay. And so what did you and your husband do
14 following that? And by "that" I mean immediately within the
15 couple of hours after that or even the following day
16 concerning this?

17 A. The following day we contacted our attorney because,
18 again, we just couldn't understand why they were saying such
19 horrible things and yelling them so loudly in the street, and
20 we just wanted to get some advice, you know, what should we
21 do, if anything, about this and --

22 Q. Don't tell us what the lawyer said.

23 A. I understand.

24 Q. That will draw an objection, I'm sure.

25 So you consulted with your lawyer?

1 A. Correct.

2 Q. And did you call the Summerville Police at that time
3 when all this was going on?

4 A. Again, it was -- it was really just overwhelming. And I
5 know at one point I intended to call the police, and then I
6 think as I was walking back, they started yelling again, and
7 so I didn't even get basically around the trailer until we
8 turned around.

9 And then by the time it was done, I just -- like I said,
10 I walked in my house and I was worried about my children and
11 I called my mother and we just -- you know, I mean, it just
12 didn't -- it just -- I don't know. We just didn't do it that
13 day.

14 Q. But you did meet with the attorney the following day?

15 A. Correct.

16 Q. And thereafter, did you ask the police to come and look
17 into the matter and file a police report?

18 A. We did.

19 Q. And was that done?

20 A. Yes.

21 Q. Okay. And do you recall at that time whether a
22 statement was taken from maybe Stephon Johnson, I think a
23 statement's been referred to, or any other statements taken?

24 A. Yes. I wrote a statement and Stephon Johnson wrote a
25 statement and Lance Johnson wrote a statement.

1 Q. Okay. And thereafter, a lawsuit was filed; is that
2 correct?

3 A. Yes.

4 Q. Okay. Against the Rashtchians?

5 A. Correct.

6 Q. By you and your husband for what you've -- the reasons
7 that you've set forth today; is that correct?

8 A. Correct.

9 Q. And thereafter, did you prepare a statement, I believe
10 this has been alluded to by Mr. Cleveland, a statement for
11 Lance Johnson?

12 A. I did.

13 Q. Tell us about that, if you would.

14 A. It had been suggested that we should get together --

15 MR. CLEVELAND: Objection. Hearsay.

16 MR. STUCKEY: It's fine, Your Honor.

17 THE COURT: As it is couched, it's hearsay.

18 THE WITNESS: We needed to get a statement from the
19 witnesses, additional statements in order to understand the
20 gravity of the whole situation, and Mr. Johnson was doing
21 work at our home with Stephon as well, and I asked him, you
22 know, what he remembered about that day and if he would be
23 willing to give me a statement, and he said "yes," he would.

24 And I said, "Well, thank you." And I said, "Can you
25 write something down for me?"

1 And he said, "I'm not" --

2 MR. CLEVELAND: Objection. Hearsay.

3 THE COURT: Watch the hearsay, yes.

4 THE WITNESS: I'm sorry.

5 Q. So for whatever infirmity may have been expressed by
6 Mr. Lance Johnson, did you prepare a statement at his
7 request?

8 MR. CLEVELAND: Object to the leading and also hearsay,
9 Your Honor.

10 THE COURT: Sustained.

11 Q. And following discussions with your attorney and
12 following discussion with Mr. Lance Johnson, did you prepare
13 a statement for Mr. Lance Johnson?

14 A. Yes.

15 Q. And how was that statement prepared? Did you type it or
16 write it or what?

17 A. I typed it.

18 Q. You typed it?

19 A. Yes.

20 Q. And it consisted of how many pages?

21 A. Three.

22 Q. Three pages?

23 A. Mm-hmm.

24 Q. And did you present that to Mr. Johnson?

25 A. I did.

1 Q. For his -- and did he review it?

2 A. Yes.

3 Q. Did he read over it?

4 A. Yes.

5 Q. Did he make any suggested changes or additions?

6 MR. CLEVELAND: Objection to the extent he's asking for
7 hearsay.

8 MR. STUCKEY: Pardon?

9 THE COURT: Yes. When you asked, "Did he make any
10 suggestions," that's eliciting hearsay. "Did he make any
11 suggestions?" That would be hearsay.

12 MR. STUCKEY: Okay. Thank you, Your Honor.

13 Q. And you've told us that Mr. Johnson read through the
14 statement?

15 A. Correct.

16 Q. And at some point did Mr. Johnson strike out a word or
17 two in the statement?

18 A. Yes, he did.

19 Q. And following that, what did Mr. Johnson do?

20 A. He signed it.

21 Q. He signed it?

22 A. And dated it, yes.

23 Q. And dated it?

24 A. Mm-hmm.

25 Q. And he dated it. When did he date it; do you recall?

1 A. June 11, 2013.

2 Q. June 11, 2013, so that's basically, what, two, two years
3 plus since this event happened on April the 26th, 2011; is
4 that right?

5 A. That is correct.

6 Q. Okay. And Mr. Cleveland has asked -- and perhaps
7 introduced into evidence that the statement had something
8 about "Personal and Confidential Statement of
9 Lance E. Johnson," I believe. Is that basically what it
10 said?

11 MR. CLEVELAND: Objection. That's a
12 mischaracterization, Your Honor.

13 MR. STUCKEY: What is the mischaracterization? Let me
14 see. I might refresh my memory. Have you got a copy of it?

15 MR. CLEVELAND: I'm sure I can find one.

16 Q. I stand corrected. I asked you did you prepare a
17 statement that said "Personal and Confidential Statement of
18 Lance E. Johnson," but I see now that it's labeled. Do you
19 recall what it was labeled by any chance?

20 A. Personal and confidential for Lance Johnson, I believe.

21 Q. Actually it says, the one we have here, "Confidential
22 and Privileged Information for Lance Johnson."

23 A. Correct.

24 Q. And so what was the purpose of your getting that
25 statement some two-plus years afterwards?

1 A. Well, we had just filed the lawsuit, and, again,
2 statements were required, witness statements were required or
3 requested.

4 Q. And you mentioned there was a three-page statement. Was
5 there an additional page that was appended to it or that
6 followed it?

7 A. Yes. It was basically -- I was -- after my conversation
8 with Lance and he relayed the incident as he recalled it to
9 me and I was typing it up for him, I was upset. I was -- it
10 was like reliving it again. And I had finished up with the
11 section that Lance had told me, and while he was still
12 working in the yard, I just continued typing, but they were
13 my personal thoughts, because it was so -- it was just right
14 there on the edge of my -- my skin, I guess. And I just kept
15 typing.

16 But when my husband came in said Lance was ready to
17 leave, I printed out the three pages that pertained to what
18 Lance and I discussed, and I -- he signed that. And the
19 fourth page just sat on my computer until I finished it.

20 They weren't meant to be one document. It just -- you
21 know, I just kept typing.

22 Q. And so what did you do with the statement?

23 A. I gave it to my -- you mean Lance Johnson's?

24 Q. Yes.

25 A. Yes. I gave it to my attorney.

1 Q. And your attorney at that time wasn't me?

2 A. Correct.

3 Q. And wasn't Ms. Lietzow?

4 A. No.

5 Q. Okay. It was a Summerville attorney?

6 A. No, Mount Pleasant.

7 Q. Oh, Mount Pleasant attorney. Okay, okay.

8 And then this lawsuit has progressed on after being
9 filed; is that correct?

10 A. Correct.

11 Q. And tell us about your married life with your husband,
12 how have you all gotten along and so forth.

13 A. We have a good marriage.

14 Q. How long have you been married?

15 A. 26 years.

16 Q. 26 years. Have how many children?

17 A. Two.

18 Q. Ever been separated?

19 A. No.

20 Q. First marriage for you?

21 A. Correct.

22 Q. First marriage for Mr. McFarland?

23 A. Correct.

24 Q. Ever been unfaithful to Mr. McFarland?

25 A. No, sir.

1 Q. In other words, Jenn, don't tell us maybe how M^{REDACTED}
2 feels but how you feel in -- in M^{REDACTED}'s reactions to you,
3 I think would be fair.

4 A. Well, I was just going to say that it's just been very
5 difficult on all of us, and it's very painful for me to watch
6 him to see his parents under so much stress and duress from
7 an incident that was just completely uncalled for. It's just
8 caused a tremendous amount of stress. We -- my main fear is
9 I don't know how many people they've told these things to.

10 MR. CLEVELAND: Objection. Speculation, Your Honor.
11 It's no evidence of any other conversations or publications.

12 THE COURT: Unless there's about to be information
13 elicited with regards to the numbers of publication, I am
14 concerned about there being speculation with the numbers of
15 publication. But if there's some basis to think that there
16 is that, she certainly can testify regarding that, but I
17 don't want her to speculate.

18 MR. STUCKEY: Thank you, Your Honor. That's all we
19 have, Your Honor.

20 THE COURT: Very well. Cross-examination.

21 CROSS-EXAMINATION BY MR. CLEVELAND:

22 Q. Good afternoon, Ms. McFarland. You mentioned a few
23 moments ago during direct examination that the Rashtchians
24 did not come to your house to invite you to the neighborhood.
25 Do you remember that testimony?

1 A. Yes, I answered the question.

2 Q. And, in fact, they don't live in the same neighborhood
3 as you. You live in the Live Oak Village neighborhood; is
4 that correct?

5 A. That is correct.

6 Q. And that's the gated community; is that correct?

7 A. Correct.

8 Q. And there's probably keypad or a card of some type that
9 you have to use in order to get into the neighborhood?

10 A. Well, there is now, but in 2002 we were the only home
11 and there was no gates, fences.

12 Q. And of course you didn't go over and introduce yourself
13 or meet the Rashtchians before the 2002 fireworks incident,
14 did you?

15 A. No, I hadn't been in my home for a month.

16 Q. And I think you indicated that the fireworks incident
17 that occurred on New Year's Eve 2002, that you were not
18 outside and present for that; is that correct?

19 A. That's correct.

20 Q. But you did know the police came to your house, right?

21 A. They didn't come to my house.

22 Q. They came to Flud Street?

23 A. Yes.

24 Q. And Flud Street runs behind your house?

25 A. That's correct.

1 Q. You could see the blue lights and all out your windows?

2 A. If I was in a room that was -- I mean, it would have
3 been at night, and I believe my blinds are closed at night
4 mostly, so --

5 Q. Okay. And did your husband tell you that he told
6 Mr. Rashtchian to go back where he came from?

7 A. No.

8 Q. Moving on to 2009, you indicated that there was an
9 incident when you were dealing with Ms. Mazell concerning a
10 survey or property dispute; is that correct?

11 A. I wouldn't call it an incident, but, yes, we were having
12 a conversation.

13 Q. And Ms. Mazell was crying; is that correct?

14 A. Not when I was speaking to her.

15 Q. Do you remember Mr. Rashtchian coming over and carrying
16 the survey that he had assisted in the Mazells obtaining?

17 A. Yes, I understood that's what he was doing.

18 Q. Now, you would agree that you're in conflict with the
19 Mazells?

20 A. In 2009 it was beginning, yes.

21 Q. And it continues on until today; is that correct?

22 A. Yes.

23 Q. And when Mr. Stuckey was asking you questions a moment
24 ago talking about your husband's involvement in the lawsuit
25 with the Mazells on behalf of the HOA and you being involved

1 in the lawsuit on behalf of the HOA, you actually have your
2 own personal interests that are asserted in that lawsuit as
3 well; is that correct?

4 A. Yes.

5 Q. That's where you've asserted your own separate cause of
6 actions for defamation?

7 MR. STUCKEY: Your Honor, may we approach?

8 THE COURT: Sure.

9 (Judge and attorneys confer.)

10 THE COURT: Ladies and gentlemen, please step to your
11 jury room. Do not discuss this matter and do not allow
12 anyone to discuss it with you.

13 (The jury retires to the jury room at 3:13 p.m.)

14 THE COURT: Here's the language, Mr. Cleveland, and,
15 well, Counsel, all counsel, it starts approximately -- well,
16 it's obviously during the direct examination, begins, "And
17 there's been some mention from the stand about the Mazells
18 who supposedly lived in the neighborhood; is that correct?"

19 "Yes."

20 "Now, about that time in 2009, did you and your husband,
21 as president of the homeowners association, have any dealings
22 with Sofia and Michael Mazell?"

23 "Yes."

24 "And would you describe that. Tell me about that."

25 And then go through it and continue to go through it.

1 And then there is the testimony about the leasing of that
2 first floor and that being a violation of the bylaws. That's
3 in there.

4 And then, "Did Bill McFarland at that time have any
5 dealings with either Messrs. Mazell or Rashtchian or you?"

6 "No."

7 And then we're back to 2002.

8 So there's a lot of testimony, there was a lot of
9 testimony about the Mazells, but at the sidebar I made
10 mention to you all that I don't think the Mazell testimony is
11 relevant, and it keeps creeping in here, and it -- you know,
12 what happens is when it's introduced about the Mazells, it
13 wasn't stopped.

14 So we got a little bit and that opens the door, then we
15 get a little bit more and the door gets opened a little bit
16 more and the door keeps getting kicked open more and more.
17 The Mazells ought not be in this case, but it's in this case.
18 And it was in on direct. The door got opened and
19 Mr. Cleveland's entitled to go into the relationship, and I
20 went back and looked at it because the language is very
21 general in the question. It says, "Let me direct" -- well,
22 "Did you have any other dealings with the Mazells other than
23 the homeowners association drainage situation?"

24 And she talks some more about that.

25 And I think that door is open, Mr. Cleveland, for you to

1 go into the relationship. In other words, she talked about
2 some. I think you can talk about how about this relationship
3 and how about that relationship.

4 What I want you to refrain from -- yes.

5 MR. STUCKEY: Your Honor, I don't recall that we
6 mentioned anything about a lawsuit between the Mazells and
7 the homeowners association.

8 THE COURT: Right.

9 MR. STUCKEY: And certainly no lawsuit with
10 Ms. McFarland and the Mazells.

11 THE COURT: Right.

12 MR. STUCKEY: And it's just not -- it's completely
13 irrelevant. Seems to me that it's an absolute clear issue
14 under 403. Although relevant, he's trying to assert it. I
15 don't think it's relevant, first of all. And the probative
16 value is substantially outweighed by the danger of unfair
17 prejudice.

18 What he wants to do is argue to the jury, hey, you know,
19 these are litigious [sic] people and they can recover from
20 the Mazells. It's all the Mazells fault and confusion of the
21 issues. It certainly confuses the heck out of the issues or
22 misleading the jury. It's misleading the jury.

23 And as Your Honor has so succinctly pointed out, this is
24 a case between the McFarlands and the Rashtchians. It's not
25 a case --

1 THE COURT: Right.

2 MR. STUCKEY: It's not a case against the Mazells.

3 THE COURT: Right.

4 MR. STUCKEY: Either for or against.

5 THE COURT: I know that. I know that. Here's my
6 problem, though: It's in there. And you got into it. You
7 got all into it. I don't know why you got into it. I trust
8 you know why you got into it, but my problem is that I'm
9 not -- how do I now, when you ask, "Tell me what your
10 relationship is with the Mazells," and she talks about her
11 relationship with the Mazells, he gets to cross-examine.

12 MR. STUCKEY: Your Honor, he is on cross-examination.

13 THE COURT: I know.

14 MR. STUCKEY: And I know judges try different things
15 different ways.

16 THE COURT: Yes.

17 MR. STUCKEY: Some judges just limit the cross to
18 exactly what was brought out on direct --

19 THE COURT: Right.

20 MR. STUCKEY: -- and then limit recross to what was
21 brought out on redirect.

22 THE COURT: Right.

23 MR. STUCKEY: This is what I -- was brought out on
24 cross.

25 THE COURT: I don't do that.

1 MR. STUCKEY: And I haven't -- well --

2 THE COURT: I tend not -- I really don't, because there
3 may be issues, there may be issues that are relevant to the
4 case that the plaintiff didn't bring out in the plaintiff's
5 direct for obvious reasons. But in a search for the truth on
6 cross-examination, sometimes those things have to be brought
7 out. So I don't -- I certainly don't do that.

8 No doubt there would be plaintiff's lawyers that wish
9 that I would, but that doesn't -- that would allow the
10 plaintiff to dictate the truth -- the measure of truth that
11 would be presented to the jury, in my mind, so I don't do
12 that.

13 MR. STUCKEY: Well, Your Honor --

14 THE COURT: Yes.

15 MR. STUCKEY: -- in this particular thing, I don't think
16 the dealings has been pointed out -- the dealings between my
17 client and the Mazells leads to any truth in this case
18 between the dealings between the McFarlands and the
19 Rashtchians.

20 THE COURT: So why did you ask it? I mean, really.

21 MR. STUCKEY: I'm just asking it, and just --

22 THE COURT: Okay.

23 MR. STUCKEY: Not for the lawsuit.

24 THE COURT: Okay.

25 MR. STUCKEY: But they plan to bring in -- they noticed

1 that they plan to bring in the Mazells, and I'm just --
2 instead of coming back in rebuttal on that, I'm just trying
3 to lay a foundation as to the ill feeling that the Mazells
4 have for Bill McFarland because of his presidency of the
5 homeowners association.

6 THE COURT: Right. And he's helping you do that. He's
7 going to make it iller [sic] yet because they're in
8 litigation with each other. I mean, that's the problem.

9 The problem is I wish none of -- I wish the Mazells were
10 out of it. I wish that when Mr. Cleveland raised it, you all
11 had jumped up and screamed, because I would have sustained
12 that objection. That didn't happen. I figure you all know
13 what you're doing, so I didn't do anything. I didn't say
14 anything.

15 But so now it's in there. I can't help that it is now
16 in this case. I can't help that Mr. Cleveland chose not to
17 object when you started asking about what is the relationship
18 between you and the Mazells. The problem is he's on
19 cross-examination. And it's very -- as much as I would love
20 to do it, I cannot now go extricate the Mazells from this
21 litigation because they are in here.

22 I now know exactly what our Congress folk are talking
23 about when they talk about mission creep. I am in mission
24 creep.

25 MR. STUCKEY: About what?

1 THE COURT: Mission creep. I mean, I don't want them in
2 here, and I have done everything I can to keep them and keep
3 it limited, but, you know, you've -- listen, you kicked that
4 door open a little bit. He's like smoke. He's coming
5 through.

6 MR. STUCKEY: Well, Your Honor, I think under 403, you
7 can do just about whatever you want to do.

8 THE COURT: And I would, except that I -- in the
9 interest of fairness, since it's in there on
10 cross-examination, the other side has to have an opportunity
11 to address it.

12 MR. STUCKEY: But we haven't mentioned with this -- with
13 this young lady, we haven't mentioned a single thing about a
14 lawsuit.

15 THE COURT: I know. I get that. But you have talked
16 about relationship. Tell me what -- tell me about your
17 relationship with the Mazells. Tell me about the
18 relationship with the HOA. Tell me about your husband's
19 relationship with regards to HOA. I mean, it's in this case.
20 It really is.

21 And I'm not finished. I'm not going to let
22 Mr. Cleveland just go trompsing [sic] around. He's not, you
23 know, just going to go (indicating). But, I mean, I've got
24 to talk to him because I do want some limitations on it
25 because I don't want to try that case. I don't want to try

1 that case.

2 MR. STUCKEY: Your Honor, as I pointed out on sidebar --

3 THE COURT: Yes.

4 MR. STUCKEY: -- we've asked about the relationship with
5 the Mazells --

6 THE COURT: Yes.

7 MR. STUCKEY: -- and HOA Mr. McFarland through the HOA.

8 THE COURT: I know.

9 MR. STUCKEY: I mean, that's a separate lawsuit.

10 THE COURT: I know.

11 MR. STUCKEY: And then when the Mazells elect to file a
12 counterclaim, I mean, that could be an entirely separate
13 lawsuit that has nothing to do with the relationship between
14 the McFarlands and the Mazells. It's entirely separate and
15 apart.

16 THE COURT: Okay. So moving on then (reading): "Did
17 you and Sofia Mazell get together sometime during 2009 when
18 the incident that's been previously described from the
19 witness stand?"

20 "Yes."

21 "Tell me about that."

22 And then we go into this instance and whether or not
23 Mr. McFarland was there. "Did Bill McFarland at that time
24 have any dealings with either Messrs. Mazell or
25 Mr. Rashtchian or you?"

1 "No."

2 Okay. Tell me how far you want to go. Maybe I can cut
3 down some of the objections.

4 MR. CLEVELAND: Yes, Your Honor. I would like to hand
5 her a copy of the lawsuit that she filed --

6 THE COURT: Okay.

7 MR. CLEVELAND: -- which is as a plaintiff --

8 THE COURT: Okay.

9 MR. CLEVELAND: -- and that she verified with her
10 signature attached, and just get her to admit that she has,
11 talking about her relationship with Mazells, sued them for
12 conspiracy as to all the defendants, slander and defamation
13 as to just the Mazells, and that the allegations of
14 defamation are that she is unchaste, having extramarital
15 relations, committed criminal acts by stealing her father's
16 business, that she is racist, that she invades defendants'
17 privacy by appearing into their windows, all of which she
18 says are untrue.

19 THE COURT: Okay.

20 MS. LIETZOW: Your Honor, I'm sorry. What's the date of
21 that lawsuit?

22 MR. CLEVELAND: When it was filed?

23 MS. LIETZOW: No, the date the allegations were alleged
24 to have occurred.

25 Do you have the dates, Mr. Cleveland?

1 MR. CLEVELAND: It's your client's pleading.

2 MS. LIETZOW: Then may I look at it while we're
3 discussing this objection?

4 MR. CLEVELAND: Sure.

5 MR. STUCKEY: Of which we have not been provided a copy
6 of, incidentally.

7 THE COURT: Okay. And it's in this case anyway, because
8 remember, when we're talking about Mr. Rashtchian pointing to
9 the house, pointing to the house, nodding at the house, I
10 mean, that's all in here. All that's in here. It's in here.
11 I mean, that's fair cross-examination. In my mind it's fair
12 cross-examination. Get it and let's go, though. Let's don't
13 try that case.

14 MR. CLEVELAND: Yes, Your Honor.

15 THE COURT: Let's try this one.

16 MR. CLEVELAND: I'm hoping two minutes or less.

17 THE COURT: Yes. But I think it's fair
18 cross-examination, given the way that you're talking about
19 it, I think. And it's in this case anyway, okay? Already,
20 not anyway, already.

21 (The jury enters the courtroom at 3:31 p.m.)

22 THE COURT: All right. You may proceed.
23 Cross-examination.

24 MR. CLEVELAND: Thank you, Your Honor.

25 (Defendants' Exhibit 10 marked for identification.)

1 Q. Ms. McFarland, I'm handing you Defendants' Exhibit
2 No. 10.

3 A. Yes.

4 Q. That is a copy of the lawsuit that you filed along with
5 others against the Mazells and Tom Morris and David Hanneman;
6 is that correct?

7 A. Yes.

8 Q. And if you look at the very last page, it has a document
9 called Verification, and that's your signature on the
10 lawsuit; is that correct?

11 A. Yes, it is.

12 Q. And in that lawsuit, you assert various causes of
13 action, including if I could get you to turn to what is
14 Paragraph 10 of the complaint.

15 A. Can I get my glasses passed up to me? I should have
16 brought them. I'm sorry.

17 Q. Certainly.

18 Looking at Paragraph 10, beginning there, it alleges a
19 cause of action as to all defendants, that would be the
20 Mazells as well as Mr. Morris, Mr. Hanneman, for conspiracy;
21 is that correct?

22 A. Yes.

23 Q. And then the next cause of action, which is starting
24 with Paragraph 13, is for slander and defamation as to
25 Mr. and Mrs. Mazell; is that correct?

1 A. That is correct.

2 Q. And the allegations that you make against Mr. and
3 Mrs. Mazell is that they have said that you are unchaste and
4 having extramarital relations; is that correct?

5 A. Yes, that's what it says.

6 Q. Also says that you committed criminal acts by stealing
7 your father's business; is that correct?

8 A. Yes.

9 Q. Also says that you were a racist; is that correct?

10 A. Yes.

11 Q. Also says that you invade defendants' privacy by peering
12 into their windows; is that correct?

13 A. Yes.

14 MR. CLEVELAND: At this time, Your Honor, we would offer
15 into evidence Defendants' Exhibit No. 10.

16 THE COURT: All right. Note the objection entered
17 before.

18 MR. STUCKEY: Well, we would move, I guess, to redact
19 certain portions of it, Your Honor. He's asked about certain
20 aspects of it, and I don't know what else is in it because I
21 haven't seen it.

22 THE COURT: Okay.

23 MR. STUCKEY: But I would ask probably that it be
24 limited appropriately to whatever he's attempting to
25 introduce.

1 THE COURT: All right.

2 MR. CLEVELAND: I'm not sure how I can respond to that,
3 Your Honor.

4 THE COURT: I'm with you. I understand. You've
5 published that portion of the document. I will consider
6 that. Do you intend to publish it currently to the jury?

7 MR. CLEVELAND: Not right now, Your Honor.

8 THE COURT: Very well. Then I'll look at the
9 possibility of redacting. I just don't know. I haven't seen
10 it either, so I don't know if that is appropriate or not, but
11 I'll rule outside the presence of the jury. You may proceed,
12 though.

13 (Defendant's Exhibit 10 admitted into evidence.)

14 MR. CLEVELAND: Thank you, Your Honor.

15 Q. Ms. McFarland, moving back to 2009, the incident that
16 occurred when Ms. Mazell was speaking with you, you were
17 discussing, I assume, the boundary issue between your homes;
18 is that correct?

19 A. I believe it was the boundary issues for the HOA
20 drainage.

21 Q. Right. And that's when Mr. Rashtchian came over with
22 the survey that he had assisted the Mazells in obtaining?

23 A. That's my understanding, yes.

24 Q. And do you remember Mr. Rashtchian comforting Ms. Mazell
25 after that incident?

1 A. No.

2 Q. Did it make you and your husband angry that
3 Mr. Rashtchian was assisting the Mazells in obtaining a
4 survey?

5 A. No.

6 Q. You don't dispute that you're adverse to the Mazells?

7 A. At this point, yes, we are. At that time, no, it wasn't
8 to the point it is now.

9 Q. But, I mean, were you and your husband adverse enough to
10 the Mazells on March 5, 2009, for your husband to obtain a
11 restraining order against Mr. Mazell?

12 A. A restraining order?

13 Q. Yes.

14 A. I'm not familiar with what document you're referring to.

15 Q. Let me show you.

16 MS. LIETZOW: May we see it?

17 MR. STUCKEY: Your Honor, she stated she has no
18 information about it, no knowledge about it. Now he's
19 attempting to whatever, show her something she has no
20 knowledge of.

21 THE COURT: She just asked to see it.

22 Q. Ms. McFarland, I've handed you a document that your
23 husband identified as a restraining order marked as
24 Defendants' Exhibit No. 2; is that correct?

25 A. It's Defense Exhibit No. 2, but it's a notice of

1 trespass.

2 Q. Okay. And I'm sorry if I misstated that. So there was
3 a notice of no trespass, is that what it's called?

4 A. It's just a notice of trespass.

5 Q. Okay. And that was obtained by your husband in March of
6 2009; is that correct?

7 A. That's what this says, yes.

8 Q. And that was against Mr. Mazell; is that correct?

9 A. Yes.

10 MR. CLEVELAND: And if we didn't earlier, Your Honor, we
11 would move into evidence Defendants' Exhibit No. 2.

12 MR. STUCKEY: Your Honor, she stated she has no
13 knowledge of it, and he's attempting to offer something that
14 this witness can't verify or authenticate.

15 THE COURT: She asked to see it. Would you just ask her
16 if she can authenticate that document.

17 Q. Can you authenticate that document?

18 A. I don't know how I could authenticate this. What do you
19 mean exactly? I'm sorry.

20 Q. Well, is that your husband's signature?

21 A. Yes.

22 MR. CLEVELAND: Okay. And I think he identified it
23 himself as well, Your Honor, so we would move it into
24 evidence for that reason as well.

25 THE COURT: Let me see it for just a moment. Thank you.

1 Very well. Over the objection, it is in evidence as
2 Defendants' Exhibit 2, and I'll scribble out the ID. There
3 you go.

4 MR. CLEVELAND: Thank you so much, Your Honor.

5 (Defendant's Exhibit 2 admitted into evidence.)

6 Q. Now, Ms. McFarland, I want to make sure that I
7 understand your testimony. A moment ago you suggested that
8 although you're adverse to the Mazells right now that you
9 really weren't adverse to them back in 2009. Is my memory
10 correct?

11 A. Yes. I said we weren't -- it's not as serious as it is
12 now is what I said, that it was beginning to occur. They
13 were, as my husband stated, starting to send letters to the
14 HOA trying to stop the drainage project. So, yes, at that
15 time it wasn't personal, so to speak, at least with me and
16 Mrs. Mazell, but they were beginning to cause problems.

17 Q. Okay. So some level of being adverse to each other
18 began at least by March 5, 2009, when your husband
19 obtained -- I'm sorry if I called it restraining order, but
20 notice of trespass, I guess; is that correct?

21 A. Yes.

22 Q. And then it sounds like things have escalated since then
23 as far as your level of adversity versus the Mazells?

24 A. I'm sorry, adversity between us?

25 Q. Yes.

1 A. Uh-huh.

2 Q. And I think you said that it really wasn't personal at
3 this point when you got the notice of trespass back in 2009.
4 Has it become much more personal than that since then?

5 A. Yes, on occasion, I guess.

6 Q. Now, you told your husband about what happened when
7 Mr. Rashtchian came over and gave the survey to the Mazells?

8 A. I may have. It really wasn't that big of a deal, so I
9 don't remember if I told him or not.

10 Q. Do you think that was after your husband had obtained
11 the notice of trespass against Mr. Mazell on March 5th, 2009,
12 when you had this conversation with Ms. Mazell?

13 A. I would think it would be because the meeting where the
14 drainage project was voted on was in March, and so it would
15 have to have been after that.

16 Q. Now, were you ever outside with your husband during this
17 period of time from 2009 until April of 2011 when the
18 incident occurred when Mr. Rashtchian was leaving his home,
19 leaving his drive and your husband would give him any type of
20 obscene gesture?

21 A. No, sir.

22 Q. Were you outside --

23 MR. STUCKEY: Your Honor, I object to that and ask the
24 Court to give a curative instruction. He's given an
25 elongated statement of evidentiary value that has no

1 substance at all to it. The witness has answered "no," and I
2 would ask the Court to give a curative instruction that the
3 jury is not to be misled by that.

4 THE COURT: Okay. While I'll overrule -- I'll overrule
5 it. I know what you're -- and I understand what you're
6 concerned about, but in this instance, I would certainly
7 overrule that.

8 And I would just ask the -- and I guess it's your style.
9 Just be careful how many facts you put into your questions,
10 please. Having said that. I certainly want you to be able
11 to ask your questions.

12 MR. CLEVELAND: Thank you.

13 Q. Were you ever present at any point in time when your
14 husband either said or mouthed the offensive term of sand
15 N-word to Mr. Rashtchian?

16 A. No. My husband, no.

17 MR. STUCKEY: Your Honor, I would ask for the same
18 curative instruction. He's trying to testify. He's trying
19 to introduce, as best he can, very prejudicial things that
20 are nonexistent and are nonexistent as testified to by the
21 witness, and Mr. Cleveland just keeps doing it, and it's
22 misleading and confusing to the jury, and I would submit -- I
23 would ask you to give a curative instruction and ask the
24 ladies and gentlemen of the jury to please disregard all this
25 testimony or purported testimony by Mr. Cleveland.

1 THE COURT: Very well, thank you. Overruled. You may
2 proceed.

3 Q. You do admit that you were present when your husband
4 referred to Mr. Rashtchian as a goddamn Iranian, don't you?

5 A. Yes. I was outside when the police were at our
6 property.

7 Q. And you were there during the incident and you heard
8 your husband say that, correct?

9 A. Yes, he said that -- something to the effect that I'm a
10 GD veteran and he is a GD Iranian, yes.

11 Q. And the damages that you're claiming in the lawsuit that
12 we looked at a moment ago, those are the same or similar
13 damages that you're claiming in this lawsuit?

14 MR. STUCKEY: That speaks for itself, Your Honor, the
15 document that Mr. Cleveland has offered.

16 THE COURT: Sustained.

17 Q. Now, on the day of the incident in this case, you were
18 not outside initially; is that correct?

19 A. That is correct.

20 Q. But you prepared a statement for Lance Johnson some two
21 years later; is that correct?

22 A. Yes.

23 Q. June of 2013 to be more specific?

24 A. Right, on his request, yes, I did.

25 Q. And in the statement, you indicated that a red truck

1 went into the Rashtchians' yard before the incident occurred;
2 is that correct?

3 A. That's what Lance told me.

4 Q. And since you were not outside at that time, you don't
5 know whether or not your husband motioned and directed the
6 red truck to go around the landscaper's truck into the
7 Rashtchian yard, do you?

8 A. I was not present at that time, no.

9 MR. STUCKEY: Same objection, Your Honor. Request a
10 curative instruction. Counsel's testifying, attempting to
11 testify.

12 THE COURT: Very well, thank you, sir. Overruled.

13 Q. And Plaintiffs' counsel asked you on direct about the
14 claims that you're making in this lawsuit, what it is that
15 you claim was said. Are you still making a claim that you
16 were called a racist or that your husband was called a
17 racist?

18 MR. STUCKEY: Objection.

19 THE COURT: Very well. Do you want me to -- come here.
20 Let me talk to you about that.

21 (Judge and attorneys confer.)

22 THE COURT: Ladies and gentlemen, there's been an
23 objection to the last question. I have sustained the
24 objection for this reason: As you are aware, based upon the
25 opening statements, there were certain statements, certain

1 allegations of defamation.

2 One of the allegations of defamation is no longer in the
3 case. You need not concern yourself with it. Don't concern
4 yourself with the reasons behind it, but it is no longer in
5 the case, and that is the allegation of statements made
6 regarding someone being a racist, and that particular
7 allegation is no longer in the case.

8 The allegations that do remain are the allegations
9 regarding the statements regarding -- the alleged statement
10 regarding stealing a company or in-laws' company and the
11 unchasteness or lack of faithfulness or however it's been
12 described. And as you are aware at this point, those two
13 statements remain. The third does no longer remain -- is no
14 longer in this case. And on that basis, I have sustained the
15 objection.

16 You may proceed.

17 MR. CLEVELAND: Thank you, Your Honor.

18 Q. During this incident your husband used profanity; is
19 that correct?

20 A. I believe he did.

21 Q. And that included using the F-word; is that correct?

22 A. I believe he did once or twice maybe.

23 Q. I just want to make sure I understand your testimony.
24 You say "maybe." Can you affirmatively state for this jury
25 that your husband used the F-word during this incident?

1 A. Yes.

2 Q. And, in fact, when he said it, did he say it in a nice,
3 soft gentle voice or did he say it in a loud, angry voice?

4 A. He was upset.

5 Q. Was it loud?

6 A. I would assume it was semi loud, yes.

7 Q. And it was angry?

8 A. It was defensive.

9 Q. And were you -- did you see spit hitting Ms. Rashtchian
10 while he was yelling?

11 A. No.

12 Q. And you used profanity during this incident as well,
13 didn't you?

14 A. I may have said where are you getting this S-H-I-T from,
15 but that's it.

16 Q. And did you use the F-word?

17 A. No, sir.

18 MR. CLEVELAND: Your Honor, may I open her deposition?

19 THE COURT: You may.

20 Q. And if I could get you to turn to Page 22 of your
21 deposition.

22 A. Yes.

23 Q. Line 9.

24 A. I'm sorry, what?

25 Q. Line 9, please.

1 A. Yes.

2 Q. "QUESTION: And did you hear your husband use any
3 profanity at any point?"

4 "ANSWER: Yes. He said words like 'bullshit' and I'm
5 sure he said 'F you' to him. I think I even swore once to be
6 honest saying, 'What is wrong with you people?' I used the
7 F-word in there maybe because it was unbelievable. It was
8 just unbelievable, so I -- everyone was quite upset,
9 clearly."

10 Was that your sworn testimony?

11 A. Yes, that's what it says.

12 Q. And was the gentleman that we saw earlier this
13 afternoon, Stephon Johnson, was he present when you were
14 dropping the F-bomb during this incident?

15 A. Well, I said I used the F-word in there maybe, so he was
16 present there, yes, and he may have heard me say S-H-I-T,
17 yes, maybe.

18 Q. Okay. But while you were using this profanity, did you
19 say it in a nice, calm, low voice?

20 A. I was very upset. I was not yelling. I was crying.

21 Q. But did you say it in a loud voice?

22 A. No.

23 Q. And this incident ended up in Flud Street; is that
24 correct?

25 A. Yes, sir.

1 Q. Do you admit going into the Rashtchians' driveway to
2 confront Mr. Rashtchian?

3 A. I never left Flud Street except to return back to my
4 property.

5 Q. Do you admit that all the landscapers were laughing
6 during this incident?

7 A. No, I do not admit that.

8 Q. I'm going to hand you your second deposition.

9 (The Court's Exhibits 12-13 marked for identification.)

10 Q. If I could get you to turn to Page 18, please.

11 A. Yes.

12 Q. Page 18, Line 17:

13 "QUESTION: Now, during the incident, Mr. Lance Johnson
14 and his other crew members were laughing; is that correct?"

15 "ANSWER: Yes, but it wasn't like -- it wasn't laughing .
16 like amusing, it was laughing like shake your head, this is
17 crazy, I've never seen anything like it, that kind of
18 laughing, like" --

19 Was that your testimony?

20 A. Yes, that's correct.

21 Q. So you do admit they were all laughing?

22 A. Yes. To me the laughter wasn't laughter like it was
23 amusing. It was laughter like it was unbelievable.

24 Q. And once again, you did not call the police on April
25 26, 2011?

1 A. No, I did not.

2 Q. You waited two weeks later after you'd already spoken to
3 your attorney?

4 A. That is correct.

5 Q. And you waited until the landscapers were back at your
6 house?

7 A. It was recommended, yes.

8 Q. And that was so that you could assist them with their
9 statements; is that correct?

10 A. I did not assist them with their statements.

11 Q. Well, you actually typed out a three-page statement for
12 Lance Johnson some two years after the accident, right?

13 A. He asked me to, but you -- to answer your question, it
14 was -- that day I did not assist them when the police were
15 there.

16 Q. And you would agree that the police did not come to your
17 home on the day of the incident?

18 A. Yes.

19 Q. So you heard Mr. Stephon Johnson's testimony this
20 morning or this afternoon about the police coming to the
21 house that day of the incident. You disagree with that?

22 A. Yes, I believe he was confused, yes.

23 Q. And you told the officer when you spoke to him some two
24 weeks or so after the incident in this matter that you
25 planned to file a lawsuit.

1 A. Is that a question?

2 Q. Yes.

3 A. Okay. I don't recall telling him that I planned to file
4 a lawsuit. I believe he told me that it was a civil matter.

5 MR. CLEVELAND: I would object to the hearsay, Your
6 Honor.

7 THE WITNESS: Okay. I was told that it was a civil
8 matter, and I told him that I understood that it was a civil
9 matter.

10 Q. And you've not called the police relating to Mr. and
11 Mrs. Rashtchian for any reason since you called the police
12 back on May 10, 2011; is that correct?

13 A. Have I called the police? No, I have not. I have filed
14 a report with the police on the Rashtchians.

15 Q. And the statement that you gave on May 10, 2011, doesn't
16 say that there's any claim that you're cheating on your
17 husband, does it?

18 A. I don't have it in front of me.

19 Q. I think it's attached to your first deposition. It
20 looks like 36 and 37 are the two exhibits.

21 A. Yes. Actually, it's hard to read my own writing. I was
22 so upset. It says that people sneaking in our house when my
23 husband is out of town.

24 Q. But it doesn't use the word "cheat," does it?

25 A. No, I told you I was pretty much ranting in my

1 statement.

2 Q. Well, let's look up at the top of the statement. This
3 was May 10, 2011; is that correct?

4 A. Yes.

5 Q. And the incident occurred on April 26, 2011, so this
6 would have been about two weeks later?

7 A. Yes.

8 Q. But you say that you were so upset that your
9 handwriting's so bad that you can't really read it?

10 A. Yes, sir, I'm still upset.

11 Q. And in your statements that you provided to the officers
12 two weeks after this incident, you didn't include anything in
13 that about you and your husband using profanity at the time
14 of the incident?

15 A. I assume not, if you're asking me, because we weren't
16 in -- anywhere near as profane as they were. I mean, they
17 were just nonstop with their profanity. And so if I --
18 that's really all I was talking about is what they did to us,
19 not -- I mean, that's what my statement was. This is the
20 incident that occurred.

21 Q. I just want to make sure that I understand, then. You
22 admit that you did not put in your statement to the police
23 two weeks after the incident that you and your husband used
24 profanity?

25 A. No, I did not.

1 Q. Once again, the reason being that you were preparing
2 that so that you could file this lawsuit a couple years
3 later?

4 A. No, sir.

5 Q. And your husband didn't even prepare a statement at all
6 when the police were called two weeks after the incident; is
7 that correct?

8 A. I know he spoke to the officer. There was two officers,
9 and he spoke with both of them.

10 Q. And he did not prepare a written statement that we could
11 see here today; is that correct?

12 A. No, I -- no.

13 Q. That's a correct statement?

14 A. Yes. I'm sorry, that is a correct statement.

15 Q. You would agree that the statement that you gave to the
16 police, handwritten, two pages two weeks after the incident
17 is not nearly as long or detailed as the statement that you
18 prepared for Lance Johnson two years later?

19 A. That's correct. Well, no, they're all -- everything is
20 in there. It's just -- just typed as compared to
21 handwritten. I mean, the essence of everything that would
22 happen that day is in my handwritten statement.

23 Q. And moving on to two years or so, June of 2013, you
24 spoke with Lance Johnson for 25 or 30 minutes, you claim,
25 before preparing that statement?

1 A. That is correct.

2 Q. And you put at the top of the pages, "Confidential and
3 Privileged Information for Lance Johnson"; is that correct?

4 A. Correct.

5 Q. Privileged. Now, how would you have any type of
6 privilege with Lance Johnson?

7 A. I wouldn't. It was --

8 Q. He's not an attorney, is he?

9 A. No, he's not.

10 Q. Not a priest?

11 A. No.

12 Q. Now, as far as confidential information for
13 Lance Johnson, why did you mark it confidential?

14 A. I believe I did that -- I honestly am not sure why I
15 wrote it that way. I --

16 MR. STUCKEY: Your Honor, she consulted an attorney.
17 She's talked about the attorney and what she did in reliance
18 with the attorney and so forth. And I guess Mr. Cleveland is
19 attempting to invade the attorney-client privilege as to what
20 my client told her then attorney, and we would object to it.

21 MR. CLEVELAND: And I would object to speaking
22 objections, Your Honor, and leading.

23 THE COURT: All right. Let me hear the question. I was
24 pulling something up at that moment. Let me hear that again.

25 Don't answer until I've had a chance to hear his

1 question.

2 Q. At the top of the three pages that you gave to
3 Mr. Lance Johnson, you put "Confidential and Privileged
4 information for Lance Johnson"; is that correct?

5 A. Yes.

6 Q. And we've already established that you have no privilege
7 with Mr. Johnson. So now I want to ask you about why did you
8 put at the top of Mr. Johnson's statement that it was
9 confidential?

10 MR. STUCKEY: Well, I think, Your Honor, if her answer
11 is that it was based on --

12 MR. CLEVELAND: I would object to the leading, Your
13 Honor.

14 MR. STUCKEY: I mean, he's asked her --

15 THE COURT: I understand. I get it. I get the concern.
16 She can answer it. Given what you're concerned about, I
17 don't think it will invade anything. She can certainly give
18 her reason in general terms why.

19 MR. STUCKEY: May I make a speaking objection to that?

20 THE COURT: Come here.

21 MR. STUCKEY: Your Honor, maybe he can rephrase the
22 question. Maybe if he would rephrase the question was it
23 based on --

24 (Judge and attorneys confer.)

25 THE COURT: Answer.

1 THE WITNESS: I wanted Lance to understand that this
2 information was going to be transferred to my attorney and
3 that it wasn't going to be just sent out to anyone. It was
4 going to be used for my attorney.

5 Q. So once again, and once again, that wasn't Mr. Stuckey;
6 is that correct?

7 A. It was Mr. Burke.

8 Q. It was another attorney?

9 A. Mr. Burke.

10 Q. Okay. So we've talked now about at the top of the
11 three-page statement for Mr. Lance Johnson, you put
12 "Confidential and Privileged information for Lance Johnson."
13 I want to talk about that third word now, which is
14 "information." Why did you put "information" as opposed to
15 statement of Lance Johnson?

16 A. Sir, I don't know. There was no intent behind this
17 document other than to collect a statement.

18 Q. You would agree that putting information for
19 Lance Johnson at the top of the three pages makes it sounds
20 like you were providing him with information?

21 A. It may appear to look like that, but that's not what
22 occurred.

23 Q. And the statement was also written from your point of
24 view; is that correct?

25 A. In some circumstances, yes. It was -- after talking

1 with him for 25 minutes, it kind of brought everything to the
2 surface again. Sometimes what I remembered was put in there,
3 but it was based on everything that Lance and I discussed
4 together and he recalled.

5 Q. And one of the things that you included in the statement
6 that you prepared for Mr. Johnson was that you had requested
7 a plat from the Town of Summerville engineers office; is that
8 correct?

9 A. Yes.

10 Q. But you and your husband are the ones that requested the
11 plat from the engineers office, aren't you?

12 A. That is correct. As I told you, some of this in the
13 beginning was just based on what I was told, and it was just
14 information. Lance read it. He understood that. The rest
15 of it, where it talks about people and what they were doing,
16 that's what Lance told me.

17 Q. Okay. So just make sure we're following you then, Lance
18 did not, to your knowledge; seek and request a plat from the
19 Town of Summerville planning department?

20 A. That is correct.

21 Q. But you put that in the statement?

22 A. It was based on our conversation, and that was part of
23 our conversation because he couldn't understand why
24 Mr. Rashtchian was so concerned about the grass. And we were
25 explaining that we didn't understand the situation at all, so

1 we just did some research to find out the situation. That's
2 all.

3 Q. And you didn't put in the three-page statement that you
4 prepared for Lance Johnson that all the landscapers were
5 laughing during the incident?

6 A. Well, he didn't tell me that. I think he was being
7 sensitive to the fact of how upsetting this was and is to me.

8 Q. Well, you attended Lance Johnson's deposition when I
9 finally had a chance to take his deposition, didn't you?

10 A. Yes, I did, but this was before that.

11 Q. You remember him testifying in the deposition that all
12 the landscapers were laughing --

13 MS. LIETZOW: Your Honor, pitting witnesses against one
14 another.

15 THE COURT: Sustained.

16 Q. You said that you prepared the statement because you
17 needed a statement from witnesses, but you've attended two
18 different depositions yourself to give sworn testimony in
19 this case; is that correct?

20 A. I've attended, yes, sir.

21 Q. Your husband's attended two depositions to give sworn
22 testimony in this case?

23 A. That's correct.

24 Q. Lance Johnson attended his deposition when we noticed it
25 to give sworn testimony; is that correct?

1 A. Yes, sir.

2 Q. Because you were present for it?

3 A. That's correct.

4 Q. And when we took your deposition that first time back on
5 November 25th, 2013, that would be five months after you
6 obtained the statement from Lance Johnson, you didn't tell us
7 about your 25- to 30-minute meeting with him or preparing a
8 statement for him, did you?

9 A. No, I did not.

10 Q. And of course you were under oath to tell the truth
11 during that deposition as well; is that correct?

12 A. Yes, but you didn't ask me that question.

13 Q. If I could get you to turn to Page 71 of your
14 November 2013 deposition.

15 A. Yes.

16 Q. Beginning on Line 16:

17 "QUESTION: And have you had any communication with
18 Lance Johnson since the incident of April 26, 2011?"

19 "ANSWER: A couple of times he's done some flower work
20 since then, yes."

21 Was that your sworn testimony?

22 A. Yes.

23 Q. Next question: "And have you had any discussions about
24 the April 2011 incident?"

25 "ANSWER: The only time I spoke to him about it was that

1 same day, and then two weeks later when he came back to
2 finish his work and we, you know, explained that we were
3 going to call the police. And he said, 'Absolutely, what
4 they did was wrong, you know, I'll fill out a report saying
5 what I saw.' And that's it. You know, it's quite
6 embarrassing to me. It's not a subject that I bring up to
7 people?"

8 Was that your sworn testimony?

9 A. Yes, it was. If you recall, it was a very long day, and
10 I understood the question as I answered it.

11 Q. If I could get you to turn to Page 5 of your deposition.

12 A. Yes.

13 Q. Page 5, Line 5:

14 "QUESTION: As I ask you questions today, if you don't
15 understand a question or if you need me to repeat or rephrase
16 a question, please ask me and I'll be happy to do so. When
17 you do respond, if you would, please say "yes" or "no" rather
18 than shaking your head or saying "uh-huh" or "uh-uh" so that
19 we have a clear record. If you need to take a break at any
20 point today, please let us know. We'll be happy to
21 accommodate you on that."

22 "ANSWER: Uh-huh."

23 Was that your response?

24 A. Yes, it was.

25 Q. Next question: "We probably will ask you to respond to

1 whatever the last question was before we take a break. Is
2 there any reason why you cannot give truthful testimony
3 today?"

4 "ANSWER: No."

5 Was that your sworn testimony?

6 A. Yes.

7 Q. Next question: "If you do respond to our questions,
8 then we will assume that you heard them, you understood them
9 and that you're answering truthfully; is that fair?"

10 "ANSWER: Correct, uh-huh."

11 Was that your sworn testimony?

12 A. Yes, sir. And I answered your question as I understood
13 it.

14 Q. Once again, you did not tell us about the statement that
15 you obtained from Lance Johnson in June of 2011 when we took
16 your deposition in November of 2011; is that correct?

17 A. No, I had forwarded it to our attorney. I assumed that
18 he had forwarded it to you.

19 Q. In your sworn testimony in your deposition, you did not
20 tell us about your conversation with Lance Johnson in June of
21 2011 or the statement that you prepared for him; is that
22 correct?

23 A. Yes, I answered your questions.

24 Q. I just want to make sure that I understand. You did not
25 tell us about the 25-minute conversation that you had with

1 Lance Johnson when we took your deposition in November of
2 2013?

3 MR. STUCKEY: Asked and answered.

4 THE COURT: Sustained.

5 Q. And you and your husband did not ever provide us with
6 the statement from Lance Johnson from June of 2013; is that
7 correct?

8 A. My understanding is I'm not allowed to produce anything
9 to you. It has to go through my attorney, so that's what we
10 did.

11 (Defendant's Exhibit 11 marked for identification.)

12 Q. Mrs. McFarland, I'm handing you now Defendants' Exhibit
13 No. 11.

14 A. Mm-hmm, yes.

15 Q. Would you agree that those are entitled "Plaintiffs'
16 Responses to Defendants' Requests for Production"?

17 A. Yes.

18 Q. And that has your and your husband's name as plaintiffs
19 versus my clients on the caption; is that correct?

20 A. That is correct.

21 Q. And if you would, turn to the back of the responses to
22 get the date that these responses were provided. And if you
23 look at the certificate of service, which is about --

24 A. I have it.

25 Q. Well, actually, it's dated by your attorney on Page 3 as

1 November 8, 2013?

2 A. That is correct.

3 Q. Okay. And once again, the deposition was taken
4 November 25th, 2013, so just some two weeks later?

5 A. Yes.

6 Q. Okay. And flip through those documents that were
7 produced and tell me, do you see the three-page typewritten
8 statement from Lance Johnson that you have testified you
9 prepared in June of 2013?

10 A. Right. No, sir. It's not here. I had given it to my
11 attorney, and I don't know why he didn't include it in this
12 packet to you. He prepared this.

13 Q. And once again, you did not share with us in your
14 deposition that the responses were incomplete?

15 A. I don't even know if I looked at these. We hired an
16 attorney and gave him the appropriate paperwork. It was up
17 to him to handle it.

18 Q. Now, the lawsuit that we looked at earlier that you
19 signed, you did actually read that before filing that
20 lawsuit?

21 A. Yes, because it was presented to me, yes.

22 Q. And you would agree that your statements to the officer
23 didn't include mentioning anything about Ms. Rashtchian
24 touching Bill?

25 A. My statement -- no. No, sir. I said it wasn't a

1 complete statement, that there was just too much happening
2 that day to put it on all on paper.

3 Q. Just to make sure the jury follows that then, the
4 statement you provided two weeks after the incident in this
5 case after you had spoken with your attorney, you put at the
6 bottom of it, "Not a complete statement"?

7 A. Yes, because it wasn't.

8 Q. Now, you're not aware of anyone else claiming that you
9 or your husband are racist; is that correct?

10 MR. CLEVELAND: Actually, I withdraw that, Your Honor.

11 MS. LIETZOW: Objection, Your Honor. Thank you.

12 THE COURT: Okay.

13 Q. And you and your husband are not members of any social
14 organizations; is that correct?

15 A. No, we're not.

16 MR. STUCKEY: I'm sorry, any what?

17 MS. LIETZOW: Social organizations.

18 MR. STUCKEY: Social organizations. I'm sorry.

19 Q. And your husband's work is all out of town; is that
20 correct?

21 A. Yes.

22 Q. And you haven't seen a doctor or counselor; is that
23 correct?

24 A. No.

25 Q. And you're not making any claim for lost wages or

1 anything like that?

2 A. No.

3 Q. That's a correct statement?

4 A. I'm not making any claims for lost wages.

5 Q. Thank you.

6 And no one's told you that they've heard anything about
7 you either stealing money or being unfaithful; is that
8 correct?

9 A. No one has told me that? That is a correct statement, I
10 guess.

11 Q. Once again, no one else has ever claimed that you were
12 unfaithful to your husband?

13 A. No.

14 Q. And you would agree that you do have visitors to your
15 home when Mr. McFarland's out of town?

16 A. Occasionally, yes.

17 Q. Your daughter has friends over?

18 A. Yes.

19 Q. Back during the time of this incident?

20 A. Yes, she would have her girlfriends over, yes.

21 MR. CLEVELAND: I believe those are all the questions I
22 have right now, Your Honor. Thank you.

23 THE COURT: Okay. Redirect?

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

25 REDIRECT EXAMINATION BY MR. STUCKEY:

1 you turn over the Lance Johnson document to him?

2 THE WITNESS: Yes.

3 Q. Now, going back, you were asked, Jennifer, about the
4 Summerville Police Department. I don't think these were
5 marked into evidence, but I believe Mr. Cleveland marked them
6 for identification. Do you have the two-page Summerville
7 Police --

8 A. Do I have them? Yes, I believe they're in here.

9 Q. Now, this statement seems -- these statements seem to
10 be -- they're one statement, right?

11 A. Yes.

12 Q. Run together?

13 A. They were given on the same day.

14 Q. On two pages?

15 A. Mm-hmm.

16 Q. And they're written in your handwriting?

17 A. Yes, sir.

18 Q. Okay. And go to the first page, if you would, please,
19 and go down.

20 A. Sorry. I'm sorry. Go ahead.

21 Q. Go down to Line 4 that begins, "Started screaming
22 profanities." Do you see that?

23 A. Yes.

24 Q. And who started screaming profanities?

25 A. The Rashtchians.

1 Q. Okay. And it says, quote, and would you pick that up,
2 please, since it's your handwriting and you can interpret it
3 better than I?

4 A. "I know you. I know all about you. F you. You are an
5 A-hole" --

6 Q. Okay. That's fine. That's fine.

7 And then skip down about three lines below that, and the
8 part that says, quote, You stole. And would you read that,
9 please.

10 A. Oh, "You stole your business and money. You have people
11 sneaking in your back when you're out of town."

12 Q. Okay. And that was referring to -- who did you purport
13 said that?

14 A. Rashtchian said that. Mr. Rashtchian said that.

15 Q. Okay. And then if you skip down when it begins the
16 second paragraph from the bottom which says, "wife," starting
17 off "wife." What does that say?

18 A. "Wife screaming at me, 'Bitch, let's make it fair.'"

19 Q. And that was in reference to whom?

20 A. Mrs. Rashtchian.

21 Q. Okay. In the middle of -- well, let's see. Down at the
22 bottom about, "You're" or "You're not." What does that say?

23 A. It says, "You're not allowed to use this street. You
24 need to move."

25 Q. And who said that?

1 A. Both of them.

2 Q. And the street was referred to and when you wrote the
3 statement referred to what street?

4 A. Flud Street.

5 Q. Flud Street?

6 A. Correct.

7 Q. Okay. And the second -- the beginning of the first page
8 said, beginning, "They," would you read that to us, please.

9 A. "They attacked us viciously, unprovoked. They used
10 extreme profanity and threats and made false accusations."

11 Q. Okay. And then down, the paragraph down below that
12 beginning, "They told us."

13 A. Right. "They told us we were not allowed to use our
14 fence. We were not allowed on Flud Street."

15 Q. And the sentence below that.

16 A. "They told us they would not back off until we moved."

17 Q. Okay. And the sentence below that beginning, "They."

18 A. "They said that we had people sneaking in our house when
19 my husband was out of town."

20 Q. And what was the sentence above that that you --

21 A. Oh. "They said that my husband was a racist. They said
22 that my husband stole all his business and his money."

23 Q. Okay. Down below, "They said my" -- beginning, "They
24 said my husband stole..." what?

25 A. All his business and money.

1 MR. STUCKEY: Your Honor, could I move to strike a
2 portion of something that she just read into it? I was
3 reading in more into the statement than I -- than I could
4 read.

5 THE COURT: There's no objection. It's in. It's in.

6 MR. STUCKEY: Okay. That's fine.

7 Q. You were asked, Jenn, about the goings-on out on Flud
8 Street?

9 A. Yes.

10 Q. And Mr. Cleveland asked you did your husband
11 Bill McFarland, did he say the F-word? And I believe you
12 said that he did.

13 A. He did.

14 Q. Okay. And he asked you did you say it -- did he say it
15 as loud as Mr. Rashtchian did. And did he or did he not?

16 A. No, not as loud as Mr. Rashtchian. They were very loud.

17 Q. Okay. And you asked the clarification that you said you
18 may have dropped -- maybe that you dropped the F-word but
19 that at that time you -- what was your condition?

20 A. I was very upset and I was crying. I just didn't
21 understand why they were doing it.

22 Q. Okay. So is it fair to say at that point you weren't
23 really clear whether you would have participated with the
24 F-word or not because you were both upset and crying; is that
25 right?

1 A. Correct. I don't normally use that word, so I -- it
2 wouldn't have been in my nature to do it naturally.

3 Q. Now, Mr. Cleveland had asked you, "Has anyone told you
4 that you are unfaithful?" Wasn't that his question?

5 A. Yes, he did.

6 Q. Anybody told you that?

7 A. No.

8 Q. Now, you mentioned that your friend Karen Evans, who is
9 the wife, I believe you said, of Dr. Evans who was social
10 friends of you all; is that right?

11 A. Correct.

12 Q. Okay.

13 A. Yes.

14 Q. Okay. Has Karen ever come to you and said, "Jenn, are
15 you unfaithful?"

16 MR. CLEVELAND: Object to the leading, Your Honor.

17 THE COURT: Sustained.

18 MR. CLEVELAND: And hearsay.

19 THE COURT: Yes.

20 Q. And if anybody had asked you that, your answer would
21 have been what?

22 A. No.

23 MR. STUCKEY: Your Honor, that's all we have.

24 THE COURT: All right. Recross.

25 MR. STUCKEY: Let me see, we would move the police

1 statements into evidence, Your Honor. She's been asked about
2 those. We might want to redact certain portions of them.

3 MS. LIETZOW: We can do it outside the presence of the
4 jury during our break.

5 THE COURT: Well, it's been offered with -- I gather you
6 offer it as redacted, yes?

7 MR. STUCKEY: Yes.

8 THE COURT: Okay. I'll need to deal with that.

9 MR. STUCKEY: Because I think Mr. Cleveland just marked
10 them for identification, I believe.

11 MR. CLEVELAND: I think they were attached to the
12 deposition the witness has.

13 THE COURT: Well, we'll mark them now for identification
14 purposes. And if you wish to move them in redacted, then
15 we'll do that outside of the presence of the jury, and I'll
16 rule on them then.

17 MR. CLEVELAND: I'll be brief, Your Honor.

18 THE COURT: All right.

19 RECROSS-EXAMINATION BY MR. CLEVELAND:

20 Q. Ms. McFarland, the statement that you provided to the
21 police two weeks after this incident did not include any
22 statement that you and your husband both used profanity; is
23 that correct?

24 A. I answered that. No, it does not.

25 Q. And specifically including it doesn't indicate in the

1 statement you provided to the police two weeks after the
2 incident that you and your husband both used the F-word?

3 MS. LIETZOW: Asked and answered.

4 THE COURT: That is a little bit different.

5 Cross-examination. You may answer.

6 THE WITNESS: No, sir.

7 Q. And during this incident that occurred, do you admit
8 that you and your husband said to the Rashtchians, "We know
9 all about you"?

10 A. No, we do not admit that, or I do not admit that.

11 Q. And you were present when Mr. Burke took the depositions
12 of my clients, correct?

13 A. Yes.

14 Q. Mr. Burke seemed to understand that if he needed a
15 statement from somebody that he could schedule their
16 deposition?

17 MS. LIETZOW: Objection, Your Honor. Speculation.

18 THE COURT: Sustained.

19 Q. And when Mr. Stuckey was asking you questions a few
20 moments ago concerning that three-page statement that you
21 prepared for Mr. Johnson, he referred to it as saying up at
22 the top "Confidential and Privileged Statement for
23 Lance Johnson," but that isn't what it says, is it?

24 A. No.

25 Q. It actually says, "Confidential and Privileged

1 Information for Lance Johnson"; is that correct?

2 A. Yes.

3 Q. And Mr. Stuckey had you read the response to Request to
4 Production No. 10, saying all the responsive documents are
5 attached, however, we object to anything to the extent that
6 it's attorney-client or work-product privilege.

7 To your knowledge is Mr. Lance Johnson represented by
8 Mr. Burke?

9 A. No, but I believe it may fall under work product.

10 Q. You're not a lawyer, are you?

11 A. No, sir.

12 MR. CLEVELAND: Okay. Thank you so much, ma'am.

13 THE COURT: Okay. You may come down.

14 Please call your next witness.

15 MR. STUCKEY: We've got one witness, Your Honor,
16 probably take, my part of it, ten minutes.

17 THE COURT: Good. I need to see -- while that witness
18 is coming, let me see you all quickly.

19 (Judge and attorneys confer.)

20 THE COURT: Please step to your jury room. Do not
21 discuss this matter. Don't allow anyone to discuss it with
22 you. When you have had your comfort break, knock on the door
23 and return, okay? We will take as long as you all need and
24 no longer.

25 (The jury retires to the jury room at 4:36 p.m.)

1 retired last year, and I guess the bailiffs have tried to
2 determine who's responsible. Irene is now, for all times,
3 responsible for the breakfast.

4 So Irene has planned for you biscuits and donuts,
5 because I heard somebody wanted donuts and somebody wanted
6 biscuits. So Ms. Irene is getting both. So, yes, don't
7 anybody have a blood test tomorrow or Friday, because I don't
8 know why where your cholesterol will be. But tomorrow
9 morning you're going to have biscuits and donuts.

10 And I apologize you didn't have them this morning, but
11 Ms. Irene hasn't been designated, but now she is designated.
12 So from your jury panel forward, they will all be fed well.
13 Thank you, Ms. Irene.

14 So ladies and gentlemen, let me ask you, let me ask this
15 question of you, and I'm going to take a poll: Those of you
16 who would like to begin at 9:00, raise your right hand.
17 9:30?

18 9:00 in the morning. Very well.

19 (The jury retires to the jury room at 5:04 p.m.)

20 THE COURT: All right. Now, you wanted to talk about
21 the deposition.

22 MS. LIETZOW: Yes. Your Honor, the way that this -- we
23 did this, we had previously submitted the page and lines for
24 the video deposition of defendant Mr. Rashtchian. And we had
25 a video made to that effect. In response we received an

1 email with the page and line designations from plaintiff that
2 they wanted included pursuant to Your Honor's order
3 yesterday.

4 We redid the tape or the disc with both requests sort of
5 meshed together. I had an opportunity -- it's currently 33
6 minutes. I had an opportunity during the lunch break to
7 watch it. Pursuant to Your Honor's ruling earlier today and
8 the dropping of the allegation of racism, I believe that
9 could be pared down, and so we can certainly do it tonight.

10 I have two forms. I have a form where it plays
11 continuously, but the one I actually think we ought to use is
12 the disc where the individual clips are numbered, so
13 individually they can be played, which makes eliminating one
14 or two much easier. Rather than pausing and fast-forwarding,
15 we can just get rid of a clip, if that makes any sense.

16 THE COURT: Yes, it does.

17 MS. LIETZOW: So I have them. I could hook up the
18 laptop. I can show you which ones we're talking about. Or
19 it may be easier just to look at the transcript. If you have
20 a copy of the deposition handy --

21 MR. CLEVELAND: I do.

22 MS. LIETZOW: -- I don't know we've opened one yet
23 for --

24 THE COURT: This is the way that I think we should
25 proceed is that you all should look at them and then you

1 should look at them, because yours were in response to what
2 they wanted. Look at what they want and then your response
3 and see if you can't go from that.

4 MS. LIETZOW: Sure. And that should be easy enough. I
5 have them already typed or written out the reasons why I
6 think they're maybe no longer relevant. And so maybe
7 tomorrow morning the first thing we can do is confirm that we
8 agree on the particular clips. Any ones we disagree on, we
9 could address with the Court.

10 I don't think we need to go to the expense of making an
11 additional disc. I'll just not play certain ones.

12 THE COURT: I'm okay with that. Are you okay with that?

13 MR. CLEVELAND: That sounds reasonable, assuming that
14 the tapes are all such that we don't need to just play half
15 of one. I don't know exactly what the situation is.

16 MS. LIETZOW: And, yes, Your Honor, that would be --
17 some of them I think could be taken out in their entirety.
18 And that could be easily addressed with opposing counsel.
19 There is one clip in particular that I have some concerns
20 about. It would be Clip 10, and the note I have written down
21 is mix, because part of it has to do with the racism, and
22 part of it has to do with being a shoddy contractor.

23 So it's a soliloquy that goes on between I guess
24 it's David -- Mr. Burke, Attorney Burke at that time and the
25 defendant. That one would be difficult. I believe our

1 position, I haven't heard it from Mr. Stuckey yet, would be
2 that we could just not include that one. I think we would be
3 fine withdrawing it completely. I obviously don't know what
4 Defendants' position would be on that. The rest, though, I
5 think we'd be able to address in their entirety.

6 There's only one where it's -- it plays for several
7 pages worth, and within those pages are lines, and it sort of
8 jumps around, so it would be difficult. That's the only one
9 clip, I believe it's Clip 10, would be difficult to play,
10 pause, stop, fast-forward, play, fast-forward.

11 But, of course, I would be happy to detail out and
12 itemize this evening the clips that we have and what I think
13 we should now withdraw pursuant to the rulings and how we
14 wish to proceed.

15 MR. CLEVELAND: I just need something in writing so that
16 I can look at the deposition transcript, follow it and then
17 have a response.

18 THE COURT: Gotcha. And you all can just send that back
19 and forth by email this evening.

20 MS. LIETZOW: Yes.

21 THE COURT: So we don't keep court personnel, but I want
22 to see you all for just a few.

23 MR. STUCKEY: Your Honor, one quick matter, 20 seconds.
24 We were going to offer this in our case in chief.

25 THE COURT: Okay.

1 MR. STUCKEY: About 13 minutes. Mr. Cleveland wanted to
2 add an additional 21 minutes, and I just think he ought to
3 pay the cost of what he's got.

4 THE COURT: Gotcha.

5 MR. STUCKEY: Thank you.

6 (Trial of the case adjourned at 5:10 p.m.)

7 (Trial of the case resumed on 12/11/14 at 10:30 a.m.)

8 THE COURT: All right. We've got to go over the video
9 clips, and I have had a chance to review them, and except as
10 to the very last one, but let me -- No. 5, excuse me,
11 Page 43. Now, on Page 43, 14 through 25 is fine. 1 through
12 22 is fine on Page 44.

13 MR. CLEVELAND: I'm sorry, Your Honor. I'm looking once
14 again. We had requested that Page 43 --

15 MS. LIETZOW: David, your request starts at Line 16, but
16 when I played the video yesterday for this purpose, I saw
17 that the videographer picked up on 14 --

18 MR. CLEVELAND: Fair enough. Thank you. That was my
19 confusion.

20 MS. LIETZOW: Sure.

21 THE COURT: Okay. Page 44, Lines 1 through 22 are fine.

22 MR. CLEVELAND: And, Your Honor, we had requested it go
23 on Page 44, Line 23 through --

24 THE COURT: I know. I know it. 23 begins, the question
25 is okay. That would not be in. 24, 25 on that page or part

1 of really what goes on on Page 45, and 45 is all hearsay. He
2 says -- he says, "They have done a lot of stuff to us or
3 others by coming out seven days a week, blowing their stuff
4 on everybody else's yard" -- please. That's out.

5 And then we go on, "When you talk about you said when
6 you have an issue, you tell him no one in the neighborhood
7 cares for you because of the crap that you do roughly; is
8 that -- the kind of crap you do. When you say no one in the
9 neighborhood cares for you."

10 "Are you talking about the people in Live Oak Village? "

11 "Yes."

12 That just -- that is eliciting hearsay. And as we go
13 right on through, "You have knowledge of issues that the
14 McFarlands have done relating to that neighborhood?"

15 That's eliciting hearsay. After the -- that incident
16 with what they had done with the Mazells, and I knew about
17 all of the stuff he had done with the previous owner of the
18 Knights' house, Pete Knight, all of that is hearsay.

19 MR. CLEVELAND: If I could just state for the record,
20 Your Honor, I understand Your Honor's ruling --

21 THE COURT: Yes.

22 MR. CLEVELAND: -- but we would argue that it's not
23 hearsay because it goes to reputation, which is at issue, not
24 being offered for the truth of the matter asserted.

25 THE COURT: Okay. And Page 46, for the same reason, is

1 out. It's all hearsay and state of mind of other people
2 about who's ready to -- somebody else is ready to move.

3 "I have spoken to" -- you know, all of this hearsay on
4 Page 47 down through 14. "They couldn't take the
5 harassment," talking about other people. You know, it was
6 coming, hammering on them on a daily basis. None of that's
7 relevant. Hearsay. Out. 47 down to 14.

8 And then --

9 MS. LIETZOW: Yes, Your Honor. So that's the totality
10 of Clip 5 that we've just covered.

11 THE COURT: Okay. So what is -- and then No. 48,
12 Page 48, 10 through 24, same thing. What the Mazells knew
13 and hearsay. Out. And then we're onto Page 50.

14 MS. LIETZOW: Your Honor, Clip 7, I believe, starts --
15 yes, 50, Line 16.

16 THE COURT: Mm-hmm. Page 50, Line 16 through Page 51,
17 Line 1 is good, is in. Then Line 2 through -- and all of
18 Page 52, Page 53 to Line 18 are out. Then Line 19 to the end
19 of the page is in. Page 54, 1 through 5 is in. 21 through
20 25 on Page 54 is in.

21 MS. LIETZOW: I'm sorry, Lines 21 to 24?

22 THE COURT: 25 is what I've got, is in.

23 MS. LIETZOW: Okay.

24 THE COURT: 1 through 23 on Page 55 is in. Okay.
25 Page 55 beginning Line 24 through the end of the clip is out.

1 MS. LIETZOW: And that, Your Honor, would be 58,
2 Line 11.

3 THE COURT: Yes. And then --

4 MS. LIETZOW: May we confirm that the two counsels got
5 Your Honor's ruling accurately and correctly?

6 THE COURT: I'm not finished.

7 MS. LIETZOW: Oh, I just meant to that clip.

8 THE COURT: Page 60, 10 through 25 is out. Okay. And
9 that's as far as I've gotten, so I've got to look at Page 63.
10 All right. Then it gets to be very difficult, because
11 with regards to the use of that particular term and the
12 people who heard it, is there anything else about that that
13 you need to tell me today?

14 Is there any -- I guess you could say is there anything
15 else about that that you need to tell me today. I guess the
16 question is -- the answer's not okay. The question's okay,
17 but the answer -- 21, 22, 23, 24 are out. So the question
18 ought to be out too.

19 But you ask it again: "And, again, do you think this
20 happened for the first time shortly after the incident at the
21 Mazells with the survey in July of '09?"

22 That really is duplicative. It's really is out because
23 you've already talked about that.

24 All right. Then you pick up on 64, Line 4 -- or excuse
25 me, Line 5: "How often would you say that this happened over

1 that two-year period?"

2 5 through 15 -- no, I'm sorry, 18. Let me go on. I'm
3 doing this as I sit here.

4 Let me begin anew. 5 on Page 64 through 65, Line 8 is
5 in. 65, Line 18 through 66, 14. Okay. And that's it. It's
6 in. Oh, there's one more, I'm sorry. What?

7 MS. LIETZOW: Yes, Your Honor, Clip 11.

8 THE COURT: Oh, okay. I thought I had done that. Okay.
9 Okay. Let's see. Okay. 75, 5 through 4 is in.

10 MS. LIETZOW: I'm sorry, Line 5 through --

11 THE COURT: Through 4 on 76 is in. Then we pick up
12 Line 5 on 76 through Page 78, Line 3 is out on the basis of,
13 wow, you know, double, maybe triple hearsay. At least double
14 hearsay. Okay. Page 78, 4 through 7 is in, and I think
15 that's it. Is that it?

16 MS. LIETZOW: All right. With the contention, Your
17 Honor -- I think for convenience, what we'll do is we'll read
18 it rather than trying to locate those precise lines on the
19 clips, which I think will be a nightmare to do.

20 THE COURT: Okay.

21 MS. LIETZOW: So I will, with the Court's indulgence,
22 highlight those portions to allow reading.

23 THE COURT: Sure.

24 MR. CLEVELAND: And, Your Honor, may I attach as a
25 Court's exhibit my email to Plaintiffs' counsel --

1 THE COURT: Sure.

2 MR. CLEVELAND: -- concerning the portions we've
3 requested?

4 THE COURT: Sure.

5 (The Court's Exhibit 14 marked for identification.)

6 THE COURT: As you know, our alternate will not be with
7 us tomorrow. I would like him to remain today. I don't know
8 why, I just do. You know, my gut tells me I need him to
9 remain and then we will be excused tomorrow. He's Juror 151,
10 right?

11 THE CLERK: Yes, ma'am.

12 THE COURT: 151.

13 (The jury enters the courtroom at 10:51 a.m.)

14 THE COURT: Good morning. I know you've been in your
15 jury room, but we really have been doing things to try to be
16 more efficient with your time. I do not, I do not think it
17 yet is -- it's time to be making, moving appointments for
18 next week. I really don't. I will let you know when I have
19 reached that point, so ride the lightning with me. Just hang
20 in there.

21 We're bringing lunch in for you today, just so we can
22 limit the time for lunch so that we can keep going. And I'm
23 extracting all the calories. I will take them instead of
24 you. So I do want you to know that we're doing that so that
25 we can be more efficient.

1 Q. And where did you go to high school?

2 A. Goose Creek.

3 Q. Did you graduate from Goose Creek?

4 A. No, sir.

5 Q. Did not?

6 A. No.

7 Q. Okay. How far did you go in high school?

8 A. Eleventh grade.

9 Q. And your reason for quitting in the 11th grade was what?

10 A. Trouble.

11 Q. Okay. And following the so-called trouble, did you go
12 into your work or business?

13 A. Oh, yes, right into my business, yes.

14 Q. Okay. And what business was that?

15 A. Landscaping.

16 Q. And did you have a name for your landscaping company?

17 A. Strictly Business Landscaping.

18 Q. And Strictly Business does business or Strictly does
19 business in what particular areas?

20 A. I go as far as Orangeburg, everywhere, like Mount
21 Pleasant, Summerville, Goose Creek, Hanahan, everywhere.

22 Q. Okay. So basically around, I guess, in Charleston,
23 Berkeley, Dorchester and maybe Orangeburg counties; is that
24 right?

25 A. Yes, sir.

1 Q. And how many folks do you have who work with you?

2 A. Two.

3 Q. And I direct your attention back on April the 26th of
4 2011. Do you know the lady and gentleman sitting right here
5 (indicating)?

6 A. Yes.

7 Q. And who are they?

8 A. Jenn and Ben -- Bill.

9 Q. Jenn and Bill. And what's been your connection with
10 Jenn and Bill?

11 A. I worked -- I was working for them.

12 Q. And on that particular date you were working for them,
13 how long before April of 2011 had you been working for Jenn
14 and Bill?

15 A. I guess a few years. I guess couple years, few years.
16 I don't know exact.

17 Q. And where was the house located that you did work for
18 them?

19 A. In Summerville off of --

20 Q. Off of Central Avenue?

21 A. Central Avenue, yes.

22 Q. Okay.

23 A. In Live Oak Village.

24 Q. Live Oak Village, okay.

25 And what type of work, general landscaping work did you

1 do in their home or for their home in Live Oak Village?

2 A. Whatever they had me to do: Sod, mulch, trimming,
3 pruning, whatever.

4 Q. Now, we had a gentleman yesterday who testified,
5 Mr. Stephon Johnson?

6 A. Mm-hmm.

7 Q. Are you familiar with him?

8 A. Yes, it's my family.

9 Q. That's your family?

10 A. Yes.

11 Q. Okay. And did he also work with you?

12 A. Yes, sir.

13 Q. And was he employed and working with you on
14 April the 26th, 2011?

15 A. Yes.

16 Q. Did you have any other worker or workers with you on
17 that day?

18 A. Terrion, his brother, Terrion Johnson.

19 Q. Okay. So is it fair to say then the three of you were
20 there: Lance Johnson, Terrion Johnson and Stephon Johnson;
21 is that correct?

22 A. Yes, sir.

23 Q. And what type of work were you to do for the McFarlands
24 then?

25 A. We was putting down mulch.

1 Q. And tell the ladies and gentlemen of the jury, please,
2 what mulch is. And when you put down mulch basically what do
3 you do?

4 A. It's just like a bed dressing. I mean, it just
5 beautifies the yard. It's like wood chips.

6 Q. Okay. And did you haul some mulch over to their
7 property?

8 A. Yes, sir.

9 Q. And how did you haul the mulch?

10 A. On my trailer.

11 Q. Okay, great. And when you got to the house, did you --
12 what location of their house did you take the mulch to?

13 Was --

14 A. It was in the back. It's a little back street right
15 behind his house, and we was in the back loading it through
16 the back double gates.

17 Q. Would that have been Flud Street?

18 A. Yes.

19 Q. And what did you do when you arrived at Flud Street?
20 Did you start backing the trailer and the -- the truck up?

21 A. No. First we pulled -- we just pulled on the -- on the
22 side of the street, and we started -- it was so far, so we
23 decided, well, we'll back in closer to the yard. So we
24 backed in through his double gates to be closer so we can
25 load the mulch easier.

1 Q. Okay. So the double gates were wrought iron gates, I
2 believe; is that right?

3 A. Yes.

4 Q. And a brick and wrought iron fence?

5 A. Yes, sir.

6 Q. And they opened the gates, and you backed the trailer
7 into the driveway; is that right?

8 A. Yes, sir.

9 Q. Okay. And who was driving?

10 A. Me.

11 Q. Okay. And in backing the trailer, did you cross Flud
12 Street, and by that I mean on the opposite of the street from
13 where the McFarlands lived and maybe back up or be on any
14 grass or median on the other side of the street?

15 A. No, sir.

16 Q. Did not do that?

17 A. No, sir.

18 Q. Okay. And when you got the truck and the trailer into
19 the driveway, did you -- how was it positioned? Did you
20 block -- did you block Flud Street?

21 A. No. I -- well, I could say one side on -- on the --
22 coming in the Flud Street on the right side, but the other
23 side was clear.

24 Q. Okay. So in other words, if a person were coming down
25 Flud Street, going towards the dead end down there, they

1 could go around on the --

2 A. Oncoming side.

3 Q. On the far side of the street without having to stop or
4 interfere; is that correct?

5 A. Yes, sir.

6 Q. And the same thing, cars coming from the other
7 direction, coming out of Flud Street, could do the same
8 thing?

9 A. Yes, sir.

10 Q. So you did not have the -- with your truck or trailer,
11 you did not have the street blocked?

12 A. No, sir.

13 Q. And you were driving the truck?

14 A. Mm-hmm.

15 MR. CLEVELAND: I would object to leading, Your Honor.
16 I mean, that issue's not in dispute, but he's been doing it
17 for a while now.

18 THE COURT: I understand. You may proceed.

19 MR. STUCKEY: Thank you, Your Honor.

20 Q. At that point, Mr. Johnson, would you tell us what
21 happened when you had the truck and trailer backed up into
22 the McFarlands' driveway.

23 A. We was working. We was working, and then, you know, the
24 Rashtchian, I think, yes, he came out the house, screaming
25 and cursing and saying different things, you know what I'm

1 saying? And then we kind of stopped and looked and see what
2 they were doing. And he was -- he came all the way up to
3 them and started fussing and screaming and cursing. And that
4 was basically, you know --

5 Q. Let me direct your attention to the lady and gentleman
6 seated behind counsel table over here and particularly the
7 gentleman. Do you recognize that gentleman?

8 A. Yes, sir.

9 Q. And who is that?

10 A. I can't remember. Rashtchian?

11 Q. Mr. Rashtchian?

12 A. Yes, Mr. Rashtchian.

13 Q. Okay. And the lady who's seated next to him on his
14 right, do you recognize her?

15 A. Yes.

16 Q. And who is she?

17 A. Ms. Rashtchian.

18 Q. Okay. And were these -- Mr. and Mrs. Rashtchian, were
19 they the two people who were involved in this incident?

20 A. Yes, sir.

21 Q. And you say that he was -- he was cursing, and I believe
22 you used the term "Raising Cain; was that right?

23 A. Yes, mm-hmm.

24 Q. And was he -- and he was using profanity; is that
25 correct?

1 A. Yes, sir.

2 Q. And did you hear the F-word used?

3 A. Just about everything, F, yes, son of a B, whatever out
4 there.

5 Q. F and son of a bitch?

6 A. Mm-hmm.

7 THE COURT: That's a "yes."

8 THE WITNESS: Yes.

9 Q. And you were driving the truck; is that right?

10 A. Yes, sir.

11 Q. And was this directed to you?

12 A. No, I don't think so, no, no. Because he -- well, I
13 guess he was -- I don't think so. I don't know, because he
14 didn't come to me.

15 Q. Okay.

16 A. So I'm not, you know --

17 Q. Did you -- based on what you had done and so forth, did
18 you know what had caused the commotion?

19 A. No.

20 Q. And so what happened after that?

21 A. Once that -- when he came in, when he came across, then
22 he started saying that someone -- when a car was going by,
23 "They rode on my grass," and this and that, and then I knew,
24 you know. I said, "Okay," but we still -- I didn't see how
25 the car went on the grass, because we was on the opposite

1 side.

2 Q. In other words, he was saying something about the car
3 had gone on the grass on his side of Flud Street; is that
4 right?

5 A. Yes, sir.

6 Q. Did you see a car go on his side of the street?

7 A. No, sir.

8 Q. And at that point did you have plenty of space left that
9 a car would not have to have had gone on his grass if they
10 had passed your vehicle?

11 A. Yes, sir.

12 Q. Okay. And so following that, that was his complaint to
13 you or who was that complaint to?

14 A. That's the -- that's the only thing I knew that he came
15 over there for, you know, after he started saying -- talking
16 and, you know.

17 Q. Okay. And was Bill McFarland out there at the time?

18 A. Yes.

19 Q. Okay. And what was Bill McFarland doing?

20 A. Just like in the yard with me, you know.

21 Q. Okay. And your cousin, I believe, Terrion Johnson and
22 also Stephon Johnson were right there?

23 A. Mm-hmm, yes.

24 Q. Standing around?

25 A. Yes.

1 Q. And what happened after that?

2 A. It was a commotion. Ms. Rashtchian came out after that,
3 and then she started fussing with Jenn, and they just started
4 back and forth, and it was just a bunch of arguing back and
5 forth. .

6 Q. Okay. Did you hear Mr. Rashtchian say anything about
7 Mr. McFarland as to what he may have done?

8 A. They -- I heard something, but I don't -- the only thing
9 that I really remember is saying, "You better watch who
10 coming in your back door when you're out of town," or
11 something like that.

12 Q. So that's what Mr. McFarland was told?

13 A. Yes.

14 Q. And he was told -- he was told that by who?

15 A. Mr. Rashtchian.

16 Q. Mr. Rashtchian. And tell us again as best you can
17 remember, and I realize it's been some three years now, what
18 did Mr. Rashtchian say at that time to Mr. McFarland?

19 A. I only remember just a bunch of cursing and arguing, so,
20 I mean, I can't remember exactly everything that was said.
21 It was just mainly a bunch of cursing and, you know, I --
22 like I said, that one when he said that "You need to watch
23 who's coming in your back when you're out of town," that's,
24 you know, but it was mainly just a bunch of screaming back
25 and forth and, you know.

1 Q. And when Mrs. Rashtchian arrived on the scene, could you
2 tell us what her manner was when she came?

3 A. She came out storming. She was pretty upset. She came
4 across and like they was standing in the street just arguing.
5 It was the same thing. It was just bunch of arguing.

6 Q. You say she was upset. Did she come waving her arms?

7 MR. CLEVELAND: Object to the leading, Your Honor.

8 THE COURT: Yes, sustained.

9 THE WITNESS: I can't remember.

10 THE COURT: Don't lead.

11 Hold on a second, because Mr. Stuckey's going to
12 rephrase his question.

13 Q. And did you hear, Mr. Johnson, any language that
14 Mrs. Rashtchian used?

15 A. Everybody was cursing, so, I mean, I can't remember
16 exactly what she said.

17 Q. Okay.

18 A. But she was upset.

19 Q. Okay. But it was profanity or cursing, in your
20 judgment; is that correct?

21 A. Yes, sir.

22 Q. And what happened after that?

23 A. After they finished fussing, they went they separate
24 ways, and I finished working.

25 Q. Okay. And Jennifer McFarland, did she come -- was she

1 out there? Did she come up?

2 A. Yes, she was out there.

3 Q. And where was she standing?

4 A. In the -- in her yard, like by the gate kind of.

5 Q. And was she close enough to hear all of this?

6 A. Yes, I'm sure.

7 Q. To your recollection, did Jennifer have anything with
8 her?

9 A. I don't remember she had to catch her dog or something
10 like that, but I don't -- I can't remember.

11 Q. Okay. So she had some interaction with a dog; is that
12 right -- her dog?

13 A. Yes.

14 Q. And so what followed after that?

15 A. I don't know. She -- Jenn was upset. She started
16 crying, and we just -- I don't know, everybody just went
17 their separate ways. They called the police, I think, but I
18 can't remember. That's -- that's it.

19 Q. Did you hear anybody say -- did you hear Mr. Rashtchian
20 say anything about Mr. McFarland and his business association
21 with his father-in-law, anything like that?

22 A. I don't -- I remember them talking about it, but I don't
23 remember him saying anything about it.

24 Q. Okay. So you don't -- you remember them talking about
25 it, but you don't remember the specific language?

1 A. Yes. I don't remember if he said that or whatever, you
2 know what I'm saying? So, yes.

3 Q. Did you get along well with the McFarlands during the
4 time --

5 A. Yes. I never had a problem with them. I didn't
6 personally, you know.

7 Q. Okay. And what about Mrs. McFarland, what kind of
8 person would you say she was?

9 A. A very nice person.

10 Q. Okay. How about Mr. McFarland?

11 A. He's cool.

12 MR. STUCKEY: Your Honor, indulge me just a moment.

13 THE COURT: Yes.

14 Q. Mr. Johnson, do you recall, did the police, the
15 Summerville Police, respond and come to the scene right on
16 that day, which would have been April the 26th, 2011?

17 A. You know what? I can't even remember.

18 Q. But did you thereafter talk to a police officer?

19 A. Yes.

20 Q. Okay. And did you give a -- write out a statement to a
21 police officer?

22 A. Yes.

23 Q. And would it be fair to say that that was basically
24 around --

25 MR. CLEVELAND: Object to the leading, Your Honor.

1 THE COURT: Yes, don't lead, please.

2 (Plaintiffs' Exhibit 6 marked for identification.

3 Q. Mr. Johnson, let me show you a document marked
4 Plaintiffs' Exhibit 6 for identification and tell me if you
5 recognize that.

6 A. Yes.

7 Q. And how do you recognize it?

8 A. That's my handwriting.

9 Q. And is it signed by you?

10 A. Yes.

11 Q. And would you tell the ladies and gentlemen of the jury,
12 please, what date it is dated?

13 A. 5/10/11.

14 Q. Okay. That's May the 10th of 2011; is that right?

15 A. Yes, sir.

16 Q. And this is -- is this a statement that you gave to the
17 Summerville Police Department?

18 A. Yes.

19 MR. STUCKEY: Your Honor, we would offer this as
20 Plaintiffs' 6.

21 MR. CLEVELAND: No objection, Your Honor.

22 THE COURT: Very well.

23 (Plaintiff's Exhibit 6 admitted into evidence.)

24 MR. STUCKEY: May I publish it, Your Honor?

25 THE COURT: You may.

1 MR. STUCKEY: Thank you.

2 Ladies and gentlemen, this is a statement from the
3 Summerville Police Department, and it's signed here by
4 Mr. Lance Elliott Johnson, and it's dated May the 10th, 2011.
5 And it says, quote, We were in the yard working. I,
6 Lance Johnson, was parked in the street and a guy from behind
7 Bill's house rushed out of his yard screaming and cursing,
8 using foul language at us, saying, "Get the F off the road,
9 son of a B," and he just started pushing toward us, screaming
10 in Bill and Jennifer's face, saying a lot of personal things
11 about them, like, "You better watch who is coming in your
12 house when you are out of town." And he said, "You" -- let's
13 see -- and it was just crazy.

14 MR. CLEVELAND: Your Honor, he did not read the entire
15 thing. I would ask that he publish the entire document.

16 THE COURT: Yes, sir.

17 MR. STUCKEY: Thank you, Your Honor.

18 Q. And he said, "You are a racist son of a bitch -- son of
19 a B." It was just crazy. Then his wife came out and did the
20 same thing, screaming in Jennifer's face, yelling, saying all
21 kinds of harsh things. And is that -- I basically read that
22 correctly, Mr. Johnson?

23 A. Yes.

24 Q. Okay. And you continued after April and May of 2011 to
25 continue to work with the McFarlands; is that correct?

1 A. I think I did one or two things after that.

2 Q. Okay. And did you come back later on and give an
3 additional statement about a three-page typed statement?

4 A. Yes.

5 Q. Okay. And you were asked to do that by whom?

6 A. Jenn.

7 Q. Okay. And tell us, Mr. Johnson, the circumstances of
8 that. How --

9 A. I mean, yes, she pretty much just typed out what
10 happened, what she saw, and then she let me read over it and
11 then I signed it.

12 Q. Okay. And to refresh your memory, I believe that was --

13 MR. CLEVELAND: Object to the leading, Your Honor.

14 THE COURT: Before you respond, there's an objection, so
15 I want to hear the question, see if it's leading.

16 THE WITNESS: Okay.

17 Q. Do you recall, Mr. Johnson, approximately when that was?

18 THE COURT: Oh, you may answer.

19 THE WITNESS: I can't remember dates.

20 Q. And try and give us an estimate of time. Was it maybe
21 two months from April of 2011, six months, a year, two years,
22 whatever?

23 A. I can't remember. My mind wasn't even on this, so, you
24 know --

25 Q. Well, okay. Where did you sign this statement? Where

1 was it presented to you?

2 A. I think I came there one day to give a price for a job,
3 and she had it typed out and I read over it and I signed it
4 at the bottom, like, I don't know, like, two or three pages.

5 MR. STUCKEY: Okay. If Your Honor will indulge me.

6 Q. And did you make -- in that particular statement, that
7 three-page statement that you've told us about, Mr. Johnson,
8 did you make some strikeovers in the statement?

9 A. Yes, I think I did like one scratch out, yes.

10 Q. And then you read over the statement; is that correct?

11 A. Yes, I did.

12 MR. CLEVELAND: Object to leading.

13 THE COURT: Yes, sir. Don't lead, please.

14 Q. Was everything true and accurate, to the best of your
15 recollection, in the statement?

16 A. Most, most of it.

17 Q. Okay. And then did you sign the statement?

18 A. Yes, sir.

19 Q. Okay. And following that, did you have any more
20 involvement with this -- with the McFarlands or the
21 Rashtchians concerning the incident on April the 26th?

22 A. No, sir.

23 MR. STUCKEY: That's all we have at this time, Your
24 Honor.

25 THE COURT: All right. Cross-examination,

1 Mr. Cleveland.

2 CROSS-EXAMINATION BY MR. CLEVELAND:

3 Q. Good morning, Mr. Johnson.

4 A. Good morning.

5 Q. You're only aware of one dispute between the McFarlands
6 and the Rashtchians; is that correct?

7 A. What do you mean?

8 Q. You're only aware of one dispute or one incident that
9 occurred between the plaintiffs, the McFarlands, and the
10 Rashtchians --

11 A. Oh, yes.

12 Q. -- that occurred back on April 26th, 2011; is that
13 correct?

14 A. Yes.

15 Q. And you've seen the Rashtchians in the yard from time to
16 time when you've worked on the plaintiffs' yard?

17 A. Yes, every now and then.

18 Q. They've waved at you and polite?

19 A. Yes.

20 Q. Now, I think you said on direct examination a moment ago
21 that Ms. McFarland is nice, correct?

22 A. Yes.

23 Q. And you said that Mr. McFarland is cool?

24 A. Yes.

25 Q. Did I hear that correctly?

1 A. Yes.

2 Q. And by "cool," what do you mean by that?

3 A. I mean, to me, when I was -- when I was working for him.

4 Q. So if somebody's cool, that means they get along with
5 everybody, right?

6 A. No.

7 Q. Does Mr. McFarland get along with everybody?

8 A. No, sir.

9 Q. Who all does he not get along with?

10 A. I don't -- like, I guess he get along with me, but,
11 like, who he live with, like, his neighbors, he don't get
12 along with them.

13 Q. Okay. Well, let's talk about Mr. Hanneman. You've done
14 some work for Mr. Hanneman, right?

15 A. Yes.

16 Q. And Mr. McFarland's had a dispute with David Hanneman;
17 is that correct?

18 A. Yes, sir.

19 Q. Mr. McFarland has an attitude and pointing fingers at
20 Mr. Hanneman; is that right?

21 A. Yes, sir.

22 Q. And you've heard Mr. McFarland use profanity?

23 A. Yes, sir.

24 Q. And he even called Mr. Hanneman old; is that correct?

25 A. Yes, sir.

1 Q. And he's only in his 60s, right?

2 A. Yes.

3 MR. STUCKEY: Thank you.

4 Q. And Mr. Hanneman's a real nice guy, isn't he?

5 A. Oh, yes.

6 Q. And Mr. McFarland has a reputation for always being
7 angry --

8 MR. STUCKEY: Objection.

9 Q. -- at someone; is that right?

10 MR. STUCKEY: Objection. No foundation.

11 THE COURT: Sustained.

12 Q. Well, you mentioned earlier that Mr. McFarland is cool.
13 Do you know of anyone who likes him?

14 A. One of his neighbors. I don't know their name.

15 Q. And you've also seen Mr. McFarland fussing with
16 Mr. Morris; is that correct?

17 A. I can't really recall a fuss, but, like, you know, it
18 wasn't talking easy.

19 Q. I beg your pardon?

20 A. I said, like, I guess it's not really fussing, but it
21 wasn't talking easy and, you know, differences, I guess.

22 Q. Mr. Johnson, I'm going to hand you your deposition that
23 you gave in this particular lawsuit and ask you, if you
24 would, to turn to Page 13, Line 8.

25 (The Court's Exhibit 17 marked for identification.)

1 Q. And before that we were talking about Mr. Morris. And
2 then the question is: "And what did Mr. McFarland say?"

3 "ANSWER: I don't know. It was just, like, fussing,
4 arguing or whatever."

5 Was that your sworn testimony?

6 A. Yes.

7 Q. And the next question: "He was talking to Mr. Morris?"

8 "ANSWER: Yes."

9 Was that your sworn testimony?

10 A. Yes.

11 Q. Are you aware of whether or not or has your opinion as
12 to the reputation of the plaintiffs been lessened due to the
13 statements made by the Mazells concerning them?

14 A. Explain it.

15 Q. Sure.

16 Has your opinion relating to the McFarlands been reduced
17 or lessened relating to the statements made by the Mazells?

18 MR. STUCKEY: Objection. Relevancy.

19 THE COURT: Sustained.

20 Q. Has anything that you heard from my clients, the
21 Rashtchians, caused you to change your opinions concerning
22 the plaintiffs?

23 MR. STUCKEY: Objection. Same question, phrased in a
24 different way.

25 MR. CLEVELAND: It's not the same question, Your Honor.

1 THE COURT: Overruled.

2 THE WITNESS: Say it one more time.

3 Q. Sure.

4 Has anything that you've heard from my clients, the
5 Rashtchians, caused you to change your opinions concerning
6 the McFarlands?

7 A. No.

8 Q. And when you witnessed this incident that occurred back
9 in April of 2011, it was just angry words, correct?

10 A. Yes.

11 Q. And you didn't believe anything that you heard, did you?

12 A. I didn't know. I mind my own business.

13 Q. Okay. And would you say that Mr. McFarland is angry or
14 mad all the time?

15 A. A lot of times, yes.

16 Q. Kind of mad at the entire world?

17 A. That's what it seems.

18 Q. And you've heard Mr. McFarland refer to Mr. Rashtchian
19 as a -- I'm going to abbreviate -- GD Iranian; is that
20 correct?

21 A. Yes.

22 Q. Now, you've seen the McFarlands' daughter's friends come
23 to the house?

24 A. Yes, every now and then.

25 Q. And you never heard anyone use the word "cheats" or

1 "cheater" during this incident; is that correct?

2 A. No.

3 Q. That's a correct statement?

4 A. Yes.

5 Q. Thank you.

6 And you never heard anybody say anything about stealing
7 anyone's business or stealing money during this incident; is
8 that correct?

9 A. No, sir.

10 Q. That's a correct statement?

11 A. Yes.

12 Q. Now, Mr. McFarland, during this incident, said that
13 Mr. Rashtchian shouldn't have been angry because the grass
14 was not even his property. He referred to it as town grass;
15 is that correct?

16 A. Yes, sir.

17 Q. Just to make sure that the jury understands then,
18 Mr. McFarland acknowledged that a car had driven into the
19 Rashtchians' side of Flud Street into the grass that --

20 MR. STUCKEY: Objection. Objection.

21 THE COURT: Let me hear the whole question. Don't
22 answer it yet.

23 Q. But he said that Mr. Rashtchian shouldn't be angry about
24 that because the Town of Summerville has a right-of-way such
25 that he calls it "town grass," where the right-of-way is; is

1 that correct?

2 THE COURT: Okay, don't answer it.

3 MR. STUCKEY: That's pitting one witness against the
4 other, Your Honor, and I --

5 THE COURT: Sustained. Sustained.

6 MR. STUCKEY: Thank you.

7 Q. Would you agree that Mr. McFarland seems to get upset
8 when people drive onto the town grass on his side of Flud
9 Street?

10 A. Oh, yes.

11 Q. And at the time of the incident in this case, the
12 trailer was in the driveway or on the concrete pad in the
13 back of the McFarland home; is that correct?

14 A. Yes, sir.

15 Q. And the trailer's 16 feet long; is that correct?

16 A. Yes.

17 Q. And didn't back the trailer up onto the McFarland grass
18 because that would have made Bill mad, correct?

19 A. Probably not with me, but he would have said something.

20 Q. If you would, please turn to Page 62 of your deposition.
21 Page 62, Line 24:

22 "QUESTION: And did you back up the trailer into the
23 McFarland yard such that the tires were on their grass?"

24 "ANSWER: No."

25 Was that your sworn testimony?

1 A. Yes.

2 Q. Then next question: "That would have made Mr. McFarland
3 mad?"

4 "ANSWER: Oh, yes. He would have said pull it up a bit,
5 little bit."

6 Right?

7 A. Yes.

8 Q. And you don't remember whether you ever moved your truck
9 or trailer during this incident or not, do you?

10 A. What are you saying? Like after the whole incident?

11 Q. Yes, sir.

12 A. Oh, yes. I just pulled it -- I pulled it back straight
13 onto the street, because I don't like problems and --

14 Q. That was after the incident was already over?

15 A. Yes.

16 Q. Okay. Is Stephon Johnson working for you now?

17 A. No, he's in jail.

18 Q. Okay. Now, you agree that there was a car that went
19 onto the grass in the Rashtchians' side of Flud Street before
20 this incident occurred?

21 A. No.

22 Q. I'm going to ask you, if you would, to turn to Page 25
23 of your deposition, Page 25, Line 5:

24 "QUESTION: Have you ever had any conversations with the
25 McFarlands about the right-of-way easement along Flud

1 Street?"

2 "ANSWER: Oh, yes, that same day when all the
3 commotion."

4 Was that your sworn testimony?

5 A. Yes.

6 Q. The next question: "And tell me about the
7 conversation."

8 "ANSWER: It's pretty much he was saying that, I mean,
9 which is true what I think. We was just in the road, and we
10 was in the road and a car came by, and the car kind of went
11 on his grass. I don't know if it's his grass because it's
12 the grass and then it's a drain. So it ain't even exceed the
13 drain. It's just, you know, maybe a tire, you know, across,
14 and that's when it all started, you know."

15 So let me ask the question again. Do you admit that a
16 car drove onto the grass on the Rashtchians' side of Flud
17 Street before this incident occurred?

18 A. Possibility a tire, but like I said, I didn't pay
19 attention.

20 Q. And that's when it all started, correct?

21 A. Yes.

22 Q. Now looking at Page 25, Line 22:

23 "QUESTION: Can you tell how many cars went through the
24 Rashtchians' yard on the day of the incident?"

25 "ANSWER: I just saw after that one, it was -- that was

1 when everything started happening."

2 Was that your sworn testimony?

3 A. Yes.

4 Q. And you can't remember one way or the other as to
5 whether or not Mr. McFarland actually directed the traffic or
6 cars into the Rashtchian yard; is that correct?

7 A. No, I don't.

8 Q. Now, during this incident, no one said anything to you;
9 is that correct?

10 A. No.

11 Q. That is a correct statement?

12 A. Yes.

13 Q. And you didn't see anyone touch anyone else during this
14 incident; is that correct?

15 A. No.

16 Q. That is a correct statement?

17 A. Yes.

18 Q. Thank you.

19 And when you saw Mr. Rashtchian after the car came
20 around onto the Rashtchian yard, he was complaining about
21 people driving into his yard; is that correct?

22 A. Yes.

23 Q. And it's about five minutes later that Ms. -- or
24 sometime later that Mrs. McFarland came out to the scene?

25 A. She was in the yard, so she was there.

1 Q. And ultimately all four, including Ms. Rashtchian, ended
2 up in the street; is that correct?

3 A. Yes.

4 Q. And everybody was yelling; is that correct?

5 A. Yes.

6 Q. And everybody was cursing; is that correct?

7 A. Not Jenn.

8 Q. If I could get you to turn to Page 36 of your
9 deposition, Line 19:

10 "QUESTION:" --

11 Excuse me, Line -- actually, let me move up to Line 14:

12 "QUESTION: You're pointing at Mr. Rashtchian was in his
13 yard."

14 "ANSWER: He was in his yard."

15 Was that your sworn testimony?

16 A. Yes.

17 Q. Next question: "And he walked into the street?"

18 "ANSWER: Yes."

19 "QUESTION: And then Mr. McFarland" --

20 "ANSWER: McFarland walked in the street and then they
21 was arguing."

22 Was that your testimony?

23 A. Yes.

24 Q. Next question: "And eventually did all four of them end
25 up in the street?"

1 "ANSWER: All four of them, yes."

2 Was that your answer?

3 A. Yes.

4 Q. "QUESTION: And was everybody yelling?"

5 "ANSWER: Yes."

6 Was that your response?

7 A. Yes.

8 Q. Next page: "QUESTION: Everybody cursing?"

9 "ANSWER: Yes."

10 A. Yes, but not Jenn.

11 Q. Well, you would -- let's just read the deposition, okay?

12 "QUESTION: Everybody cursing?"

13 "ANSWER: Yes."

14 Was that your sworn testimony?

15 A. Yes.

16 MR. STUCKEY: Your Honor, he's got a right to explain
17 his answer, whether it be by deposition or direct testimony.

18 THE COURT: You can certainly ask him on redirect.

19 Q. And you were laughing during this incident; is that
20 correct?

21 A. Yes.

22 Q. Because you thought it was crazy?

23 A. It is.

24 Q. Stephon was laughing?

25 A. Yes.

1 Q. Terrion was laughing?

2 A. Yes.

3 Q. And you thought that they were making a mountain out of
4 a molehill; is that correct?

5 A. Yes.

6 Q. Do you remember whether or not Mr. McFarland told
7 Mr. Rashtchian that he knew what type of shoddy contractor he
8 is?

9 A. No.

10 MR. STUCKEY: Your Honor, we would ask for a curative
11 instruction on that.

12 THE COURT: Okay.

13 MR. STUCKEY: A leading question by counsel that was
14 answered in a negative that it didn't happen.

15 THE COURT: And which is what he has indicated by his
16 response. Thank you so much.

17 You may proceed.

18 Q. Now, you said something about you need to -- well,
19 strike that.

20 Do you remember Mr. or Mrs. McFarland saying, "We know
21 all about you," to the Rashtchians?

22 A. Say it one more time.

23 Q. Do you remember the McFarlands, either one of them,
24 saying to the Rashtchians, "We know all about you"?

25 A. No.

1 Q. Do you remember Mr. or Mrs. Rashtchian saying anything
2 about, "Well, you need to be concerned about who's coming to
3 your house when you're not here"?

4 A. Yes.

5 Q. Do you know whether that was Mr. Rashtchian or
6 Mrs. Rashtchian?

7 A. Mr. Rashtchian.

8 Q. And I think you indicated earlier that you believe that
9 you spoke to an officer at some point; is that correct?

10 A. Yes.

11 Q. And you identified earlier a statement which we've
12 marked as -- or Plaintiff's counsel's marked it as Exhibit
13 No. 6. Did that occur when you were back at the McFarland
14 home?

15 A. Explain.

16 Q. Sure.

17 Where were you when you prepared the statement marked as
18 Plaintiffs' Exhibit No. 6?

19 A. Yes, I think I was at the McFarlands' home.

20 Q. And you met with Mrs. McFarland before preparing this
21 statement?

22 A. No, that was from the police officer.

23 Q. Do you remember Mrs. McFarland being present at the
24 McFarland home when you were preparing this statement?

25 A. Yes.

1 Q. You would agree that the statement doesn't include
2 anything about Mr. McFarland using profanity in a raised
3 voice, do you?

4 A. Not sure.

5 Q. (Indicating.)

6 A. No.

7 Q. Just to make sure we have a clear question and answer
8 then, you would agree that the statement that you prepared on
9 May 10, 2011, some two weeks after the incident does not
10 include anything about the McFarlands using profanity or
11 raised voices; is that correct?

12 A. Yes.

13 Q. And you were sitting with Mrs. McFarland when you
14 prepared that statement; is that correct?

15 A. Say it again.

16 Q. You were sitting with Mrs. McFarland when you prepared
17 this statement marked as Exhibit No 6, two weeks after the
18 incident?

19 A. No.

20 Q. If you would, please turn to Page 49 of your deposition,
21 Page 49, Line 24:

22 "QUESTION: And you were -- and were you sitting with
23 Ms. McFarland when you prepared Exhibit No. 1?"

24 "ANSWER: Yep."

25 Was that your sworn testimony?

1 A. Yes.

2 Q. And now let's look at Exhibit No. 1, which is attached
3 to your deposition. Is that the same thing as Exhibit No. 6,
4 the document or statement that we looked at earlier?

5 A. I didn't -- I didn't know this was Exhibit No. 1. I was
6 thinking the -- what Jenn typed up, that's what you were
7 talking about. When I -- when I wrote this, I was just with
8 the police officer (indicating).

9 (Defendant's Exhibit 12 marked for identification.)

10 Q. I'm handing you now Defendants' Exhibit No. 12 for this
11 trial, which is also marked as Defendants' Exhibit No. 1 to
12 your deposition that was taken back on August 7, 2014, would
13 you agree that that document is the same document as
14 Plaintiffs' Exhibit No. 6 that you identified earlier?

15 A. Yes.

16 Q. I'm going to ask you now to turn to Page 46 of your
17 deposition. Page 46, you see the darker print in the middle
18 of the page where it says, "Document marked Defendants'
19 Exhibit No. 1"; do you see that?

20 A. Yes.

21 Q. Next question after that: "I'm going to hand you now
22 Defendants' Exhibit No. 1. And first off, there's a
23 signature down at the bottom of Exhibit No. 1. Is that your
24 signature? "

25 "ANSWER: Yes, sir."

1 Was that your sworn testimony?

2 A. Yes.

3 Q. Next question: "Okay. And then up at the top it has a
4 date of May 10, 2011, on the right side at the top. Do you
5 see that?"

6 A. Yes.

7 Q. "ANSWER: Uh-huh."

8 Was that your response?

9 A. Yes.

10 Q. "QUESTION: Is that your handwriting?"

11 "ANSWER: Yup."

12 Was that your testimony?

13 A. Yes.

14 Q. And then I go on to ask --

15 MS. LIETZOW: Your Honor, this isn't impeachment. He's
16 admitted it was his statement, and this is duplicative.

17 MR. CLEVELAND: Would you like for me to respond, Your
18 Honor?

19 THE COURT: Overruled you may proceed.

20 MR. CLEVELAND: Thanks.

21 Q. Now, going back to the question that I asked you several
22 minutes ago, would you agree that the document marked as
23 Exhibit No. 1 in your deposition where you said that
24 Mrs. McFarland was sitting next to you when you prepared it,
25 would you agree that that's the exact same document marked as

1 Plaintiffs' Exhibit No. 6?

2 A. No.

3 Q. Let's take a look at them side by side.

4 A. Oh, you said -- no, what I'm saying -- no, what I was
5 saying, when me and Jenn, she brought out something that she
6 wrote up like what happened. This is strictly from the
7 police officer. She wasn't -- she wasn't with me. I was
8 with the police officer when I wrote this (indicating).

9 Q. Well, let's go back and plow that ground again then.

10 You admit that Mrs. McFarland prepared a typed,
11 three-page statement and gave it to you that you signed some
12 two years later?

13 A. Yes, I looked over it, yes.

14 Q. And we're going to talk about that in a few moments, but
15 I want to focus now on the statement that you gave on May 10.
16 In fact, let's do a timeline so that we can follow this.

17 Okay. Let's do a timeline here so that we can orient
18 ourselves. The incident in this case occurred on
19 April 26, 2011; is that correct?

20 A. Yes.

21 Q. And then you gave your first statement about two weeks
22 later on May 10, 2011; is that correct?

23 A. I guess. I don't know the date.

24 Q. Let's take a look at it, okay?

25 A. Yes.

1 Q. Does it say May 10, 2011, there at the top?

2 A. Yes.

3 Q. And I don't think Plaintiffs' counsel marked your second
4 statement yet.

5 (Defendant's Exhibit 13 marked for identification.)

6 Q. I'm going to hand you now Defendants' Exhibit No. 13.

7 Is that the three-page statement or document, should I say,
8 that Ms. McFarland prepared for you?

9 A. Yes.

10 Q. And turn to the third page, if you would. Does it have
11 a date there of -- is it June 11, 2013?

12 A. Yes.

13 Q. And that was a second statement you gave; is that
14 correct?

15 A. Yes, I believe so.

16 Q. Now, first off, let's just emphasize, it's over two
17 years between the first statement and the second statement;
18 is that correct?

19 A. Yes.

20 Q. And you're a busy man working, trying to help take care
21 of your family; is that correct?

22 A. Yes, sir.

23 Q. You deal with all the things in life that normal people
24 do?

25 A. Yes.

1 Q. My guess is you probably weren't focusing a whole lot on
2 this incident that occurred back in 2011?

3 MR. STUCKEY: Objection. Assumption by counsel, Your
4 Honor.

5 MR. CLEVELAND: Well, let me ask the question, different
6 question, Your Honor.

7 THE COURT: Okay.

8 Q. Were you focusing on the incident that occurred back in
9 2011 during this two-year period of time between the first
10 statement and the second statement that you provided?

11 A. No.

12 Q. You were focusing on your own life; is that correct?

13 A. Yes.

14 Q. Now, let's go back to the first statement that was
15 May 10, 2011. First off, let's get you to confirm that in
16 your deposition, this document marked as Exhibit No. 12 to
17 the trial was also Exhibit No. 1 in your deposition; is that
18 correct?

19 A. Yes.

20 Q. That is the first statement right here, right?

21 A. Yes.

22 Q. Okay. Now, if you would, please turn to Page 49 of your
23 deposition. Page 49, Line 24:

24 "And you were sitting with Mrs. McFarland when you
25 prepared Exhibit No. 1?"

1 "ANSWER: Yup."

2 Was that your sworn testimony?

3 A. Yes. But like I said, again, when I -- this -- I don't
4 know about Exhibit 1, whatever, what the numbers, when I --
5 when I did this one, I was just with the police officer
6 (indicating).

7 Q. But you admit that in your deposition you said that you
8 were sitting with Mrs. McFarland?

9 A. Yes, I was at her house because the police came to the
10 house, but I wasn't sitting with her when I wrote this. It
11 was strictly with the police.

12 Q. But I did read your deposition testimony correctly that
13 you admit that you were sitting with Mrs. McFarland when you
14 prepared that statement?

15 A. But I don't -- like I said, I don't know anything about
16 the exhibit, the numbers.

17 Q. If I could -- well, let me ask the question. Did
18 Mrs. McFarland help you prepare Exhibit No. 1 to your
19 deposition, which we've just marked as the May 10, 2011,
20 exhibit in this case?

21 A. She didn't help prepare nothing. The only thing
22 was she -- the April 26, 2011, which she typed up and I read
23 over it and I signed it, because it's just about what
24 happened.

25 Q. Why didn't you put in your May 11 -- excuse me,

1 May 10, 2011, statement that Mr. and Mrs. McFarland were
2 yelling and using profanity?

3 A. I don't know. It just -- I don't know. I just kind of
4 jot down quickly what happened. I was working. I wasn't
5 focused on that.

6 Q. Now, you admit that a car went into the Rashtchians'
7 yard?

8 A. I said it's a possibility that a tire could have had hit
9 the yard, but, no, I don't think a car went in their yard.

10 Q. You think it was at least a tire or two over; is that
11 what your testimony was?

12 A. Maybe a tire. I really don't think none, but maybe, you
13 know.

14 Q. In the statement that you provided, the first statement
15 doesn't include anything about the car going into the yard,
16 correct?

17 A. No. Like I said, it was just a quick jot down what
18 happened. You know what I'm saying? I wasn't really focused
19 on that. I was focused on doing my work.

20 Q. And the statement says that Mr. Rashtchian rushed to
21 Bill and Jennifer's face; is that correct?

22 A. Yes. They kind of meet in the street, but, yes, he was
23 rushing over there.

24 Q. But Jennifer was not outside initially was she?

25 A. Jennifer was in the yard, what I remember.

1 Q. So you don't think she was inside the house?

2 A. I remember her being in the yard.

3 Q. And I think you said earlier that Mr. McFarland used
4 profanity?

5 A. Yes.

6 Q. And you didn't put that in the first statement, the
7 May 10, 2011, statement, did you?

8 MS. LIETZOW: Asked and answered.

9 THE WITNESS: No.

10 THE COURT: Now has been again. You may proceed.

11 Q. Now, let's talk about the -- about two years or so
12 later, you were contacted by the McFarlands about putting
13 down some rock; is that correct?

14 A. Yes.

15 Q. But you think they really just wanted to talk to you
16 about this case; is that correct?

17 A. Yes.

18 Q. Do you think that they lied to you in order to get you
19 to come over to their house?

20 A. I mean, I don't know. I can't say "lie." I don't know.

21 Q. Well, it was about two years later, correct?

22 A. Yes.

23 Q. You'd already stopped working for them at that point?

24 A. Yes.

25 Q. It was basically a waste of your time to go over there?

1 A. Yes.

2 Q. And after they talked to you about an estimate for
3 putting some rock in, that's when they asked you to look at
4 the paperwork that they already had provided -- prepared?

5 A. Yes.

6 Q. And you'd already forgotten what had happened by that
7 point?

8 A. Yes. I mean, I remember bits and pieces, but, you
9 know --

10 Q. And you told them that you didn't want to be a part of
11 any of this foolishness, didn't you?

12 A. That's right.

13 Q. They said they either had or were going to file a
14 lawsuit, right?

15 A. Yes.

16 Q. Now, let's take a look at the statement that was --
17 let's see which exhibit this is. We are looking at the blue
18 sticker here, Exhibit No. 13.

19 A. Mm-hmm.

20 Q. And that is the document that Ms. McFarland prepared for
21 you; is that correct?

22 A. Yes.

23 MR. CLEVELAND: Your Honor, at this time we would offer
24 into evidence Defendants' Exhibit 13.

25 THE COURT: Any objection?

1 MS. LIETZOW: Your Honor, I believe it's already in as
2 Defendants' Exhibit 2. I don't know if it's duplicative to
3 have it in there twice.

4 MR. CLEVELAND: Defendants' Exhibit No. 2.

5 MS. LIETZOW: The copy I have in front of me, Your
6 Honor, Defendants' Exhibit 2, W. McFarland.

7 THE COURT: It may be the deposition.

8 MR. CLEVELAND: Yes, that's the deposition.

9 MS. LIETZOW: All right. No --

10 THE COURT: Any objection? Very well.

11 (Defendant's Exhibit 13 admitted into evidence.)

12 MR. CLEVELAND: At this time, Your Honor, I'm going to
13 ask Mr. Leech if he'll assist me with the ELMO so that we can
14 all take a look at this together.

15 Q. And do you have Defendants' Exhibit No. 13 in front of
16 you now, sir?

17 A. Yes.

18 Q. Okay. Well, let's take a look here at the top of the
19 statement. It says, "Confidential and Privileged Information
20 for Lance Johnson"; is that correct?

21 A. Yes.

22 Q. Well, do you have any type of special relationship with
23 the McFarlands such that information that they provide to you
24 would be considered confidential?

25 A. No.

1 Q. And I know this sounds foolish, but I'm going to ask the
2 questions anyway. Do you have any type of special
3 relationship with the McFarlands, such as being their lawyer,
4 such that there would be any type of privilege between you
5 and them?

6 A. No.

7 Q. You're not a priest?

8 A. No.

9 Q. Okay. And then the fourth word there at the top after
10 confidential and privileged is "information"; is that
11 correct?

12 A. Yes.

13 Q. It doesn't say "statement," does it?

14 A. No.

15 Q. And it says that that information is for you,
16 Lance Johnson; is that correct?

17 A. Yes.

18 Q. Okay. And then the first paragraph starts with,
19 "Lance Johnson was delivering a trailer of mulch that was to
20 be installed in our backyard"; is that correct?

21 A. Yes.

22 Q. Do you usually refer to yourself in the third person,
23 Lance Johnson?

24 A. Yeah.

25 Q. You do?

1 A. Lance Johnson, yeah.

2 Q. Okay. I mean, this sounds like it was written by
3 somebody else for you; would you agree?

4 A. Yes.

5 Q. And it says "our backyard." You don't have any
6 ownership interest in the McFarland yard, do you?

7 A. No.

8 Q. And it says that a red car came up Flud Street toward
9 Central Avenue and went onto the grass located in front of
10 the Rashtchians property; is that correct?

11 MS. LIETZOW: Objection, Your Honor. Misrepresentation
12 of the statement. I think if he's going to ask him
13 questions, it should be read into the record accurately
14 rather than --

15 MR. CLEVELAND: Let me rephrase.

16 THE COURT: Okay. Thank you for rephrasing.

17 Q. I'm not going to read the entire paragraph unless
18 Plaintiff's counsel requests, but is it true that the
19 statement says a red car came up Flud Street towards Central
20 Avenue and barely touched on the grass that is located in
21 front of Rashtchians' property?

22 A. Yes.

23 Q. And is that the town grass that we were referring to
24 earlier?

25 A. Yes.

1 Q. And it says, "We later -- we received upon request a
2 plat from the Town of Summerville engineers office"; is that
3 correct?

4 A. Yes.

5 Q. Did you request a plat from the Town of Summerville?

6 A. No.

7 Q. The second paragraph starts with, "Mansour Rashtchian
8 came charging out of his house and began attacking Lance."

9 A. No.

10 Q. That's not true, is it?

11 A. No.

12 Q. Well, first off, down at the bottom of that page, it
13 says "1/4," 1 of 4; is that correct?

14 A. Yes.

15 Q. Second page says 2 of 4; is that correct?

16 A. Yes.

17 Q. And then the last page says 3 of 4; is that correct?

18 A. Yes.

19 Q. Do you know about where the fourth page is?

20 A. No.

21 Q. And you didn't initial either the first or second page,
22 did you?

23 A. No.

24 Q. And you don't know whether or not the pages have been
25 switched out since you signed it back --

1 A. No.

2 Q. -- in 2013?

3 A. No. This is -- these are the original pages.

4 Q. Okay.

5 A. That I remember.

6 Q. And you didn't read it through before you signed it, did
7 you?

8 A. I read through it.

9 Q. You'll agree that you didn't really remember a lot about
10 the incident two years later?

11 A. Yes.

12 Q. And Bill never told Mr. Rashtchian that you were going
13 to move the truck, did he?

14 A. Not that I can remember.

15 Q. And the July -- excuse me, June 2013 statement says that
16 you were in the process of unhitching your trailer when the
17 incident occurred; is that correct?

18 A. Yes.

19 Q. But that's not contained in the 2011 statement, is it?

20 A. No.

21 Q. And it's not true either, is it?

22 A. What's not true?

23 Q. That you were in the process of unhitching your trailer
24 when the incident occurred.

25 A. The only reason I was going to unhitch my trailer to

1 kill the confusion, because I was going unhitch my trailer
2 and move my truck up forward.

3 Q. So the statement in Exhibit No. 13 that you were in the
4 process of unhitching your trailer when the incident occurred
5 is not true, correct?

6 A. Correct.

7 Q. Your June 11, 2013, statement says that Bill told
8 Mr. Rashtchian he is moving the truck now; is that correct?

9 A. Which statement now?

10 Q. That's about the third paragraph down.

11 A. Okay. Yes.

12 Q. And that was not included in your May 10, 2011,
13 statement, was it?

14 A. No. Like I said, I just -- it -- it's something that
15 happened real quick, and I just jot down what happened. It
16 wasn't -- you know, it wasn't detailed or nothing.

17 Q. And it's not true either, is it?

18 A. What's not true?

19 Q. That Bill told Mr. Rashtchian that he -- that you were
20 moving the truck.

21 A. I don't remember that.

22 Q. If you would, please turn to your deposition, Page 56.
23 Page 56, question on Line 2:

24 "Okay. Did you ever hear Bill say anything about
25 telling Mr. Rashtchian that you were moving the truck?"

1 "ANSWER: No."

2 Was that your sworn testimony?

3 A. Yes.

4 Q. So just to make sure the jury's following this, there
5 are things in this statement that Mrs. McFarland prepared for
6 you that are not true, correct?

7 MS. LIETZOW: Objection, Your Honor. He said he didn't
8 hear it. There's a difference between not hearing it and it
9 not being true.

10 THE COURT: If you can answer.

11 THE WITNESS: No, that's correct. That's correct.

12 Q. Thank you.

13 And in the June 2013 statement, it indicates something
14 about a telescope in the next to last paragraph; is that
15 correct?

16 A. Which one now? Say again.

17 Q. That's the first page, next to the last paragraph. I'm
18 not going to read the whole thing, just does it reference
19 someone using a telescope to look into peoples' house?

20 A. Yes.

21 Q. And you didn't include that in your May 2011 statement,
22 did you?

23 A. No.

24 Q. And it's -- you never did hear anybody say anything
25 about a telescope, binoculars or anything similar to that,

1 did you?

2 A. Not really. I just -- I -- afterwards, you know, they
3 were talking about it, but I -- no.

4 Q. If I could get you to turn to Page 56 of your
5 deposition.

6 A. Okay.

7 Q. Page 56, Line 13:

8 "QUESTION: Did you ever hear anybody say anything about
9 a telescope or binoculars or anything else?"

10 "ANSWER: No."

11 Was that your sworn testimony?

12 A. Yes.

13 Q. In your statement that Mrs. McFarland prepared for you
14 two years after the incident, it indicates that there was a
15 statement made of "Your wife cheats on you"; is that correct?

16 A. Yes.

17 Q. But you didn't include that in the May 10, 2011,
18 statement just two weeks after the incident; is that correct?

19 A. No. Like I said, it was a -- I jot down quick for the
20 officer. I wasn't focused on every detail that happened.

21 Q. The statement from two years after the incident where it
22 says that you heard somebody saying, "Your wife cheats on
23 you," that's not true, is it?

24 A. I can't remember.

25 Q. If you would, please turn to Page 56 of your deposition.

1 A. Mm-hmm.

2 Q. Line 21:

3 "QUESTION: Did you ever hear anybody specifically say
4 that somebody else was cheating?"

5 "ANSWER: No, uh-uh."

6 Was that your sworn testimony?

7 A. Yes.

8 Q. And on your statement two years after the incident, the
9 bottom of the first page, last paragraph, it makes a comment
10 about, "They steal money and cheat on husband." You never
11 heard that, did you?

12 A. No.

13 Q. Your statement on Page 3 makes a reference to Amy
14 touching Mr. McFarland's arm; is that correct? That's about
15 a third of the way down the page.

16 A. Which? On the --

17 Q. On the third page, the last page.

18 A. Oh, this?

19 Q. I'm sorry, the statement.

20 A. Second page?

21 Q. Third page, please, about a third of the way down. It
22 says, and I'll read it for you, "As we were walking to our
23 backyard, Amy gets up in Bill's face and touched his arm. I
24 know all about you. I know what you are."

25 Is that included in your statement?

1 A. No.

2 Q. Is that not written in your?

3 A. Oh, yes, yes, yes.

4 Q. Okay. But that's not true, is it?

5 A. I don't know. I can't remember.

6 Q. If you would, please turn to Page 38 of your deposition.

7 Page 38, Line 24:

8 "QUESTION: Did you see anybody touch anybody else
9 during this incident?"

10 "ANSWER: No."

11 Was that your sworn testimony?

12 A. Yes.

13 Q. Now, the June 2013 statement marked as Exhibit No. 13 in
14 this trial does not include anything concerning
15 Mr. McFarland's profanity, does it?

16 A. Which one now? Say it again.

17 Q. The statement that Mrs. McFarland prepared for you two
18 years after this incident does not include any comments about
19 the profanity used by Mr. McFarland during the incident, does
20 it?

21 A. I don't know. I thought it was in there. I don't know.

22 Q. Take a moment and skim through it and tell me if you see
23 anything about his profanity.

24 THE COURT: Do you have an objection?

25 MS. LIETZOW: Yes, Your Honor.

1 THE COURT: Okay.

2 MS. LIETZOW: That's a misrepresentation. It's on
3 Page 1.

4 THE WITNESS: Yes.

5 MR. CLEVELAND: If you don't mind assisting me.

6 (Counsel confer.)

7 Q. Let me ask a different question. It appears that on the
8 first page perhaps the word A-hole and hell was used. Did
9 you include anywhere in the statement that Mr. McFarland used
10 the F-word?

11 A. Like I said, they were all cursing at each other.

12 Q. Would you agree that the statement that you're looking
13 at it is really just something that Mrs. McFarland prepared
14 from her point of view?

15 A. Yes, and it's basically what happened.

16 Q. And you didn't put -- and Mrs. McFarland didn't put in
17 Exhibit No. 13 that you and the other landscapers were
18 laughing?

19 A. No.

20 Q. Didn't put in the statement that you and the others
21 thought this whole thing was ridiculous?

22 A. It's a possibility it's in there. I can't remember.

23 Q. Do you feel like you -- let me make sure I understand
24 and kind of orient ourselves a little bit. Incident occurred
25 in April of 2011. You prepared the statement when the

1 officers were at the plaintiffs' home two weeks after the
2 incident in May of 2011. Then you didn't really do much, if
3 any, work for the plaintiffs until they called you back with
4 a -- asking for a rock estimate two years later; is that
5 correct?

6 A. Yes.

7 Q. And you feel like you've been used by the plaintiffs,
8 right?

9 A. Not really. I mean, in a way, but not really. Just my
10 time.

11 Q. If you would, please turn to Page 70 of your deposition.
12 Line 9:

13 "QUESTION: Do you feel like you've been used by the
14 McFarlands relating to this incident?"

15 "ANSWER: Oh, yes."

16 Was that your sworn testimony?

17 A. Yes.

18 MR. STUCKEY: Could we, in the interest of completeness,
19 Your Honor, would you like me to try to cover that on
20 redirect?

21 THE COURT: Redirect.

22 MR. STUCKEY: Thank you.

23 Q. And you've actually had your deposition taken twice.
24 Once was in the Live Oak case; is that correct?

25 A. I think two times, three times total. One was --

1 MR. STUCKEY: May we approach, Your Honor?

2 THE COURT: Sure.

3 (Judge and attorneys confer.)

4 Q. The incident that occurred in this case back in April of
5 2011, would you describe it as just being a simple argument?

6 A. No, not really. I mean, at first I thought it was, but
7 after they started going, you know.

8 Q. If you would, please turn to Page 54 of your deposition.
9 Line 22:

10 "QUESTION: This incident that occurred back in April of
11 2011 is not important to you, is it?"

12 "ANSWER: At all. It's ridiculous."

13 Was that your sworn testimony?

14 A. Yes.

15 Q. Next question: "Why do you say it's ridiculous?"

16 "ANSWER: Because it's -- to me it's just -- to me it
17 was just a simple argument. You know, it wasn't nothing.
18 You know what I'm saying?"

19 Was that your sworn testimony?

20 A. Yes. To me.

21 Q. You agree that the incident was childish?

22 A. Yes.

23 Q. And you're not sure that you -- you didn't ever hear
24 anybody saying anything about stealing any business?

25 A. No, not that I can remember. I just realize what's

1 childish to me might not be for someone else, but --

2 Q. And on direct examination, I think you indicated that
3 you thought that Mr. McFarland was cool; was that correct?

4 A. Yes.

5 Q. If you would, please turn to Page 9 of your deposition.
6 Question on Line 5:

7 "Are you aware of the McFarlands suing other people?"

8 "ANSWER" --

9 MS. LIETZOW: Objection, Your Honor. Relevance.

10 THE COURT: Sustained. Go ahead with the question.

11 Hold on.

12 MR. CLEVELAND: Answer was going to be "yes." Then the
13 next thing has the word "cool" in it, Your Honor. I'm sorry
14 did you -- were you waiting for me?

15 THE COURT: There was an objection about relevance, and
16 so I wanted to hear the rest of the question.

17 Hold on. Don't answer it yet.

18 MR. CLEVELAND: It's two questions: One, are you aware
19 of the McFarlands suing other people.

20 THE COURT: Sustained.

21 MS. LIETZOW: Thank you.

22 Q. Did you hear the plaintiffs tell Mr. Rashtchian to go
23 back where he came from?

24 A. Yes.

25 Q. Did you hear Mr. McFarland tell Mr. Rashtchian to go get

1 his green card?

2 A. I can't remember that.

3 Q. And the level of the voices went up during the incident;
4 is that correct?

5 A. Yes.

6 Q. Started off much lower and then raised over time?

7 A. Yes.

8 Q. And the plaintiffs' children were not outside at the
9 time of this incident, were they?

10 A. I can't remember.

11 Q. If you would, please turn to Page 105 of your
12 deposition. Page 105, Line 18:

13 "QUESTION: You were asked earlier about children, and I
14 think you said that the McFarland children were not present
15 when this incident occurred; is that correct?"

16 "ANSWER: I don't think -- they could have been in the
17 house, but not down on the" --

18 Was that your response?

19 A. Yes. That's why I said I wasn't sure.

20 Q. Then next part of the question: "Anybody else present?
21 Anybody else?"

22 "ANSWER: No."

23 Was that your response?

24 A. Yes.

25 MR. CLEVELAND: Thank you, sir. Those are all the

1 A. Yes.

2 Q. And you sat down and --

3 MR. CLEVELAND: Objection to leading, Your Honor.

4 THE COURT: Yes, don't lead.

5 Q. And who wrote out that statement?

6 A. Me.

7 Q. Okay. And that was at the request of Officer Terranova,
8 right?

9 MR. CLEVELAND: Object to leading and hearsay.

10 THE COURT: Yes, sir, thank you.

11 Please be mindful of the leading. Don't lead.

12 Q. And did you attempt, Mr. Johnson, at that time, since
13 you were writing the statement out yourself and you were at
14 work, I believe; is that correct -- when you --

15 A. Yes.

16 Q. And when Officer Terranova came?

17 A. Yes.

18 Q. Did you make any effort to make the statement as
19 comprehensive and as lengthy and as complete as you might
20 have?

21 A. No. Because it didn't -- it had nothing to do with me,
22 so I just a quick jot down and got back to work.

23 Q. Okay. Now, go if you would, please to Page 95 of your
24 statement.

25 THE COURT: You mean of the deposition?

1 MR. STUCKEY: The deposition, that's correct, Your
2 Honor.

3 THE COURT: Okay.

4 Q. And if you go to Line 18 of that, Mr. Johnson. And the
5 question was: "And you said that everybody was cursing but
6 Jennifer. She wasn't."

7 And Mr. Cleveland says: "Object to the form of the
8 question."

9 And it was -- and you said that everybody was cursing
10 but Jennifer. She wasn't. And then on Line 22, your answer,
11 Mr. Johnson, was what?

12 A. 22. 23?

13 Q. 22.

14 A. "QUESTION: Object to the form of the" --

15 I'm on 95, right?

16 Q. That's correct. And let me ask you this, just make sure
17 I read it correctly. Line 22 is: "Yes. She -- I didn't
18 really hear her curse. I just --

19 And the question was: "Okay."

20 And then your answer on Line 24 was: "She was fussing a
21 little bit, but nothing serious."

22 Is that what you were saying?

23 A. Exactly. Exactly.

24 Q. So Jennifer wasn't cursing at that time?

25 A. No. She was just upset and she was crying.

1 know, like, neighbor problems, because I try to get along
2 with mine. I just -- I just --

3 Q. Okay. So I gather you don't like neighbor problems and
4 this is -- the incident of April the 26th, 2011 was a
5 neighbor problem?

6 A. Yes.

7 Q. Now, you've told us on direct that you did not see any
8 cars running over the grass in front of Mr. Rashtchian's
9 home; is that correct?

10 MR. CLEVELAND: Object to leading.

11 THE COURT: Please don't lead.

12 Q. Did you see any cars, Mr. Johnson, running over the
13 grass in front of Mr. Rashtchian's home?

14 A. No.

15 Q. Okay. Did you see Mr. McFarland out front directing any
16 traffic to run onto Mr. Rashtchian's lawn?

17 A. No.

18 Q. Did the cars, as far as you're concerned, have plenty of
19 room while you were backing and maneuvering your truck and
20 your trailer for them to pass without running onto
21 Mr. Rashtchian's yard?

22 A. Yes, sir.

23 MR. STUCKEY: That's all we have, Your Honor.

24 THE COURT: All right. Recross.

25 RECROSS-EXAMINATION BY MR. CLEVELAND:

1 THE COURT: All right. Yes, sir, if you'll have a seat,
2 please, out in the audience.

3 All right. Call your next witness, please.

4 MS. LIETZOW: Your Honor, we have the deposition
5 transcript that we -- rather than playing the video, we
6 thought we would read.

7 THE COURT: All right.

8 MS. LIETZOW: For the purposes of this dialogue, Your
9 Honor --

10 (Counsel confer.)

11 MS. LIETZOW: For the record, counsel is reading from
12 the deposition of Mansour Rashtchian given on
13 January 6, 2014, at the offices of Clawson & Staubes.

14 "QUESTION:" -- this is the attorney speaking --
15 "Obviously the reason we're here today, the lawsuit, there
16 was an incident that took place in April of 2011. We believe
17 it took place on April 26, 2011. I'm going to use the term
18 probably "altercation" to describe that. Are you familiar
19 with that term?"

20 "ANSWER: Yes, sir."

21 "QUESTION: Obviously we're here about some issues that
22 went on between you, so I'm going to ask you with specificity
23 what you recall. When you say you delivered a survey to
24 Ms. Mazell, did you perform a survey for her?"

25 "ANSWER: No, sir. Mr. and Mrs. Mazell asked me to help

1 them to survey their property. Mr. Mazell told me there was
2 an issue about the fence between their two properties,
3 disputes where the fence is supposed to be on whose yard it
4 is. He asked me to find a surveyor. I told him 'yes.'

5 "He said, 'Is there any way you could ask him to survey
6 my property?'

7 "I did ask him to survey his property. I do a lot of
8 business with this survey company. I went to pick up that --
9 my survey for another piece of property. The owner said,
10 'Mazell's survey is ready. Would you mind taking it to them
11 so that I can call them to come pick it up?'

12 "I said, 'I'm going home for lunch. I'll be more than
13 happy to pick it up and drop it in the' --

14 "I went home for lunch. I parked my car in my driveway.
15 I walked over to put it in her mail, in her back porch,
16 because that's how they go in and out of their house. I
17 figured as they're going upstairs, they will see -- they will
18 pick it up.

19 "As I approached that back porch, back steps, their back
20 gate was always open. When I approached that back porch and
21 I noticed Mrs. Mazell's back to me and she was talking to
22 Mr. and Mrs. McFarland and she heard me. She turned around.
23 She started coming toward me. She was tearful. The tear was
24 coming down both her eyes.

25 "She walked toward me. I put my hand around her neck

1 and we walked towards Central Avenue. No, no, I'm sorry,
2 toward Flud Street, where the gate is, entrance to their
3 property. She told me what all the problems they're having
4 with them and about this issue with the fence between the two
5 lots.

6 "I told her, I said, 'Why don't you call Mike? Let Mike
7 come home.'

8 "And she said, I believe he says he's at Manning. I
9 think he was working in Manning, South Carolina at a Dodge
10 dealership or Ford dealership. I can't remember which one.
11 She said, 'No, I can't take him away from his work.'

12 "And I said, 'Here it is, your survey. Go ahead and I
13 will get with Mike about it later.'

14 "She said, 'Let me go write you a check.'

15 "I said, 'Don't worry about it. I'll take care of it
16 later.'

17 "Second thing I know, as I walked to my house,
18 Mrs. McFarland cuts through through their yard, follows me to
19 Central Avenue. First thing that comes out of her mouth to
20 me is, 'By the way, your floodlight shines on my bed at
21 night, and I cannot sleep at night.'

22 "Basically I ignored her. I walked toward my house. We
23 have a circular driveway. When I reached my first circular
24 driveway, she was still behind me. Basically I guess you can
25 say I blanked it out because I wasn't really listening to

1 what she was saying 'til I reached my mailbox.

2 "And then before I reached my mailbox, she started
3 saying, 'We're good people. We're good people. We're good
4 people.'

5 "As I entered my property, I said, 'Let someone else
6 judge if you all are good people,' and I turned around to go
7 to my property.

8 "She was in my driveway. I'm not too sure if she was
9 past the point where the property line is or not. I didn't
10 pay attention to that. She asked me if she could come inside
11 our property, and I said 'no' and I went inside.

12 "That was the other incident with her."

13 "QUESTION: So that incident, the only person that you
14 spoke with or had words with was Jennifer McFarland on that
15 incident; is that correct?"

16 "ANSWER: Yes. Mr. McFarland went into -- and I could
17 see him in their property, but he never came to their gate or
18 anything like that. He stayed back."

19 "QUESTION: Your recollection is the only thing she said
20 to you was your floodlight shined into her bedroom window and
21 she couldn't sleep at night. Was that the first thing,
22 complaint?"

23 "ANSWER: That was the first complaint."

24 "QUESTION: Then she kept saying, 'We are good people'?

25 "ANSWER: Yes, sir."

1 "QUESTION: And you don't recall anything else other
2 than you saying, 'Let someone else judge if you're good
3 people or not'?

4 "ANSWER: I did say that."

5 "QUESTION: Do you recall anything else about that
6 altercation?"

7 "ANSWER: When she asked me to enter my property and I
8 told no."

9 "QUESTION: Did she not come onto your property?"

10 "ANSWER: She did not."

11 "QUESTION: And your testimony is you were looking out
12 the window and you saw Bill McFarland direct traffic and
13 direct two cars around the truck, the landscape truck, onto
14 your grass to go around it; is that right?"

15 "ANSWER: Yes, sir."

16 "QUESTION: Now, let's pick up where we were then. What
17 happened after that?"

18 "ANSWER: That's when I went out there and I asked him
19 how come he's inconsiderate and he's directing the cars to go
20 over my grass. That's when I turned around and asked the
21 landscapers. They need to move their car.

22 "Mr. McFarland replied, 'They're not going to move their
23 trucks until they have finished their work.'"

24 "QUESTION: So you're looking out your window of your
25 house. You said you could see Mr. McFarland direct two cars

1 around the landscape truck, correct? And that was enough to
2 upset you to go outside to say something about it, right?"

3 "ANSWER: Yes."

4 "QUESTION: Okay. So when you go out, what kind of mood
5 are you in when you go out to the street to talk to them?"

6 "ANSWER: I wasn't happy."

7 "QUESTION: And what type of tone of voice? What kind
8 of thing are you saying when you're telling him he's
9 inconsiderate?"

10 "ANSWER: It was firm. I was unhappy, but it was not
11 furious yet."

12 "QUESTION: Okay. Not yet? So when you first go out,
13 and obviously the only other interaction you've had with
14 Mr. McFarland before is in 2002 regarding the firework issue,
15 correct? It's the only other time you've spoken to him,
16 right?"

17 "ANSWER: Yes."

18 "QUESTION: So in the intervening nine years, you've
19 never talked to this man?"

20 "ANSWER: But I've seen his actions."

21 "QUESTION: Did you even know his name at that point?"

22 "ANSWER: No."

23 "QUESTION: So when you go out and you tell him he's
24 being inconsiderate, do you agree with me that you were
25 upset?"

1 "ANSWER: I was upset, yes."

2 "QUESTION: Then did he become upset?"

3 "ANSWER: He was -- he got upset. We would say we both
4 were. You can could call it at edge."

5 "QUESTION: I think where we left off in talking about
6 the altercation the afternoon of the 26th was when you had
7 told Mr. McFarland, 'No one in the neighborhood cares for you
8 because of the crap that you do,' and he had responded to
9 you, 'Go get your green card.'"

10 "ANSWER: Yes."

11 "QUESTION: Can you pick up from there?"

12 "ANSWER: That is when I got real upset. I guess that
13 was the point where I started using the -- tell him he was an
14 F'ing racist."

15 "QUESTION: And continue. How often would you say this
16 happened over the two-year period?

17 "ANSWER: If they were working out in their yard, I
18 probably would see them not every time they were maintaining
19 their yard, every so often. It's hard for me to say that.
20 Twice or once a month, I don't know."

21 "QUESTION: So over that period, more than five? More
22 than ten?"

23 "ANSWER: More than five."

24 "QUESTION: Maybe less than ten?"

25 "ANSWER: Yes. My assumption was they thought we were

1 taking sides, and that's what I felt those comments were, in
2 my opinion."

3 "QUESTION: You're saying because you've taken sides?"

4 "ANSWER: Because we did that survey for them."

5 "QUESTION: So you believe, correct me if I'm wrong,
6 that you think because you were associated with the Mazells
7 or had taken their side, you think that's where this
8 animosity came from?"

9 "ANSWER: They think I thought, based on me helping them
10 get that survey, they felt like basically we had chosen a
11 side, and we had nothing to take a side on this case. That
12 was their interpretation."

13 "QUESTION: But you believe that's why you think the
14 McFarlands were upset with you is they feel like you had
15 taken a side with the Mazells against them?"

16 "ANSWER: Yes."

17 "QUESTION: Let's go back to the incident on
18 April 26, 2011. Now, we left off before. We went on kind of
19 a side tangent about the "Go get your green card" comment.
20 And you said that's when you got very upset; is that
21 correct?"

22 "ANSWER: Yes, sir."

23 "QUESTION: Okay. Kind of pick it up from there about
24 what happened after that was said to you, how you reacted and
25 what you recall from that point."

1 "ANSWER: I did tell him he's an F'ing racist."

2 "QUESTION: What else do you recall?"

3 "ANSWER: His hammering did not -- started right there.
4 He continued to say, 'I know what kind of shoddy contractors
5 you are.'"

6 "QUESTION: You say after he makes the green card
7 comment, you call him an F'ing racist, using the actual term
8 not the abbreviation, and then you do recall -- and then do
9 you recall anything else you said at that time before he
10 makes the contractor comment?"

11 "ANSWER: Yes, sir. I turn around and I told the -- one
12 of the landscapers, who was back on the trailer, 'Why would
13 you all work for this F'ing racist?'"

14 "QUESTION: Let's go back to the incident on the 26th.
15 When we left off, you have made the comment where
16 Mr. McFarland had said, 'I know all about you.'

17 "You said, 'You could look in my window with a
18 telescope,' however that comment went.

19 "What do you remember then after that?"

20 "ANSWER: Mr. McFarland said -- McFarland said, 'I know
21 what kind of shoddy contractor you are.'

22 "And that is when I turned around and told him I'm a
23 self-made person. I came to the United States with one
24 suitcase. I'm a self-made person and I did not' -- and I
25 believe I used the word 'steal' -- the word steal, take over,

1 it means the same thing to me -- 'of your in-laws' business.'

2 "He was very, very upset about that comment."

3 "QUESTION: Let's stop right there. So after he makes
4 the comment you say about you allegedly being a shoddy
5 contractor, you tell him, 'I'm a self-made man. I made my
6 own business.' And your testimony is you told him, 'I did
7 not steal my in-laws' business'; is that correct?

8 "ANSWER: Yes."

9 "QUESTION: You made a comment about what the word
10 'steal' means, but you did use the word 'steal,' correct?"

11 "ANSWER: I did, yes.

12 "After he told me shoddy contractor, it was retaliation,
13 yes."

14 "QUESTION: So when he called you a shoddy contractor,
15 that made you angry, right?"

16 "ANSWER: Yes."

17 "QUESTION: And in retaliation, you said he stole his
18 father's business -- father-in-law's business?"

19 "ANSWER: Based on what I've heard out on the street, I
20 know" --

21 "QUESTION: I know where you heard it, but you said it
22 to him, correct?"

23 "ANSWER: Yes."

24 "QUESTION: Who else was present when you said that?"

25 "ANSWER: I don't believe it -- it was three workers in

1 there. Two of them were spreading that. One of them may --
 2 may -- I think one of those two guys was maybe in the back of
 3 the trailer or truck or whatever unloading the mulch, pushing
 4 the mulch in a wheelbarrow."

5 "QUESTION: The guys who were spreading the mulch, how
 6 far away are they?"

7 "ANSWER: From the front of the truck to the back of the
 8 truck, that is -- because we were right at the edge of my
 9 property, I would say about 30 feet, 30 feet, roughly."

10 "QUESTION: Let's just call it 35 feet to be safe.
 11 Let's say they're approximately 35 feet away. Are you
 12 yelling at Bill McFarland and vice versa?"

13 "ANSWER: It's loud, but it's not basically shouting."

14 "QUESTION: Voices raised?"

15 "ANSWER: Voices raised."

16 "QUESTION: Everybody's a little bit angry now?"

17 "ANSWER: Yes."

18 "QUESTION: You would also agree with me that maybe one
 19 of the other guys was by the trailer when this was going on?"

20 "ANSWER: At the end of the trailer."

21 "QUESTION: End of the trailer. How far away is that,
 22 20 feet?"

23 "ANSWER: Right by his gate, from the edge of the road
 24 on my side almost to where the gate is."

25 MS. LIETZOW: That's all we have, Your Honor.