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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2007-CP-07-2373

Matthew S. McAlhaney, ... Respondent,

v.

Richard K. McElveen a/k/a Richard
K. McElveen, Sr., Individually and
d/b/a Battery Creek Marina, The Great
Pumpkin, LLC, Linda McElveen, Richard
K. McElveen, Jr., and Billy Joe Byrd, ... Defendants,

of whom Richard K. McElveen, Sr., is the Appellant.

RECORD ON APPEAL
VOLUME II

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1 THE COURT: Everyone ready? Is there going
2 to be a problem?

3 MR. MATHISON: No, sir.

4 THE COURT: No, sir, there won't be any
5 problems or, no, sir --

6 MR. MATHISON: I don't believe there will be
7 any problems.

8 MR. LEE: I think he's getting ready to
9 publish a deposition in which we gave our objection to
10 some of the things he intends to publish and ask that
11 certain things be unpublished as well.

12 MR. TEMPLETON: Which deposition are we
13 talking about?

14 MR. MATHISON: McElveen, Sr.'s deposition.

15 MR. LEE: McElveen, Sr.?

16 MR. MATHISON: Yes.

17 THE COURT: He doesn't have an objection to
18 that.

19 MR. LEE: I thought you said McCullers'.

20 MR. MATHISON: Going to do McElveen, Sr. and
21 then I may do McCullers', may not.

22 THE COURT: Bring the jury in. We need to
23 get rolling.

24 MR. MATHISON: Your Honor, will it be
25 suitable for me to read to the jury or you want to set a

1 witness in the chair.

2 THE COURT: You're the lawyer. You can do it
3 either way. Reading it might be simple.

4 MR. LEE: On cross, we're going to publish
5 what I want to publish rather than in conjunction with
6 his.

7 THE COURT: That's fine.

8 MR. MATHISON: For purposes of clarification,
9 if I put up this evidence with fulfilling my case in
10 chief, is he going to be able to fulfill his case in
11 chief with fulfilling this witness.

12 THE COURT: He is not going to call through
13 their witness at this time. He can publish portions of
14 deposition for clarification at this stage. That's all
15 he plans on doing, he represented. You have to put in
16 certain things for your case and he does not have to.

17 (WHEREUPON the jury entered the courtroom.)

18 THE BAILIFF: Jury is seated, Your Honor.

19 THE COURT: You may proceed.

20 MR. MATHISON: May it please the Court, Your
21 Honor, may I open the deposition of Rick McElveen, Your
22 Honor?

23 THE COURT: You can do it.

24 MR. MATHISON: Struggling to get it out of
25 here.

1 THE COURT: Incidentally, jurors, why the
2 attorneys hand up a deposition that is under sale, I
3 opened one in my life. That was over 20 years ago and I
4 cut my hand and since then -- so I tell the attorneys to
5 go ahead and open it.

6 MR. MATHISON: Ladies and gentlemen of the
7 jury, I'm going to read to you some of the passages from
8 the deposition of Mr. McElveen, Sr. These are passages
9 that the plaintiff believes are pertinent to it's case.
10 The first passage is at page 108.

11 THE COURT: Mr. Mathison, just for the
12 record, tell them when it was taken and so forth.

13 MR. MATHISON: This deposition was taken in
14 Beaufort County at nine o'clock a.m. on the 21st of
15 November, 2008.

16 MR. LEE: Judge, the only thing I would ask
17 is that it be read as it was done with no inflection or
18 argument on behalf of the person --

19 THE COURT: He's only going to read what's
20 written. He can't add to it.

21 MR. LEE: Or emphasize or stress or --

22 THE COURT: I can't -- jury, y'all know if
23 he's --

24 MR. LEE: All right.

25 THE COURT: -- emphasizing or not. Just

1 treat it like he's reading it. I can't tell somebody not
2 to do something because of their mannerisms. Some people
3 raise their voice. He's not Mr. McElveen. He's not
4 going to testify like Mr. McElveen. He's going to read
5 it. If he emphasizes something, you just take the words
6 as stated.

7 MR. TEMPLETON: Your Honor, if you would,
8 please give a brief curative instruction to the jury as
9 to what a Rule 12, use of the transcript is, all that
10 kind of stuff.

11 THE COURT: He can call the gentleman or read
12 from it. He's got certain things he has to put into
13 evidence to make out his case. He feels -- I don't know
14 because I haven't read the deposition, but you saw it
15 open. He's going to read certain things he thinks is
16 important to his case. It may not be, of course,
17 Mr. McElveen is not going to testify at this point.
18 Later he will. He can say whatever.

19 All right. Proceed.

20 MR. MATHISON: I'm reading now at page 108,
21 line 7.

22 And the question is: "But I'm hoping that
23 you're going to give me some information that would be
24 relevant for what you actually said."

25 The answer by Mr. McElveen was, "What it

1 says, he's got some problems. Yes, sir."

2 This is the question: "Specifically, you
3 said that he's a drug addict."

4 "Yeah. I said that he's a drug addict" --
5 actually he says I -- "I said that he has a drug
6 addiction. A drug addiction."

7 "You said that he's a child abuser, right?"

8 "Abuse was sexual (unable to transcribe due
9 to quality of reporter's notes) certain."

10 The next portion that I'm reading is page
11 118, commencing with line 10.

12 "Okay. What was the basis of his having
13 spanked your son in a mall in Columbia."

14 "Right."

15 "You wrote a letter to the governor saying
16 that he was a child abuser."

17 "No that's not why this letter was written at
18 all."

19 "Why was the letter written?"

20 "This letter was written because of Matt's
21 next door neighbor, Julia Sanford. You know, some of the
22 circus antics that you lawyers seem to come up with is to
23 walk in the courtroom and look -- hey, it's a wonder this
24 letter didn't get written on September 23. That's how
25 angry I was. We were dealing with two children here.

1 Okay? That are in grave danger."

2 The next item is at page 120, line 18.

3 Question is from me -- "Okay. Have you ever
4 made calls to other people in an effort to give you
5 certain (unable to transcribe due to quality of
6 reporter's notes) evidence?"

7 Answer: "I don't know that I made any phone
8 calls. I sent letters."

9 Question: "Sent letters?"

10 Answer: "I don't know that I HAD any phone
11 calls. I sent letters."

12 Question: "Sent letters?"

13 Answer: "Yeah."

14 Question: "To whom?"

15 Answer: "To numerous people."

16 "Okay. Well, tell me some of the people that
17 you sent letters to."

18 "I sent letters to Bruce and Jan Shelava. I
19 Sent letters to Jeff and Kelly Palmer."

20 "Okay."

21 "I sent letters to -- I'm just going to have
22 to tell you the Duncans. I can't remember the Duncan's
23 first name, him or his wife. I sent letters to a lot of
24 people in regards to these children."

25 "Where are those letters?"

1 "I assume they have them. I don't keep
2 copies of those letters."

3 Next portion is page 125, line three.

4 Actually, the question begins page 124, line
5 20.

6 "With any degree of civility."

7 Answer: "What I'm trying to tell you is you
8 can ask the question three or four and different,
9 different ways, you're not going to get a different
10 answer. If I don't know the (unable to transcribe due to
11 quality of reporter's notes) I'm going to give it to you.
12 If I don't, I'm going to tell you I don't know. I'm
13 telling you I wrote this letter."

14 (Indicating.)

15 "Does Julia Sanford and Governor Sanford, the
16 weight of the governors -- Governor Sanford's office had
17 no business in this Family Court hearing."

18 Question: "I didn't ask you that. I asked
19 you --" and there's an interruption.

20 "You asked me why did I write the letter."

21 Question: "All right. I'm asking you why
22 did you malign Matt McAlhaney in the letter?"

23 Answer: "Because he had started putting
24 himself in the picture."

25 Question: "So --"

1 There's an interruption.

2 Answer: "Okay. So now, I don't have one nut
3 case to deal with, I've got two to deal with."

4 Question: "So you were angry at Julia
5 Sanford?"

6 Answer: "And you know what? I said, what
7 does it say there? I said a local realtor, okay? Let me
8 tell you something. Nobody knew who that local realtor
9 was until they put all this business on the street. They
10 published it in their own damn book. They're the ones
11 that put this business on the street, not me."

12 The next portion --

13 MR. LEE: Your Honor, can I interrupt one
14 second?

15 It appears Mr. Mathison, that page 124, line
16 24, I think they had some voice recognition software and
17 I think it prints the words out "rather" than "answer."

18 MR. MATHISON: Forgive me, you were the one
19 that insisted that I read it literally, so I'm trying to
20 read it exactly what's in the book.

21 MR. LEE: The way you're supposed to do it is
22 read it -- I'm trying to clear something you. You
23 requested reeding it the way you wanted to. I'm just
24 telling you it had the word in there because of some
25 voice recognition software, but you handle it the way you

1 want to. I was attempting to help.

2 MR. MATHISON: The next page is at page 150,
3 line 5.

4 Question was: "Do you recall an event where
5 the older of your two grandchildren, Ricky, three, was
6 trying out for Dixie Youth Baseball."

7 Answer: "Sure. I do remember that event."

8 Question: "Was that in late February?"

9 Answer: "Would have been sometime around
10 there. Baseball starts first of March, yeah."

11 Question: "Well they have to pick the teams
12 first?"

13 "That's correct, uh-huh."

14 Skipping some, down at line 22, "okay. Did
15 your grandson, Ricky, tryout to play pitcher?"

16 Answer: "No. Yes, he did. Yeah, I'm
17 sorry."

18 Question: "Isn't it a fact that they kept
19 the pitchers and catchers afterwards and had a separate
20 tryout for those people that -- "

21 Interruption --

22 "I can't say about catchers, which is an
23 important aspect of a baseball team, but I do know that
24 after -- afterwards, they made an announcement that if
25 somebody felt like they could be a pitcher, then come up

1 there. It wasn't -- it wasn't necessarily offered to the
2 whole --"

3 Question: "It was self-selection?"

4 Answer: "That's correct."

5 Skipping down in a discussion about Dixie
6 Youth baseball and previous coaching and things of that
7 nature, and at line 19, it says: "Do you recall it as
8 plain as if it was yesterday" --

9 Question: And "When you snatched the bat?
10 Because the bat belonged to you?"

11 Answer: "One of the reasons. There were a
12 lot of reasons leading up to that."

13 Question: "All right. When you came back,
14 did Matt tell you not to snatch anything out of his hands
15 again?"

16 Answer: "No, he waited until I was halfway
17 across the field with the bat in my hand and then made
18 that announcement so everybody could hear it."

19 Question: "Forgive me. I thought you took
20 the bat to the vehicle, put it in the vehicle and came
21 back."

22 "I took the bat from him and halfway to the
23 vehicle is when he made the announcement. Don't ever
24 snatch anything out of my hand again."

25 "Okay. And then you came back; is that

1 correct?"

2 "After I put the bat up."

3 Question: "Right. At that point, did you
4 get in his face?"

5 Answer: "I would say I was relatively
6 close."

7 Question: "And did you threaten him?"

8 Answer: "Did not. I invited him."

9 Question: "Specifically, did you tell him, I
10 don't want you making trouble in front of these kids?
11 Did you tell him that?"

12 Answer: "That."

13 Question: "Did you --"

14 Interruption.

15 Answer: "Go ahead. Go ahead."

16 Question: "You didn't tell him that?"

17 Answer: "I did not tell him that."

18 Question: "Did you tell him that you wanted
19 to, quote, take it on down the road, closed quote?"

20 Answer: "I did."

21 Question: "All right. And by take it down
22 the road, end quotes, you mean that you and him should go
23 down the road and fight?"

24 Answer: "Exactly what I meant."

25 "Okay. What did he say in response to that."

1 Answer: "That he was an adult and adults
2 don't act like that."

3 Question: "Was there any further
4 conversation on this subject?"

5 Answer: "No."

6 Question: "But within a week of that
7 confrontation, Mr. McAlhaney was arrested for child
8 molestation; isn't that right?"

9 Answer: "Could not tell you that."

10 Question: "Do you know when he was
11 arrested?"

12 "I thought it was in -- I thought it was in
13 January for some reason."

14 "Would it make sense to you if I told you
15 that it was March 1, 2004."

16 Answer: "If that's what you tell me."

17 Question: "Yes, sir, within a week of your
18 confrontation at the baseball field; is that right?"

19 Answer: "Right."

20 The next portion is page 196 at line 2.
21 Actually, we'll start one-half page before that. Page
22 195 at line 13.

23 "Were you worried about the fact that
24 Jackson's privacy, the privacy of a minor, had been
25 invaded."

1 Answer: "By this book? Absolutely."

2 Question: "Not necessarily by the book. By
3 all the hoopla that had gone on surrounding the arrest
4 and so forth."

5 Answer: "I don't think anybody really
6 noticed the arrest to be honest with you. But (unable to
7 transcribe due to quality of reporter's notes) what if
8 you're talking about in the courtroom is where it should
9 be -- should stay. I think the privacy of those children
10 and myself had been grossly violated."

11 Question: "That being the case, what would
12 induce you in 2005 to file a lawsuit" --

13 MR. LEE: Your Honor, for the record, I'm
14 going to object to this portion of the testimony as not
15 relevant.

16 THE COURT: I have no clue. Go ahead.

17 MR. MATHISON: "What would induce you in 2005
18 to file a lawsuit on behalf of Jackson McElveen alleging
19 in the most (unable to transcribe due to quality of
20 reporter's notes) of terms exactly how he'd been
21 molested."

22 Answer: "What would possess me to do that?"

23 Question: "Yes, sir."

24 Answer: "That child's got to have some way
25 of knowing that at some point in life, in time in his

1 life that he's got a way (indicating) to fight back if he
2 needs to."

3 "Yes, sir. And who was actually fighting in
4 this lawsuit? Was it Jackson or was it you."

5 Answer: "Well, it certainly wasn't me.
6 Well," -- this is a question --

7 "You were the guardian ad litem who brought
8 the suit for Jackson; is that right."

9 Answer: "Right."

10 "You brought it in Jackson's name, didn't
11 you?"

12 "Well, who else's name can I bring it in?"

13 "You could have brought it in the name of
14 John Doe, sir. Couldn't you?"

15 "I don't know. I'm not as smart as you are,
16 Rob."

17 Further down, after a discussion of the case
18 at page 198.

19 The question is: "Yes, sir, in this case,
20 which is Case Number 05-cp-07-2142, you were removed as a
21 guardian ad litem, weren't you?"

22 Answer: Yes. I think I was. I think that
23 was our first meeting with --"

24 Interruption.

25 "And after you were removed as the guardian

1 ad litem, could you find anybody who would take over the
2 case and serve as the guardian ad litem?"

3 Answer: "I don't know. I don't know that we
4 tried. I think there was a big problem with that."

5 Question: "Did you dismiss the case because
6 you could not find someone who would agree to serve as
7 the guardian ad litem?"

8 Answer: "Absolutely not."

9 Question: "To advance a case that you'd
10 brought."

11 Question: "Excuse me."

12 Answer: "That case was not dismissed. That
13 case is on hold."

14 Question: "Would you please read what this
15 document I just put in front of you says."

16 Answer: "Hereby dismissed without prejudice,
17 but I understand it stays on the roster, if you will, or
18 the rolls -- or the rolls -- until such time as Jackson
19 is old enough to sit in the courthouse and tell some
20 folks what happened to him. This testimony is
21 accompanied by an exhibit which is an order of dismissal
22 in Case Number 05-CP-07-2142 which says that it is
23 dismissed without prejudice."

24 The next portion is page 171, at line 15.

25 "Who else did you tell that your son had been

1 molested by Matt McAlhaney?"

2 Answer: "The therapist in Summerville, South
3 Carolina."

4 Question: "Did you also report repeatedly in
5 e-mails to Brian Baird at the Beaufort County Sheriff's
6 Office that Matt was -- let's start with the word open --
7 quote -- deviant. Didn't you use that term in an
8 e-mail?"

9 Answer: "It's possible."

10 "Didn't you use the word gay in an e-mail?"

11 "Well, yeah, probably so."

12 "All right. Did you call -- does gay to you
13 import homosexual?"

14 Answer: "It does."

15 "How many times did you contact the Beaufort
16 County Sheriff's Office by e-mail, calling Mr. McAlhaney
17 either a deviant or a gay?"

18 "I don't know. Three or four."

19 Question: "You only had three or four
20 e-mails to Detective Baird?"

21 Answer: "Would be my guess. You know."

22 Next is page 235. Excuse me. Next is page
23 227, line 18, actually, we'll start at line 12.

24 "Is it just an coincidence that you got what
25 you want, that is final custody of Jackson and Ricky on.

1 November 29, and all of a sudden, the charges against
2 Matt evaporated before Christmas in 2004?"

3 Answer: "If that's the way you're looking at
4 it, then I would say it's a coincidence because it's
5 immaterial to me. First of all immaterial to me whether
6 they charged him, didn't charge him, they're
7 professionals. They need to do their job. I didn't
8 bother them. The only time I ever communicated with them
9 was when they left a message for me to give them what
10 information I had and it was just an act of good faith --
11 good faith."

12 "I guess that he got arrested and within
13 three days arrests you had custody of the children."

14 Answer: "I think so, I really do. I think
15 it was imminent."

16 This is page 235 at line 6.

17 "I'm handing you this document, which is
18 Plaintiff's Exhibit 14, dated 29, March, 2004, and I'm
19 asking you whether you sent this to Brian Baird at
20 Beaufort County Sheriff's Office."

21 Answer: "Yes. That's the same date on which
22 your wife also sent an e-mail to Brian Baird at the
23 Beaufort County Sheriff's Department as reflected in
24 Plaintiff's Exhibit 13."

25 Answer: "I would assume that we were asked

1 to do something."

2 Question: "All right."

3 Answer: "And the only reason that I'm going
4 to tell you this without reading it is it's got Rick at
5 the bottom, okay? I wrote -- I write my own letters."

6 Question: "And what you were doing is trying
7 to find people that would give Sergeant Baird negative
8 information about Matt; isn't that correct?"

9 "Well, I would say that probably was the
10 intent."

11 "All right. This --"

12 Interruption.

13 Answer: "I don't think we were going to look
14 for anything positive to say about him."

15 Question: "Was this a month after the event
16 had been disclosed and a month after Matt had been
17 arrested? Is that correct?"

18 "Okay."

19 Question: "What was the point in writing
20 this kind of e-mail to the Beaufort County Sheriff's
21 Office trying to dredge up people to say negative things
22 about Matt?"

23 Answer: "I'm sure it was a request by them
24 to, you know -- you know -- you go through life saying,
25 you know, yeah, I was told this or was told that, well,

1 give us some idea of who's telling you these things."

2 Next portion is page 221, line 12:

3 Question: "And as a result of this
4 investigation Molly McCullers' cut her wrists in an
5 apparent suicide attempt; isn't that correct?"

6 Answer: "Whether she (unable to transcribe
7 due to quality of reporter's notes) Well, I have heard
8 that."

9 Question: "She was admitted to the hospital.
10 Do you know whether that's right?"

11 Answer: "I do. I've seen the medical
12 records."

13 Question: "And she was your opponent, not
14 Mr. McAlhaney, correct?"

15 Answer: "That's correct."

16 Question: "And then after she had cut her
17 wrists you and she reached an agreement where you would
18 have custody subject to rights of visitation, and Molly
19 McCullers parents where she could visit while her parents
20 had visitation with the children; isn't that correct?"

21 "That's correct."

22 "And I'm handing you is that order and ask if
23 you can identify it for me, please. It's Plaintiff's
24 Exhibit 10."

25 "I can. And that order, parenthetically is

1 in the record."

2 Next is page 242, line 13.

3 Question: But I still don't understand why
4 you felt compelled to try and make life more difficult
5 for someone who had been arrested when you already had
6 custody of the children."

7 Answer: "All right. I understand your
8 question."

9 "I don't know what I have, you know --"

10 Answer: "For you at this point, that's the
11 use of the word (unable to transcribe due to quality of
12 reporter's notes)."

13 MR. LEE: Thank you.

14 MR. MATHISON: Question: "Assume that you
15 found evidence that he was engaged in bad business
16 practices. Would that have any bearing on whether or not
17 he was guilty of child molestation?"

18 Answer: "Bad business practices?"

19 Question: "Yes, sir."

20 Answer: "Absolutely not."

21 Question: "Okay. Assume that you found out
22 that he engaged in rough sex, would that have any bearing
23 on it?"

24 Answer: "With the child?"

25 Question: "No. With an adult. I said,

1 would it have any bearing with abuse to a child? Well,
2 if you could have found that that would have had a
3 bearing, wouldn't it?"

4 "No. Wouldn't have had a bearing."

5 "But you didn't find anything --"

6 Interruption.

7 "But that would be towards deviant portion of
8 any segment that seems to bother you a lot."

9 Question: "Well, you haven't offered any
10 SLED of evidence that would indicate that --"

11 Interruption.

12 "-- you have been asking me if he had rough
13 sex with an (unable to transcribe due to quality of
14 reporter's notes) year-old girl. You know, I'm telling
15 you that pertains to being a deviant in my book."

16 The next is page 223, line 19. Actually
17 starting with 7.

18 "Well, do you know -- you do know, don't you
19 that Angela McCall-Tanner told you in (unable to
20 transcribe due to quality of reporter's notes) that they
21 were not going to prosecute Matt on those charges?"

22 Answer: "Angela McCall-Tanner? Is this the
23 woman that was in the room with Randy Murdaugh and
24 myself? Is that who it was in the room?"

25 Question: "She was the one that told you."

1 "There was a woman and there was Randy
2 Murdaugh. I have no idea who the woman was."

3 "It was Angela McCall-Tanner, then I will
4 tell you very adamantly that she is a liar."

5 "Well, tell me what you called her."

6 "What I called her?"

7 "Yes."

8 "What do you mean? I called her?"

9 "The name that you called her in the room
10 with the solicitor?"

11 "Yes. There was no name call --"

12 "No, no. Excuse me. On the telephone
13 afterwards."

14 Answer: "Telephone afterwards? I didn't
15 call her anything. I never got a chance to call her
16 anything. That's the most foul-mouthed woman I've ever
17 met in my life. My simple statement was that you don't
18 have a clue and that's all I've got to say."

19 May it please the Court, I have one more
20 passage and it's not marked. Just one second.

21 (There was a short break in the proceedings.)

22 MR. MATHISON: Thank you for the indulgence,
23 Your Honor.

24 That completes the Rule 32 disclosures with
25 respect to defendant Rick McElveen, Sr.

1 THE COURT: Any of y'all want to read
2 anything to clarify anything that was said, but you can't
3 put up your case in chief through anything you could ask
4 with --

5 MR. LEE: Your Honor, we will just wait until
6 the witness testifies.

7 MR. TEMPLETON: Nothing from this defendant.

8 THE COURT: Okay.

9 MR. MATHISON: Your Honor, May it please the
10 Court, the defendant has one more deposition that there
11 is to be read to the jury and that's the deposition of
12 Ms. McCullers and I was advised that there are some
13 objections and I quite frankly don't know what they were
14 so I'd like to see them.

15 MR. LEE: I gave them to you before we got
16 here this morning and laid them on your desk.

17 MR. MATHISON: Could you give me another
18 copy?

19 THE COURT: How long is it?

20 MR. MATHISON: Should take 15 minutes.

21 THE COURT: All right. It will take 30
22 minutes for y'all to decide what you're going to put in
23 or not, but -- so we're going the break for lunch to save
24 time, but be back at one o'clock, jurors. Trying to save
25 a few minutes.

(1 (WHEREUPON the jury left the courtroom.)

2 THE BAILIFF: Jury is clear, Your Honor.

3 THE COURT: Y'all look it over and see what
4 you want. We will be back at a quarter until one. I'm
5 not going anywhere -- but the court reporter needs to
6 eat -- if you need help on what comes in and what can't
7 come in. All right.

8 (WHEREUPON a lunch recess was observed.)

9 THE COURT: Are we ready to roll?

10 MR. MATHISON: We have discussed Mr. Lee's
11 objections, reached an agreement on six, but we still
12 have three on which we can't agree.

(13 THE COURT: Y'all should have come and got
14 me. The jury wants to start when we told them we're
15 going to start. I told you I'm down there.

16 What three cases?

17 MR. MATHISON: First objection he's got is
18 what's on page 10, line 1.

19 And is a question that starts this way: "Do
20 you know the first time that Mr. McElveen accused you --
21 accused you of abusing your daughter."

22 MR. LEE: I will withdraw that objection.

23 THE COURT: He withdraws that. That's one
24 down.

(25 MR. MATHISON: Next one is page 17, line 17,

1 says, "Would you go to the top of the second page and
2 read the first paragraph there for me? It is referring
3 to Ms. McElveen, Linda McElveen's allegation that your
4 daughter had an affair with a 60-year-old man named Emmet
5 Decker; is that right?"

6 Answer: "I don't remember this. I remember
7 there were so many allegations twirling around. Oh, this
8 was before the McAlhaney thing?"

9 Question: "Yes, sir. This is before. This
10 is in 1997. Didn't Ms. McElveen accuse your daughter of
11 having an affair with a 60 year-old security guard named
12 Emmet Decker?"

13 Answer: "Yes."

14 Question: "Wasn't that a lie?"

15 Answer: "Yes."

16 MR. LEE: Withdraw that one.

17 MR. MATHISON: Next one is at page 39, Your
18 Honor. The exact reference is at line (unable to
19 transcribe due to quality of reporter's notes).

20 "I'm handing you a letter from Mr. McElveen
21 that is Rick, Sr. to Betty Anderson and dated February 9,
22 1997, and I will ask if you've ever seen that before."

23 "Yes, I've heard about this. I don't
24 remember, but, you know, I've talked to Mr. McElveen
25 about impugning the Mormon Church, the Mormon faith.

1 We're people just like you. We have jobs just like you
2 and I've told you that. I said why would you want to say
3 negative -- anything about an DSS employee there? That
4 has nothing to do with it."

5 Question: "Did he suggest that she was not
6 impartial because she was of the same faith that you
7 are?"

8 Answer: "Did he?"

9 Question: "Yes. Mr. McElveen."

10 MR. LEE: That one is withdrawn too, judge.
11 I spoke to my client.

12 MR. MATHISON: It continues on. It has to do
13 with a letter with the court reporter.

14 THE COURT: Okay. Bring them in.

15 THE BAILIFF: Yes, sir, Judge.

16 Jurors entering, Your Honor.

17 (WHEREUPON the jury entered the courtroom.)

18 THE COURT: All right.

19 THE BAILIFF: Jury is seated, Your Honor.

20 THE COURT: They are indeed.

21 Mr. Mathison was in here, but he left. I
22 don't know. He'll be back.

23 (Mr. Mathison returns to the courtroom.)

24 MR. MATHISON: May it please the Court, the
25 plaintiff is going to read the deposition of Molly

1 McCullers' father, that is Dale G. McCullers', certain
2 portions of it.

3 THE COURT: All right.

4 MR. MATHISON: There were objections made and
5 we have ironed out the objections as to what I'm putting
6 in the record.

7 THE COURT: We ironed them out a minute ago,
8 which is why we're five minutes late.

9 MR. MATHISON: First page is page 5, line 7.

10 THE COURT: Begin, Mr. Mathison, not that it
11 matters, but I always tell them where it was taken.

12 MR. MATHISON: Forgive me, sir. This
13 deposition is of Dale G. McCullers taken in Waycross,
14 Georgia on October 8, 2009. Mr. McCullers' is Molly
15 McCullers' father.

16 Are you employed?

17 Retired.

18 Question: I believe you worked in law
19 enforcement for a number of years?

20 Answer: I did.

21 Question: What exactly did you do?

22 Answer: I was an NCIS Special Agent,
23 investigating criminal behavior in the Navy, Marine Corp.

24 Starting when, sir?

25 1977.

1 And immediately prior to your retirement,
2 were you serving in a training capacity in Brunswick,
3 Georgia?

4 Answer: That's correct.

5 Question: What exactly were you doing there?

6 I was a Federal Law Enforcement Training
7 Instructor with different divisions at the Federal Law
8 Enforcement Training Center.

9 Did you train across the spectrum of
10 different services and organize (unable to transcribe due
11 to quality of reporter's notes)?

12 Answer: Yes.

13 How many years did you do that?

14 Answer: Roughly 10 years.

15 Question: So from 1992 to 2002.

16 Answer: That's correct. After 2002, what,
17 if anything, did you do?

18 Answer: I was what they term a rehired
19 (unable to transcribe due to quality of reporter's notes)
20 I went back with the Department of Homeland Security and
21 worked in different divisions on the center as an
22 instructor.

23 Question: Does that mean you were drawing a
24 pension and working? I'm not familiar with the term
25 rehired annuant.

1 Answer: Yeah, drawing a pension and working
2 a second career.

3 At present, are you completely retired?

4 Answer: I am.

5 The next is page 6, line 20.

6 Over the course of the previous 12 years,
7 you've been involved in two different lawsuits with
8 Mr. And Ms. Richard McElveen, Sr., have you not.

9 Answer: Yes, I have.

10 In the course of these lawsuits, you've given
11 a number of affidavits; is that correct?

12 I did.

13 Being a law enforcement officer would it be
14 correct for me to assume that when you swore to something
15 in an affidavit you were telling the truth?

16 Yes.

17 Do you know the first time that Mr. McElveen
18 accused you of -- of abusing your daughter?

19 Answer: Do I?

20 Question: Yes.

21 To tell you the truth, it's been -- the first
22 time was '97, the suit, and the second one was 2003.

23 Okay.

24 Answer: I tried to put this out of my mind
25 completely.

1 Question: Can you state definitively for the
2 record here that you never physically abused your
3 daughter, Molly when she was growing up?

4 Absolutely, no.

5 So what's set forth in this affidavit, what's
6 set forth dated June 1, 2004, is, in fact, the truth?

7 It is the truth.

8 Question: I'm handing you now an affidavit
9 of Richard McElveen, Sr., which is dated 13, January,
10 1997, and I'll represent to you that the affidavit was
11 submitted to the court immediately after Mr. McElveen,
12 Jr. had obtained a restraining order and begun a lawsuit
13 against your daughter, Molly. I would refer you to the
14 third paragraph of that affidavit.

15 Answer: Yeah, the truth is my daughter Molly
16 is a liar.

17 What I'm asking is did you, in fact, slap or
18 punch Molly in such a way that she showed physical marks
19 that someone could see?

20 Answer: I have already told you no.

21 So Mr. McElveen is saying that he personally
22 witnessed Molly's face showing the events of being
23 punched and slapped would have to be a lie, wouldn't it?

24 I don't know if he saw her bruised or not,
25 but it was not inflicted by me.

Next is page 12, line 7.

Then he goes on to say, quote, I've seen evidence of Molly's father's punishment as she appeared one night in my home in my home with marks where her father had slapped and punched her.

My understanding is that you did not slap or punch her.

Answer: That is a lie.

So to the extent that Mr. McElveen made this up, it's a lie? You know whether he made it up or not?

I don't know. I wasn't in his mind. I wasn't present when he made these statements.

There's an affidavit which was put in the record thereafter.

The next is page 17. Would you -- this is line 17.

Would you go to the top of the second page and read the first paragraph there for me?

It's referring to Ms. McElveen, Linda McElveen's allegation that your daughter had an affair with a 60-year-old man named Emmet Decker. Is that right?

I don't remember this. I remember there were so many allegations twirling around --- this was before the McAlhaney thing.

1 Yes, sir, this is before. This is 1997.

2 Did Ms. McElveen accuse your daughter of
3 having an affair with a 60-year-old security guard named
4 Emmet Decker?

5 Yes.

6 Wasn't that a lie?

7 Yes.

8 Do you think your daughter, quote, told her
9 husband that she had an affair with Emmet Decker?

10 I don't remember. I remember there being an
11 older man involved. I remember my daughter denying that
12 she had a sexual relationship with him.

13 Next one is page 29, line 6.

14 What did Mr. McElveen tell the governor he
15 wrote to you -- excuse me.

16 Strike that and start over.

17 What did McElveen tell you that he wrote the
18 governor?

19 Basically that McAlhaney (unable to
20 transcribe due to quality of reporter's notes) was a coke
21 abuser and, you know, he fully believed these allegations
22 of child molestation. I want to make it clear, I never
23 knew for sure and I still, to this day, don't
24 understand --

25 I cannot read that and I'm going to ask that

1 that be stricken from the record.

2 THE COURT: All right.

3 MR. MATHISON: Next allegation is paragraph
4 39, page 39, paragraph 1.

5 I'm handing you a letter from Mr. McElveen
6 that is Rick, Sr. to Betty Anderson and Associates dated
7 February 9, 1998, and I will ask if you've ever seen that
8 before.

9 Answer: Yes, I've heard of this. I don't
10 remember, but you know, I've talked to Mr. McElveen about
11 impugning the Mormon Church, the Mormon faith, where
12 people just like you -- we have jobs just like you and I
13 told him that. I said (unable to transcribe due to
14 quality of reporter's notes) would you want to say
15 negative anything about the DSS employee there? That has
16 nothing to do with it.

17 Did he suggest that she was not impartial
18 because she was of the same faith that you are? Did he?

19 Yes. Mr. McElveen. In that he does.

20 Referring to the letter. Yes, he does,
21 doesn't he?

22 Answer: Yeah.

23 In your experience, is that truthful?

24 I think he is like a lot of (unable to
25 transcribe due to quality of reporter's notes)

1 misinformed and extremely (unable to transcribe due to
2 quality of reporter's notes) for no reason. I think it
3 was just a prejudicial comment, flippant.

4 You know, Mormons learn to have a thick skin,
5 we're used to this trash. What he said is not true.

6 So there is another one of those instances
7 where he used something that wasn't true in an effort to
8 get what he wanted?

9 The answer was: Now, I think he thought it
10 was true, in an effort to get what he wanted. The answer
11 was (unable to transcribe due to quality of reporter's
12 notes) I think he thought it was true.

13 So there is another one of those instances
14 where he used something that wasn't true in an effort to
15 get what he wanted.

16 The answer was, I think he thought it was
17 true, and there is a letter -- an exhibit to this
18 affidavit where Mr. McElveen had written to a court
19 reporter indicating that the reason that she would not
20 produce a transcript was because she shared the same
21 faith as Mr. McCullers', that is to say they were both
22 members of the church.

23 The next is page 73, and I will not read that
24 one.

25 The next is page 75, line (unable to

transcribe due to quality of reporter's notes).

Did you and your wife have concern for the wellbeing of the children when they were alone with Matt and Molly?

Answer: I did, based on primarily my daughter's behavior and Matt's would have been secondary. My daughter was the one that had signs of instability. Matt seemed to be a stabilizing influence until we heard about the allegations. We were blind-sided by the allegation.

Next is page 77, line 15.

If I understand, in response to Mr. Lee's question, you said, according to the affidavit filed by Mr. McElveen in the 1997 action he accused you of child abuse.

Witness indicated.

You said that you could have -- that could have been based on something he heard from Molly; is that right?

Answer: That's the only way that he could have known anything about it. Molly told us that she lied. But after the 1997 incident, you addressed that issue by specifically denying it and making sure that Mr. McElveen knew that you denied it, didn't you.

Answer: Absolutely. And that's what you're

1 affidavit says, dated January 1, 2004.

2 Answer: That's correct.

3 Question: And he came back knowing full well
4 that you denied it and accused you of it again in 2003,
5 didn't he.

6 Answer: Yes, he did.

7 Question: So what good did the denial do?

8 Answer: Not much. What did your good name
9 do?

10 Answer: Not much.

11 So he knew that you were not admitting to
12 child abuse, and he came back and accused you of it
13 again?

14 Answer: I'm not saying he knows that I'm not
15 capable of child abuse.

16 MR. LEE: Rob, that's incorrect.

17 MR. MATHISON: Sorry.

18 MR. LEE: You put a not in there.

19 MR. MATHISON: Excuse me. I'm saying he
20 knows that I'm -- that's what he says.

21 MR. LEE: I'm saying he knows that I am
22 not --

23 MR. MATHISON: He knows -- I'm saying he
24 knows that I'm not capable of child abuse.

25 Now, discipline, spanking my children at a

1 certain age, you know, those kind of things, yes, but
2 corporal punishment where there's any kind of marks or
3 bruises, I'm incapable of that unless I'm hallucinating.
4 I have previously refuted the same (unable to transcribe
5 due to quality of reporter's notes) in his statements
6 submitted to the Court, thanks to my daughter's attorney.

7 That's what you said. And you said this
8 allegation was false then and is it still false now?

9 Answer: Yes, thank you.

10 That concludes the readings from plaintiff's
11 review of the deposition of Mr. McCullers'.

12 MR. LEE: I have just a couple.

13 Page 13, line 4 through line 12.

14 Answer: Mr. McCullers -- Mr. McElveen and I
15 have forgiven one another. We have moved on for the
16 benefit of these grandchildren. His son, my daughter,
17 their lifestyles are totally against anything we believe
18 in, in terms of lifestyle. I'm not going to sit here and
19 beat him up on behalf of a lawsuit so your questions and
20 responses are going to be limited for me. I'm making it
21 clear, I'm concerned about these grandchildren.

22 Page 15, line 1 through 15.

23 Did Mr. McElveen or his wife ever put words
24 in your mouth with respect to your daughter's mental
25 health, specifically saying you had impugned to her

1 mental health and suggested she was in need of
2 medication.

3 Answer: Absolutely not. Mr. McElveen is a
4 good man, trying to raise two grandchildren because of my
5 daughter's lifestyle and your (unable to transcribe due
6 to quality of reporter's notes) lifestyle at one time,
7 (unable to transcribe due to quality of reporter's notes)
8 the allegations of drug abuse. They didn't belong in
9 that environment. Mr. McElveen is providing a safe, good
10 environment for these children.

11 Page 27, line 16.

12 Do you believe Mr. McElveen, Sr. told lies
13 about your daughter, Molly?

14 Answer: I'm not certain they were all lies.

15 Question: Do you believe that?

16 Answer: I know the abuse was. She never
17 abused her children, but as far as negligent,
18 inattention, drug abuse, alcoholism, the man told the
19 truth.

20 Page 20, line 3.

21 Question: What I need you to do is answer
22 truthfully. This is -- a question of Mr. Mathison.

23 I've answered truthfully. I know your trick
24 questions. I know your trick questions.

25 Question: Mr. McCullers, I'm not trying

1 to --

2 Answer: You're trying to trick, confuse, do
3 anything you can to get me to say something bad about
4 Mr. McElveen, Sr.

5 Question: Mr. McCullers --

6 Answer: That is dead and buried.

7 Two more. Page 42, line 2.

8 Question: Well, that would make you think
9 that she's bipolar, sir.

10 Answer: Because she has these emotional
11 swings. We've never had a thorough, complete diagnosis
12 where she's been to (unable to transcribe due to quality
13 of reporter's notes) psychiatrists even since then, since
14 all of this has been, even she's been trying to put a
15 name on what her problem is and the best they come up
16 with is manic depressive.

17 This is cross-examination by me. Line 17,
18 page 69.

19 I just have a couple -- question of
20 Mr. McCullers as to the issue in 1997 allegations as far
21 as abuse as to Molly, would it make sense to you that
22 Rick and Linda McElveen were told that by Molly?

23 Yes.

24 Two more. My question is -- question -- my
25 question is what they did do you have a problem with the

1 way they did this after getting a disclosure from the
2 grandchild.

3 Answer: I have no problem with their
4 distortions and they're aware of that. I have no problem
5 with the way they handled Jackson in the (unable to
6 transcribe due to quality of reporter's notes) I mean
7 they're not professional people.

8 This follows one of the (unable to transcribe
9 due to quality of reporter's notes) page 75, line 9.

10 Question: Didn't you say earlier when they
11 started dating, you believed based upon reports from her
12 co-workers that her drinking and/or drug usage went up?

13 Answer: Yes.

14 That's all we have, Your Honor.

15 MR. TEMPLETON: No, sir, nothing from us.

16 THE COURT: Okay.

17 MR. MATHISON: I have one in response, Your
18 Honor.

19 THE COURT: All right.

20 MR. MATHISON: Page 24, line 6.

21 I'm handing you an affidavit of Mr. McCullers
22 dated September 15, 2003, which would have been right
23 before the temporary hearing in the second McElveen case,
24 and I call your attention to the paragraph on the third
25 page, which is the second paragraph, beginning with Rick,

1 Sr. Simply put, would you read that paragraph into the
2 record, please.

3 Which paragraph?

4 Rick, Sr. simply put -- the second paragraph

5 Answer: Okay. Rick, Sr. simply put is a
6 mean-spirited person with money. My wife and I have
7 never said anything even remotely close to -- time out.
8 Stop. Let's read it so someone can actually write it
9 down.

10 Answer: Rick, Sr. simply put, is a
11 mean-spirited person.

12 Question: With money?

13 Answer: My wife and I have never said
14 anything even remotely close to Rick, Sr.'s ridiculous
15 and false claims written. He referred to my wife and I
16 making disparaging remarks about Molly's competence as a
17 mother.

18 Also, we have never said anything like
19 quoting the statement by Rick, Sr., Molly's children
20 were, quote, not please in the eyes of God, closed quote.
21 This is a blatant lie. It was then and it is now. His
22 lawyer knows this. His lawyer knows that I have said
23 these things, that it is a lie.

24 What does this have to do with the current
25 suit?

1 Why are you dragging me in this when I've
2 already given an affidavit to Mr. Marvin Dukes?

3 Thank you.

4 May it please the Court, I have one more
5 deposition to read.

6 THE COURT: Have at it.

7 MR. MATHISON: This is the deposition of
8 Richard McElveen, Jr., which was taken in Beaufort
9 County, on November 5, 2008.

10 I'm at page 53, line 12.

11 During the first domestic litigation in 1997,
12 did you make a tape recording of a telephone conversation
13 that Molly McCullers' had with another man.

14 Answer: I did.

15 What was the man's name?

16 Answer: I don't remember his name.

17 What was the objective of making that tape
18 recording?

19 Answer: The objective?

20 Question: Yes.

21 Answer: Well, I guess I felt like something
22 wasn't right, you know? She went down to Miami for a
23 hair show, and as soon as she came back, you know, stuff
24 wasn't right, wanting a divorce and all this and that,
25 saying on the phone, so I knew something was going on.

1 Question: You smelled a rat? Is that what
2 you're saying.

3 Answer: Yes.

4 So who told you how to tape record a
5 conversation?

6 Answer: How to tape record something?

7 Question: Yes.

8 Well, actually, I think it was just me and a
9 friend of mine, Jamie.

10 Who?

11 Jamie Horton.

12 What type of eaves dropping device did you
13 use?

14 It was a recorder and then it had a little
15 microphone you plugged in through like on a phone line.

16 And where was the microphone put?

17 Well, I had a computer desk and the phone was
18 behind there and I hooked -- excuse me -- well, I had a
19 computer desk and the phone was behind there and I hooked
20 that up that way.

21 Did you ask your father's advice in
22 connection with putting this tape recorder on the phone?

23 Answer: I probably told him I was going to
24 do it. Something wasn't right here. I'm sure I told him
25 and my mom.

1 Question: Do you know whether your father
2 had ever used a tape recording device.

3 Answer: Yes, I know he has. Yeah.

4 Question: And when would he use a tape
5 recording device?

6 Answer: I know he used it with business,
7 with conversations within the office. To try and record
8 conversations if there was something about a certain
9 problem with a boat or something like that.

10 In other words, he was recording
11 conversations with customers?

12 Answer: Customers, yes.

13 I'm now on page 60 at line 24. Excuse me, at
14 line 9.

15 Question: Did you ever pay anybody to do
16 surveillance on Molly when she was living there?

17 Answer: No.

18 Did your father ever do surveillance on Molly
19 when she was living there?

20 Answer: Yes, I think so. Yeah.

21 Question: What exactly did he do?

22 Answer: Well -- this is the answer -- as far
23 as I know, snuck up and recorded them and watched her
24 smoking a joint and around the garage area.

25 Question: You say he snuck up and recorded

1 it? What did he record it on.

2 Answer: A video camera.

3 Question: When was that?

4 Answer: Basically right after the Miami
5 trip.

6 Question: And did your father know that you
7 believed that she was seeing another person or at least
8 was interested in another person?

9 Answer: Did he know?

10 Question: Yes.

11 Answer: Oh, yes, he knew that. Yes, I
12 listened to the tape with him.

13 So you and he analyzed whatever it was that
14 she said to this guy and vice versa.

15 Answer: Yes.

16 The next is page 88, line 22. Excuse me. It
17 would be line 14 -- no. Line 22.

18 Question: Have you ever used cocaine?

19 Answer: I tried it, yes.

20 Question: Do you consider yourself a drug
21 addict?

22 Answer: No.

23 Question: Does your father know you've used
24 cocaine?

25 Answer: Probably not.

1 Question: Why? You didn't tell him?

2 Answer: Yeah, yes.

3 He didn't ask?

4 Answer: Yeah, he has asked me and stuff. He
5 has asked me before and stuff.

6 Did you tell him the truth or did you lie?

7 I'm sure I lied.

8 Question: How often have you used cocaine?

9 Not often. I mean it was a long time ago.

10 You don't consider yourself a drug addict?

11 Answer: No.

12 Question: Have you ever used marijuana?

13 Answer: I've tried it, yes.

14 Question: And did your father know you were
15 smoking marijuana?

16 Answer: I think I told him that I smoked
17 marijuana before.

18 Question: Do you consider yourself a drug
19 addict because you smoked marijuana?

20 Answer: I don't smoke marijuana. I tried
21 it.

22 Did you consider yourself a drug addict when
23 you were trying it?

24 Answer: No, I don't.

25 Next is page (unable to transcribe due to

quality of reporter's notes), line 8.

And do you recall what Mr. Dukes said that irritated your father?

Answer: I think it was -- I don't know, was it something about his brother that said something or something or Mark Sanford's brother or something wrote an affidavit or something. I don't know. Something like that.

Did you see that -- the affidavits that were submitted in your -- in his custody -- excuse me -- did you see the affidavits that were submitted in this custody case?

No, I didn't look at none of it. I just picked up on bits and pieces of hearing stuff.

Do you know who Julia Sanford is?

Answer: Julia Sanford? That was the (unable to transcribe due to quality of reporter's notes, I guess. Is that who she is?

You have to answer my questions.

I'm sorry. I don't know exactly. I remember hearing something about a Julia Sanford. I don't know if it was a Julie or a Julia.

Question: Was it -- what was it that was said that got your father angry at either Mr. Dukes or Julia Sanford?

1 As far as I remember they might have wrote
2 something or maybe Matt's -- on maybe Matt's behalf or
3 something.

4 Well, Matt wasn't a party to the custody
5 case, or Molly.

6 It was Molly then. They wrote something on
7 Molly's behalf, maybe something. That is all I can
8 remember. I don't remember hearing something about it.
9 I don't know the exact details.

10 Question: Why would that be offensive.

11 Answer: I don't know. I mean, maybe because
12 they were using Governor Sanford's name, you know.

13 Did your father tell you that he thought that
14 Matt was a drug addict?

15 Did my father tell me?

16 Did Mr. McElveen, Sr., that gentleman right
17 there --

18 Well, actually, I heard it from several
19 (unable to transcribe due to quality of reporter's
20 notes).

21 I asked you whether your father told you
22 that. I think I -- that I heard it said that he used
23 drugs, yes.

24 Drug addict.

25 Asked if I heard that he used drugs I think

1 that was the question was asked and I said yes.

2 Next, page 97, line 9.

3 Did your father at about this time -- that is
4 within a week of the temporary hearing -- where did he --
5 where he did not get temporary custody of his
6 grandchildren, did he tell you that he thought that Matt
7 was guilty of child abuse?

8 Did my father tell me?

9 Question: Yes, sir.

10 Answer: Yeah.

11 What was he referring to when he said that
12 Matt was guilty of child abuse?

13 Answer: That he was guilty of child abuse,
14 yes. (Unable to transcribe due to quality of reporter's
15 notes) I mean, I knew stuff was going on because the kids
16 were having to go to counseling and stuff like that. I
17 didn't know the extent of what happened. The only time I
18 knew anything --

19 I can't read that. Yes I can.

20 The only thing I -- knew anything is when he
21 spanked Jackson, so I had called Matt and talked to him
22 about it and then I told him not to hit him.

23 Question: When you called Matt and told him
24 that, did you tell him that you didn't want Matt spanking
25 your son?

1 That is correct. I told him it was between
2 me and Molly.

3 And what did Matt say in response?

4 Answer: He said he didn't touch him.

5 Question: He said he didn't touch him?

6 Answer: That's what he said. That is what
7 he told me.

8 Are you sure about that now?

9 Yeah.

10 Why didn't you want him to spank your son?

11 Because it's not his responsibility to
12 touch -- it wasn't his kids.

13 That is true but --

14 Interruption.

15 -- would you let me -- could you let someone
16 else spank your kids.

17 Question: If they were taking care of them,
18 yes. Don't you let your father spank your kids?

19 No.

20 Why not?

21 He doesn't spank the kids.

22 Doesn't he take care of them?

23 Yes, but he also has custody too. He is not
24 someone who is there for about two weeks.

25 Next is page 100, line 24.

1 So what you're saying is that in September,
2 is you didn't know anything about anything other than
3 what was in the complaint that we just went over? And
4 what is in this letter right here? Is that right?

5 Uh-huh, this is it.

6 And you've never seen this letter before?

7 No. I mean just not as of today.

8 Question: And you have never, never seen the
9 divorce decree pursuant to which your mother got divorced
10 from your father; is that right?

11 Answer: No.

12 Isn't (unable to transcribe due to quality of
13 reporter's notes) this question, but the response is as
14 follows at page (unable to transcribe due to quality of
15 reporter's notes), line 5.

16 Well, I guess my mom called and said she
17 needed to talk to me, so I went over there and they said
18 they just got back from the police station or something
19 like that and they didn't know exactly what he said and
20 she didn't tell me really.

21 Where were you living?

22 At the house.

23 Were you living at the house then or were you
24 living somewhere else?

25 I think I was living somewhere else.

1 Where were you living then?

2 I want to say I probably lived -- I don't
3 remember the road. Was a house on -- it was off Ocean
4 Point Road. I rented it.

5 Were you living with someone?

6 Yes.

7 Or by yourself?

8 Yes.

9 Question: Which?

10 Answer: I was living with someone.

11 Who were you living with?

12 Answer: A guy named Forrest and Billy Joe.

13 Question: Mr. Byrd?

14 Answer: Yes.

15 Question: Forrest who?

16 Answer: Forrest Hatch.

17 This would have been in approximately the end
18 of February, the first of March, 2004?

19 Yeah, probably.

20 Question: What was Mr. Byrd doing
21 employment-wise at that time?

22 Answer: He worked for me.

23 Question: He worked for you?

24 Answer: Yes.

25 So that he would have been in your employ at

1 Battery Creek Marina on a daily basis; is that right?

2 Answer: Yes.

3 Page -- page 106, line 16.

4 Question: You say that your mother, meaning
5 your stepmother, called you and said you needed to come
6 over and she said she had something to tell you; is that
7 right?

8 Answer: That's right.

9 Question: Was your father there when she
10 told you?

11 Answer: Yes, I think he was there, but I
12 don't remember if he was. He was at the house, but he
13 wasn't -- I don't think -- I think it was just me and
14 her.

15 Did she tell you that Mr. McAlhaney was a
16 child abuser?

17 Answer: Well, that is what she -- yeah, she
18 said that is what -- I guess what they were talking
19 about.

20 Next is page 107, line 23. Excuse me. Line
21 21.

22 Has your stepmother told you that
23 Mr. McAlhaney is a child molester?

24 Yeah, I would think, you know that is what --
25 I'm not trying to get confused between the abuser and

1 molester part, you know, as far as --

2 Next at page 111, line (unable to transcribe
3 due to quality of reporter's notes) did your stepmother
4 tell you that Matt McAlhaney had committed criminal
5 sexual conduct?

6 Answer: Yeah, I mean that is -- well, I
7 can't say that. I can't remember if she said something,
8 but I remember something come up about what he thought he
9 was being touched in the wrong -- wrong in the bathtub or
10 something like that.

11 Next is page (unable to transcribe due to
12 quality of reporter's notes) no need to read that one.

13 On page 118 at line (unable to transcribe due
14 to quality of reporter's notes).

15 Did you ever have a conversation about the
16 allegations that were made against Matt with anybody?

17 Just as I said very briefly I didn't know the
18 details of this or that. All I know is that I might have
19 said, hey, you've got something going on with this guy,
20 supposedly, he's been doing things inappropriate with my
21 kids. I think that is about what was -- I think that is
22 all that was ever said. I didn't know the details.

23 Question: Let's see if we can figure this
24 out. Did you tell Billy Joe Byrd, for example, that
25 Mr. McAlhaney had done things inappropriate to your kids?

1 Answer: I'm sure, yes.

2 Page 124. Excuse me, page 122, line 12.

3 Other than Billy Joe Byrd, did you discuss
4 these matters with anyone else?

5 Answer: No.

6 Question: What about Forrest Hatch.

7 Answer: Yeah, Forrest. I don't remember if
8 I -- I didn't go around discussing this stuff to tell you
9 the truth. I think I talked to Billy Joe and things led
10 from one person to another person to another person is
11 what I really think.

12 Question: So you told Billy Joe and then
13 Billy Joe told some folks and then other people told some
14 folks; is that what happened?

15 Probably. I didn't have no part in (unable
16 to transcribe due to quality of reporter's notes) here
17 and standing --

18 Interruption.

19 -- but most people had to fill in the blanks
20 themselves.

21 Because you didn't know the situation, right?

22 Answer: Yes, because I didn't -- that is
23 right.

24 THE BAILIFF: Rob, you need some water?

25 MR. MATHISON: I'm good, thank you.

Page 123, line 15.

How did you learn that the solicitor's office was not GOING to prosecute Matt McAlhaney?

Answer: I got a call from my mom.

Question: When was that?

Answer: I couldn't tell you the date.

Well, tell me what your mom -- again, you're talking about Linda McElveen; is that right?

Answer: Yes.

Tell me what your mom told you.

Well, basically that was it, that they just got a call or something like that and Beaufort County wasn't going to move forward.

Wasn't going to move forward?

Yes.

What did that mean?

I guess they were just starting a case or something. I mean they had to get more evidence. I don't know.

Next is page 129, line 12.

Did any of these people that you have identified see what you just described as Matt McAlhaney reaching over your shoulder and then smiling at you?

I don't know. I don't know.

Did you tell them that is what happened?

1 I'm sure. I'm sure that's what I told them.

2 Did you tell them that Matt was a child
3 molester or child abuser?

4 Answer: By that point, they already knew.

5 Page 26 -- 126, line 9.

6 How many different vehicles were you all
7 driving?

8 Answer: Usually it was just me and Billy Joe
9 in mine unless we picked up a couple of girls or
10 something, but that was about it. Everybody else had
11 their own vehicles, you know.

12 Question: So Ms. Tudor had a vehicle?

13 Yes. She had her own truck.

14 How about the other woman that was there?

15 I don't remember. She might have rode with
16 us or she might have had her own car.

17 How about Mr. Cowart?

18 Yes, he had his own car. And I think (unable
19 to transcribe due to quality of reporter's notes) and
20 Jessica rode together with Hatch and --

21 Did all of these people know about the
22 alleged incident with Matt McAlhaney?

23 I don't think anybody knew.

24 Page 130, line 21.

25 How often did you go to Plums at the time?

1 Answer: I don't know. Once or twice a week,
2 I guess.

3 Question: And that would be a place that you
4 would hang out?

5 Answer: Uh-huh.

6 Question: During the same period, how often
7 did you go to Breakwater?

8 Answer: Never.

9 So when you went to Breakwater, it was for
10 the specific purpose of finding Matt; isn't that right?

11 Answer: That's correct.

12 And when all these people went with you, it
13 was to help you or aid you.

14 Answer: No. They were all trying to get me
15 to go back, to leave, okay?

16 Question: When you got to Breakwater, did
17 you go inside?

18 Answer: I did.

19 Question: Did Billy Joe go inside?

20 Answer: He did.

21 Page 132, line 19.

22 Isn't it a fact that your group was asked to
23 leave and was not let back in?

24 Answer: No one asked us to leave.

25 Question: When did the incident take place?

1 I don't know. Probably two o'clock in the
2 morning, something like that.

3 Question: How long were you waiting for Matt
4 to come out before you all jumped him.

5 Answer: I guess about two hours.

6 Question: So you sat waiting outside for two
7 hours?

8 Answer: I sure did, yes.

9 Question: Where were you waiting?

10 Answer: I was waiting in a car.

11 Question: Do you know what this car looked
12 like?

13 Answer: Uh-huh.

14 Did you have it -- did you know where it was
15 parked?

16 Answer: Yes.

17 Page 135, line 11.

18 Did two trucks block the exits from the
19 parking lot?

20 Answer: I think Jessica's truck was blocking
21 in the parking lot, yes.

22 Question: Was the other exit blocked or not?

23 Answer: No -- I don't know. There was no
24 other exit blocked.

25 Question: Who was with Mr. McAlhaney when he

1 left?

2 Answer: Some girl. Some girl. I don't know
3 who it was.

4 This is page 140, line (unable to transcribe
5 due to quality of reporter's notes) where was Billy Joe
6 during this period?

7 Answer: He was getting my truck.

8 Question: Did he get in back in time for
9 y'all to skedaddle out of there?

10 Answer: No. I ended up riding, I think it
11 was with Jessica, yes.

12 So Ms. Tudor took you in her truck.

13 Answer: Yes, I believe so. I can't
14 remember.

15 Question: Did you -- and you all left him
16 out there in the parking lot?

17 Answer: Yes.

18 Did you realize had badly Kelly was hurt?

19 No.

20 Did you care?

21 No. I wish it had been him (indicating) to
22 be honest with you. He should have stayed out of it.

23 Page 141, line 19.

24 Didn't you discuss it before you moved from
25 Plums to a place you had never been before, which was

1 Breakwater?

2 Discussed what? As far as what I was going
3 to do?

4 Question: Yes.

5 Answer: Oh, sure, yes.

6 Question: So they all knew that you were
7 planning on chasing Matt down and kicking his ass; is
8 that right?

9 Answer: That's right.

10 Page 143, line 13.

11 Why did you call your mother at three o'clock
12 in the morning and tell her about it?

13 Answer: I don't know. You know, probably --
14 probably because I realized there was going to be a big
15 repercussion.

16 You did call her at three o'clock in the
17 morning?

18 Answer: I probably did, yes.

19 Question: Drunk?

20 Answer: I don't know about drunk, but, yeah,
21 I called her.

22 Page 145, line 4.

23 So if I understand correctly, you were
24 convicted of a crime that you didn't commit because you
25 never physically assaulted Matt. You're tried to --

1 Interruption.

2 Exactly, yeah, that is right.

3 But you pleaded guilty anyway?

4 Answer: Just like the lynching and
5 everything else.

6 Question: But you pleaded guilty anyway to
7 aggravated assault?

8 That is right. Because we were charged with
9 so many things -- so many charges that even if I got
10 convicted of one, then saying I guess there was a chance
11 of jail time and I just got the business, so I -- I
12 didn't want to leave.

13 Page 156 (unable to transcribe due to quality
14 of reporter's notes) that's the end of the presentation
15 from the deposition of Mr. McElveen, Jr.

16 MR. LEE: Judge, I have one I want to read.

17 It is a continuation of a question
18 Mr. Mathison started and didn't read all the answer.

19 Did all of these people know about the
20 alleged incident with Matt McAlhaney?

21 THE COURT: Hold up one question. The court
22 reporter, in case y'all appeal needs to know the page
23 you're reading from.

24 MR. LEE: I'm sorry, you're right.

25 Page 127, line 2.

1 Question: Did all these people know about
2 the alleged incident by Matt McAlhaney?

3 Answer: I don't think anybody knew...which
4 is where it was stopped.

5 The rest of the answer reads: I guess you
6 know, what had happened is Matt kept coming up around me,
7 kind of throwing little smirks and this and that and I am
8 at a bar, talking to somebody and I feel someone reach
9 over me and I turn around and I see him and he has got a
10 little smirk on his face and that is when I tried to go
11 outside and take a breath of air. I guess someone went
12 in there and told him that he'd better leave because the
13 next thing I know, I saw him cutting out the back door
14 and I tried to go after him and he made it to Breakwater
15 so I waited outside until the bar closed.

16 MR. TEMPLETON: No, sir.

17 THE COURT: Okay.

18 MR. MATHISON: Your Honor, May it please the
19 Court, I have a matter I would ask you to take judicial
20 notice of, but other than that, the plaintiff rests.

21 THE COURT: Jurors when they say the
22 plaintiffs rests, that means at this point in time, the
23 plaintiff is not going to put in any additional evidence.
24 He has a right after the defendants have presented their
25 case to put in a reply evidence very briefly, which is

1 something they didn't cover, but when they rest and a
2 case is taken this long, actually have to go over the
3 whole case to see where they were and where they -- takes
4 a while.

5 So just be at ease right there. You can get
6 an Oreo cookie and as quick as we can, we'll get you
7 back.

8 Don't talk about the case yet.

9 (WHEREUPON the jury left the courtroom.)

10 THE BAILIFF: The jury is clear, Your Honor.

11 THE COURT: Okay. I will just take a wild
12 guess. I take judicial notice that no one has ever
13 received an adverse ruling in Family Court and is happy
14 with it; is that it.

15 MR. MATHISON: No, sir, I'm not --

16 THE COURT: Oh, okay.

17 MR. MATHISON: I'm asking you to take
18 judicial notice of the weather, specifically over the
19 weekend from the 25th of February.

20 THE COURT: They don't -- I don't have to.
21 They don't dispute it. He conceded it was snowing up
22 there.

23 MR. MATHISON: Very well, that --

24 THE COURT: He conceded on the -- he said he
25 will admit that it was snowing that weekend.

1 MR. MATHISON: Then I -- that concludes the
2 plaintiff's case, Your Honor.

3 THE COURT: All right. Plaintiff's case.
4 Anything I can help anybody with?

5 MR. LEE: Judge, for planning, I guess I'd
6 call Mr. McElveen first and I -- if Mathison -- or they
7 give me some type of idea they take on cross, I need to
8 know whether to get a (unable to transcribe due to
9 quality of reporter's notes) here and another witness
10 that I have.

11 THE COURT: Well, unfortunately, they can't
12 help you, can they. Depending on how long you go on
13 direct as to how long they go on cross.

14 MR. LEE: I understand. I don't think my
15 direct will take probably between 20 and 30 minutes.

16 THE COURT: All right. Well, then, he won't
17 take more than an hour.

18 MR. LEE: Want to bet?

19 THE COURT: Because he's already --
20 deposition -- he may not take 20 or 30 minutes, but
21 clearly can't take more than an hour.

22 MR. LEE: I would be asked -- I guess I will
23 call one of my witnesses and she -- if she can be over
24 here at four.

25 THE COURT: All right. We'll do it. We are

1 at ease for a little bit.

2 (WHEREUPON a short recess was observed.)

3 MR. LEE: Judge, you want to hear directed
4 verdict motions now or after we take a break.

5 THE COURT: I was ready now. Lord knows I
6 assumed you forfeited them all, but make your motions.

7 MR. LEE: Judge, the first directed verdict
8 motion that we would make is for a directed verdict as to
9 the cause of actions at Battery Creek Marina and Greg
10 Pimpkin LLC.

11 THE COURT: Granted. There was no evidence
12 about it, so there you go.

13 MR. LEE: The next directed verdict motion we
14 would make, Your Honor, is as to Linda and Rick McElveen,
15 Sr. Well, really as to all four defendants, Junior,
16 Senior, Billy Joe Byrd and Linda McElveen on the civil
17 conspiracy cause of action. There has been no question
18 (unable to transcribe due to quality of reporter's notes)
19 testimony.

20 THE COURT: It is pretty weak. I can't grant
21 it. His whole theory is he's -- doctor (unable to
22 transcribe due to quality of reporter's notes) or
23 somebody of course (unable to transcribe due to quality
24 of reporter's notes) is whole thing and mother talks to
25 him, you know, to get a -- get a chance to hammer him,

1 not what she said, but that's his theory and that's
2 circumstantial -- unless you just wanted to drop it.

3 MR. MATHISON: No, sir, I don't want to drop
4 it.

5 THE COURT: He doesn't want to drop it so he
6 goes forward. Circumstantial and pretty weak, that's
7 neither here nor there.

8 MR. LEE: Your Honor, the next directed
9 verdict motion would be based upon the statutory immunity
10 that we need as to reports of alleged abuse. They do
11 have --

12 THE COURT: They do have and unfortunately I
13 can't grant it. His -- his theories -- and he even said
14 that the plaintiff --

15 MR. LEE: (Unable to transcribe due to
16 quality of reporter's notes) of good faith --

17 THE COURT: Questions of (that was questions
18 of good faith up there.) Good faith.

19 MR. LEE: Yes, sir.

20 THE COURT: You know, taking her testimony as
21 such normal case, we'd just throw it out against her
22 anyway, but we can't do it now. But to be absolutely
23 clear, the jury will be instructed that if she was -- if
24 a child reported to her, she was duty-bound to report it
25 even though she -- they may have -- I'm not going on even

1 though they may have benefitted from the reporting she
2 has no choice but to report and that's absolute immunity,
3 right?

4 MR. LEE: Yes, sir.

5 THE COURT: But that's a factual question as
6 to good faith on her part.

7 MR. LEE: As to -- I would also make a
8 directed verdict motion and we can do it quickly as to
9 the remaining cause of actions, the libel against
10 Mr. McAlhaney -- I mean Mr. McElveen -- I'm sorry -- as
11 well as the slander cause of action against Senior, wife
12 and Junior.

13 THE COURT: Factual issues can't --

14 MR. LEE: I figured that was going to be your
15 response.

16 THE COURT: That's all I can do.

17 MR. LEE: I think that covers all the cause
18 of actions. I've got it I -- I guess I'm one for eight.

19 THE COURT: I don't understand how they're
20 going to survive statute of limitations, but I'll --

21 MR. TEMPLETON: On my claim?

22 THE COURT: No, that's just in the abstract.
23 I haven't heard that claim against him yet.

24 MR. TEMPLETON: Yes, sir.

25 THE COURT: But it happened more than two

1 years -- I mean from what I've heard today -- I don't
2 know. They might say it didn't. But -- all right. I'm
3 not dashing out of here. It's just got 12 more minutes
4 unless I can help somebody with something. All right.

5 (WHEREUPON a short recess was observed.)

6 THE COURT: I don't really care. The jury is
7 the one that's in a hurry, not me. They knocked on the
8 door and said they were ready to come back.

9 MR. LEE: I would like to put them up first
10 because one has a trial in the morning and one has --

11 THE COURT: Time out. Go tell the jury that
12 everybody is in here, but a witness is five minutes away,
13 right?

14 MR. LEE: Yes, sir.

15 THE COURT: First two witnesses are about
16 five minutes away from the courthouse and where he talked
17 to them on the cell phone.

18 THE BAILIFF: Yes, sir, Judge.

19 THE COURT: -- and to just cool it in there.

20 (WHEREUPON a short recess was observed.)

21 MR. TEMPLETON: Judge, I'm going to raise the
22 inquiry. Just so we don't have to do all this a second
23 time around. Plaintiff's Exhibit No. 8 was introduced a
24 couple days ago, whenever it was. It's the notice of
25 motion and motion for emergency hearing. Attached to it

1 was an affidavit of the guardian ad litem, Diane Dewitt.

2 Ms. Dewitt is scheduled to testify today.

3 The affidavit contains numerous statements of what she
4 was told by the minor children. If I understand your
5 ruling --

6 THE COURT: Yes --

7 MR. TEMPLETON: -- previous ruling that
8 should not go back to the jury room --

9 THE COURT: Got it.

10 MR. TEMPLETON: So how does the Court want to
11 handle that, removing --

12 THE COURT: Just make a note of that. We
13 will remove it, tell the jury that we've taken it out.

14 MR. TEMPLETON: It is Plaintiff's Exhibit 8
15 and it is the last four pages of that exhibit.

16 THE BAILIFF: Jurors entering, Your Honor.

17 (WHEREUPON the jury entered the courtroom.)

18 THE BAILIFF: Jury is seated.

19 MR. LEE: The defendants would call
20 investigator Brian Baird.

21 THEREUPON,

22 INVESTIGATOR BRIAN MARK BAIRD,
23 after being duly sworn, testified as follows:

24 ///

25 ///

DIRECT EXAMINATION

By Mr. Lee:

Q Investigator Baird, where are you employed?

A Beaufort County Sheriff's Office, sir.

Q How long have you worked there?

A Since December of 2001.

Q And prior to that where did you work?

A I was in the United States Marines, started off as a military policeman in '81-'82. Actually, I guess it was '82; became a criminal investigator with the Marine Corp; and finished up my career with the Naval Investigative Service.

Q So for 20 something years, you've been in law enforcement service; is that right?

A Yes, sir.

Q What rank, right now, do you hold with the sheriff's department?

A Staff Sergeant, Assistant Investigations Supervisor (unable to transcribe due to quality of reporter's notes) of the Broad.

Q In late February 2003, were you employed with the sheriff's office?

A Yes, sir, I was.

Q In what capacity?

A I was an investigator then as well.

1 Q And have you worked with the sheriff's office since
2 then?

3 A Yes, sir.

4 Q Until late February 2003, did you investigate a case
5 involving the plaintiff, Mr. Matt McAlhaney?

6 A Yes, I did.

7 Q And can you tell the jury what -- what the charge --
8 what charges, ultimately were brought as a result of
9 that investigation?

10 A It was criminal sexual conduct with a minor.

11 Q And can you tell the jury how you first came to get
12 involved in that case?

13 A We received a telephone call from Linda McElveen who
14 had -- I believe she had contacted Hope Haven and
15 then was referred to myself.

16 Q We, being the sheriff's office?

17 A Yes, sir.

18 Q Okay. And over at the sheriff's office, how many
19 investigators or detectives are over this north of
20 the Broad?

21 A Then, there was -- I believe there was seven of us.

22 Q And how do y'all decide who gets certain cases?

23 A The supervisor at the time assigns cases based on
24 experience and training.

25 Q Okay. And a case of alleged sexual abuse, would that

1 go to someone who has more experience and training or
2 less experience and training?

3 A More experience, sir.

4 Q Did you have, at that time, experience and training
5 in these types of cases?

6 A Yes, sir, I did.

7 Q Could you tell the jury briefly what kind of
8 experience you've had?

9 A I have worked many of these cases both with the
10 Marine Corp, CID, and CIS and since with the
11 sheriff's office, I've been to numerous training
12 events, both with the military, the federal
13 government and also with civilian agencies and have
14 been working these cases primarily in the -- towards
15 the latter part of my career with NCIS. This is
16 mainly what I worked.

17 Q Have you gone to any classes or received any special
18 education, training in these types of cases?

19 A Yes, sir, many courses.

20 Q Do you have any special training in child forensic
21 interviewing?

22 A Yes, sir, I have attended the Finding Words. It is a
23 nationally based protocol that is recognized here in
24 South Carolina. It is the normal format we use to
25 interview children in reference to allegations of

1 abuse whether it be physical or sexual in nature.

2 Q Because there's different ways you need to speak with
3 children, correct?

4 A Yes, sir. You don't want to use leading questions.
5 You want to afford them the opportunity to speak.

6 Q So you ask open-ended questions, right?

7 A Yes, sir.

8 Q And there's -- and there's quite a bit of training
9 involved in learning that skill; is that correct?

10 A Yes, sir, we attend -- the first course is a 40-hour
11 course and we normally do it in Columbia. It is put
12 on by the ARK. It's a child abuse prevention center.
13 It is the leading child abuse prevention center in
14 South Carolina. They bring in experts that are
15 trained in protocol to teach us how to do it.

16 We have to, while there, have to actually do
17 interviews with children not -- to be able to
18 demonstrate your ability to, and then it was
19 approximately six months after that -- six months to
20 a year after that we went back for a one-week
21 follow-up where we further demonstrated that we're
22 actually capable of doing the interviews and
23 functioning as a child advocacy team.

24 Q Let me ask you this: Before February 27, 2003, had
25 you ever met Mr. McAlhaney before?

1 A No, sir, not that I'm aware of.

2 Q You hadn't played golf with him or knew him or
3 anything like that?

4 A Not that I'm aware of, sir.

5 Q Did you ever have any special relationship with
6 Mr. McElveen, Jr. before?

7 A No, sir.

8 Q Had you met him before?

9 A Not that I'm aware of.

10 Q Did you play golf with him, socialize with him,
11 anything like that?

12 A No, sir.

13 Q Now, can you take us through the process of this
14 case?

15 You -- you indicated that you had received a
16 call from Linda McElveen. Okay. What did you do
17 after receiving the call from Linda McElveen?

18 A I made an appointment to meet with her and speak to
19 her in person. She came in. She told me --

20 Q You did meet with her?

21 A -- what her concerns were.

22 Q And did Mr. McElveen come with her?

23 A Not that day, no, sir.

24 Q And after that, what was the next step?

25 A The next thing I did was I contacted Hope Haven.

1 Back then, I believe it was still called Hope Cottage
2 of the Low Country.

3 Q Can you tell the jury what Hope Haven or Hope Cottage
4 is?

5 A It is our local child advocacy center where they have
6 the rooms set up and such to do the interviews with
7 the children. It is just a better child-friendly
8 environment to do an interview with a child rather
9 than bringing them to the sheriff's office and doing
10 it and they also in turn arrange for physical
11 examinations of the children as well.

12 Q And who are the people at Hope Haven that actually
13 talk to the children that come in there? I mean --

14 A There are other people that are trained in the same
15 Finding Words protocol and they do it daily.

16 Q Okay. And the child was referred to Hope Cottage or
17 Hope Haven at the time; is that right?

18 A Yes, sir.

19 Q And then are you aware that the child, I guess from
20 Hope Haven was referred to Dr. Ellenburger; is that
21 correct?

22 A That's correct.

23 Q At what point did you seek and obtain an arrest
24 warrant on these two charges for Mr. McAlhaney?

25 A After the medical findings were brought to us, after

1 the forensic interviews were completed, I had contact
2 with Mr. McAlhaney. He did not want to speak with us
3 at the time. I believe he referred us -- I want to
4 say Bruce Marshall was the attorney at the time. I
5 spoke to Mr. Marshall. I tried --

6 Q Now, the actual arrest -- the two arrest warrants
7 that were issued in this case, did you prepare them?

8 A Yes, sir.

9 Q Okay. If you're familiar with them, I won't show
10 you -- do you have blank warrants at the sheriff's
11 office that you can then fill in with the pertinent
12 information?

13 A In 2003, we may have still been preparing the
14 warrants themselves.

15 Q Okay.

16 A Since that time, it is a computerized data base
17 program.

18 Q Okay.

19 A What we do currently is -- is we --

20 Q Let me hand you these two, Plaintiff's 6 and 7. Can
21 you tell by looking at those whether that was --

22 A I believe at this time these were the ones that they
23 would actually give us a -- a stack of warrants at
24 that time. You would have to sign for them, saying
25 you received the numbers, the warrants themselves.

1 Q Uh-huh.

2 A At that point, once we felt we had probable cause, we
3 would contact the magistrate in this case, Magistrate
4 Smith, Darlene Smith who's currently the chief
5 magistrate for Beaufort County. We would --

6 Q She is not a magistrate for Jasper County, is she?

7 A Not that I'm aware of.

8 Q Never has been, has she?

9 A Not that I'm aware of.

10 Q So did -- but my question was, did you prepare the
11 body of the warrant and fill in the --

12 A Yes.

13 Q -- okay. Did anybody help you do that?

14 A No.

15 Q Did Mr. McElveen have a say so or any part in
16 preparing that warrant?

17 A No, sir.

18 Q Okay. Did Mr. McElveen or anybody on his behalf take
19 that warrant to the judge to get signed?

20 A Absolutely not.

21 Q Who did that?

22 A I did myself.

23 Q Is that standard protocol?

24 A Absolutely. You have to swear to the facts to the
25 warrant.

1 Q When you got that warrant leading up to that, did
2 Mr. McElveen or anybody on his behalf force you to do
3 anything you don't usually do?

4 A No.

5 Q Did he have any control of you in the investigation
6 of this matter?

7 A None whatsoever.

8 Q Did you have any ax to grind with Mr. McAlhaney?

9 A Absolutely not.

10 Q Do you have one now?

11 A No.

12 Q And you said you filled out the warrant, took it to
13 the judge and tell them real quick what happens when
14 you're in front of the judge with the warrant?

15 A Basically, we present the warrant to the judge, the
16 judge reads the warrant. If they have any questions
17 about it, they may ask us questions at that time. If
18 they believe there is enough probable cause based off
19 what is solely written into the warrant, they will
20 have us raise our right hand, swear that the facts in
21 the warrant are the truth to the best of our
22 knowledge at that time.

23 We then swear to the facts that a judge has
24 us sign it, then they sign it and they hand us the
25 warrant and we take it back to our office and put it

1 on file; or if we make other arrangements, we bring
2 it back to our office to have the person served or
3 turn themselves in.

4 Q Did you do that in this case?

5 A Yes.

6 Q And the judge signed the warrant, and in the case she
7 found probable cause?

8 A That is correct, sir.

9 Q Do you remember going to -- then going to -- let's
10 back up a little bit.

11 When the warrant was served, I believe
12 Mr. McAlhaney turned himself in with a lawyer?

13 A Yes.

14 Q And did he go to the sheriff's office, LEC after
15 that?

16 A I believe that's where it happened, yes, sir.

17 Q Did you meet him up front?

18 A Yes, sir.

19 Q Is that where he was when you handcuffed him?

20 A Actually, I believe we took him in the back and
21 handcuffed him in the back. I don't recall if we
22 handcuffed him out front or in the back.

23 Q But it was at least 2 doors that you go through
24 there, correct? At the LEC?

25 A Yes, at the time there were two doors that were

locked doors that led to our office.

Q Can you also -- isn't it true that the -- that the doors that lead into the LEC over there are tinted windows meaning they're reflective mirrors when you drive by, you can't see into the LEC?

A It is difficult to see in, yes, sir.

Q Okay. All right. So the warrant was served, and did your investigation continue?

A Yes.

Q Okay. Is it safe to say that you had lots of things coming in from McAlhaney's side and lot of things coming from McElveen's side --

A Yes, sir.

Q -- as far as witnesses --

A Yes, sir, we --

Q -- people who wanted to talk to you, that sort of thing?

A Yes, sir, we received many contacts from both sides.

Q And do you remember going to a preliminary hearing a couple weeks later on this matter?

A Yes, sir.

Q And did you testify at that preliminary hearing?

A Yes, sir, I did.

Q Did Mr. McAlhaney's lawyer at the time have an opportunity to cross-examine you?

1 A Yes, sir, he did.

2 Q Did he -- did he make a motion at the end of a
3 preliminary hearing to dismiss the charge?

4 A I believe he did.

5 Q Did he -- did he make a motion at the end of the
6 preliminary hearing to discuss the charge?

7 A I believe he did.

8 Q Did the judge -- and that was Judge McDomick? Is
9 that right? Do you remember?

10 A I believe it may have -- that was who is normally
11 doing our prelims at that time. It probably would
12 have been --

13 Q Can you tell us what the judges -- what the judge did
14 at this preliminary hearing after having had a chance
15 to cross-examine you?

16 A The judge said there was enough probable cause to
17 proceed forward to the grand jury.

18 Q It is called binding it over, is that --

19 A That's correct.

20 Q -- is that correct?

21 Okay. And then later on that month -- and so
22 far is -- is the way the process usually goes that
23 we've outlined?

24 A Yes, sir. This is the process for --

25 Q Did anything unusual happen up to this point?

1 A No, sir.

2 Q Nothing out of the ordinary? Nobody forcing you to
3 do anything?

4 A Nothing out of the ordinary by force or anything like
5 that. It could have been more contacts from the
6 local complaint to us that --

7 Q Right --

8 A Than --

9 Q Okay. Do you remember the case going to the grand
10 jury?

11 A Yes, sir.

12 Q Okay. That was, I think, March 25, around about a
13 month later? Did you present the case to the grand
14 jury?

15 A Yes.

16 Q And what -- what was the result of the grand jury
17 hearing on this case? Did they true bill an
18 indictment?

19 A They did what's called a true-bill indictment and
20 forwarded it to the solicitor's office for
21 prosecution.

22 Q The grand jury found probable cause?

23 A Yes, sir.

24 Q There was a -- again, has Rick McElveen or anybody on
25 his behalf up to this point forced you to do

1 anything?

2 A No, sir.

3 Q Have they somehow gotten control of the
4 investigation?

5 A Absolutely not.

6 Q Have they bribed anybody or threatened anybody that
7 you know of?

8 A Not that I'm aware of.

9 Q And then the case sat from March -- until the next --
10 February is almost a year before. It was eventually
11 nol prosed by the solicitor's office; is that right?

12 A Yes, sir. And that's not an unusual delay to get to
13 that level.

14 Q At that point, did you -- well, let me back up. Did
15 you become aware of a book or a booklet that was
16 published in January of 2004, dealing with some of
17 the issues in this case?

18 A Yes, sir, I'm very familiar with it.

19 Q And did that book address your role in this
20 situation?

21 A It addressed myself and had some information in it
22 most of which was not correct, but --

23 Q Okay.

24 A It --

25 Q Did the book say that you perjured yourself at the

1 preliminary hearing?

2 A I believe it did.

3 Q Did the book -- did you perjure yourself at the
4 preliminary hearing?

5 A No, sir.

6 MR. MATHISON: Objection, judge. Relevance.
7 Move to strike.

8 THE COURT: Go ahead.

9 By Mr. Lee:

10 Q The book also suggested that Mr. McEachern over there
11 had received a death threat that he believed was from
12 you; are you familiar with that?

13 A I know there was that information in it but --

14 Q I'm not saying -- are you aware that allegation was
15 made?

16 A Yes, from the book.

17 Q And you haven't had a chance to respond to that book
18 ever before have you?

19 A I have addressed it within the sheriff's office and
20 to the State Law Enforcement Division.

21 Q Okay. Did you -- I think the allegation was some
22 book on tape. Did you record a book on tape and call
23 Mr. McEachern and make a death threat there?

24 A No, sir, I did not.

25 Q Did you do anything improper, illegal or unlawful

1 during the pendency of this case?

2 A No, sir, I did not.

3 Q And you received some -- you received some various
4 e-mails, information from both Rick and Linda
5 McElveen during the course of it, right?

6 A Yes, sir, I did.

7 Q Is it safe to say that you had asked them to provide
8 any information they might have?

9 A Yes, sir, I did.

10 Q Did you give them any specific guidance on what you
11 were looking for?

12 A Not that I'm -- I asked them if they had any other
13 information, if the kid said anything else to them in
14 the future, if anybody else --

15 MR. MATHISON: Objection, Your Honor. Here
16 we go.

17 THE COURT: Yes, but that's what he told him.
18 He can answer that.

19 By Mr. Lee:

20 Q And they did provide you with some information?
21 Without saying what it is, they did provide you with
22 some information, right?

23 A Yes, sir.

24 Q And would you agree that some of the stuff you got
25 from them was emotionally charged for lack of a

1 better phrase?

2 A Yes, I would agree with that.

3 Q Okay. Based on your appearance, is it common for you
4 to receive such letters, correspondence from people
5 in their position?

6 A Not necessarily the letters, but we get contacted and
7 such.

8 Q Is the emotion that you observed in them typical of
9 someone who is in their position?

10 A If you're referring to the relationship with the
11 allegation in the children, yes, that's a have
12 emotional situation for them.

13 Q Right. Did you have any secret meeting with Diane
14 Dewitt, who the guardian ad litem in this case?

15 A I had no secret meetings with her.

16 Q Did you have conversations with her?

17 A Yes, sir.

18 Q Okay. Were they relevant to the case?

19 A Yes, sir.

20 Q Okay. And did she provide you information to you
21 that was helpful?

22 A Yes, sir. Yes, sir.

23 Q Did Diane Dewitt force you to do anything or do
24 anything out of the ordinary in this case?

25 A No, sir.

1 Q Were you part of any type of conspiracy involving
2 either (unable to transcribe due to quality of
3 reporter's notes) or Hope Cottage, Diane Dewitt,
4 Judge McDomick, (unable to transcribe due to quality
5 of reporter's notes) Smith, the Beaufort County grand
6 jury, the Family Court Judge Smoak?

7 Were any of y'all that you know of involved
8 in any type of conspiracy to unlawfully bring charges
9 against Mr. McAlhaney?

10 A No, sir.

11 MR. LEE: That's all I have, Your Honor.

12 **CROSS-EXAMINATION**

13 By Mr. Templeton:

14 Q Good afternoon, Detective.

15 A How are you, sir?

16 Q My name is Morgan Templeton. I represent Mr.
17 McEachern. A couple of questions for you. Mostly
18 for the jury's information. You mentioned the term
19 grand jury?

20 A Yes, sir.

21 Q Isn't it true in a grand jury proceeding, the
22 defendant doesn't participate in that proceeding?

23 A He did not participate in this one, sir.

24 Q No defendants participate in a grand jury proceeding,
25 do they?

1 A Not that I'm aware of.

2 Q A preliminary hearing is also a proceeding where the
3 State puts up its side to show probable cause,
4 correct?

5 A That's correct.

6 Q The defendant doesn't participate in that proceeding
7 either, do they?

8 A His attorney did, but he did not himself, no, sir.

9 Q The lawyer is allowed to cross-examine the witnesses
10 at the preliminary hearing, but the defendant doesn't
11 get an opportunity to put forth his own evidence;
12 isn't that right?

13 A That's correct.

14 Q Now, the book that you referred to, a letter from Mr.
15 McEachern in June of 2004, did you do anything to
16 investigate that book?

17 A That matter was handed over to the State Law
18 Enforcement division because he felt that the law had
19 been violated with the publishing of that book
20 including the children's names.

21 Q And the terms of the information that was contained
22 in the book, did you do anything personally to
23 investigate the truth of the matter that was alleged
24 in the book or not?

25 A Because --

1 Q Or did you just turn it over?

2 A Because of the allegations contained in the book
3 (unable to transcribe due to quality of reporter's
4 notes) it was turned over to State Law Enforcement
5 Division for them to handle.

6 Q Did anyone at the sheriff's department, to your
7 knowledge, investigate the substance of the
8 allegations as it related to the McAlhaney crime or
9 alleged crime? Did it consider -- (unable to
10 transcribe due to quality of reporter's notes)?

11 A Well, the -- none of the information in the book we
12 had already received letters to the event. Now,
13 those were followed up and contacted, but for the
14 (unable to transcribe due to quality of reporter's
15 notes) book itself, no, we did not handle that. SLED
16 handled that.

17 Q And then you also -- Mr. Lee asked you a question
18 about a recording that Mr. McEachern indicated that
19 you had left on his voicemail. I understand that you
20 said you didn't do that?

21 A No, sir, I did not.

22 Q Did the sheriff's department do anything to
23 investigate that allegation?

24 A I was under the impression SLED handled that.

25 Q But --

1 A But the sheriff's office once we turn something over
2 to SLED, we no longer investigate it.

3 Q Thank you, sir.

4 A Yes, sir.

5 **CROSS-EXAMINATION**

6 By Mr. Mathison:

7 Q Detective Baird, my name is Robert Mathison and I
8 represent the plaintiff.

9 A Yes, sir.

10 Q First person that gave you any information regarding
11 the particular charges that you ultimately filed
12 against Mr. McAlhaney was Linda McElveen; is that
13 correct?

14 A Yes, sir.

15 Q And are you quite certain, sitting here today as you
16 testified that Mr. McElveen did not come and see you
17 on that day, specifically, with his wife?

18 A To the best of my recollection, Ms. McElveen came
19 first by herself, and then her husband may have come
20 by later, but I believe my first meeting was with her
21 and her alone.

22 Q (Unable to transcribe due to quality of reporter's
23 notes) your notes on this case, sir, purport that on
24 February 27, 2004, you interviewed Rick McElveen
25 after he heard of these allegations for the first

1 time?

2 A I don't have a copy of my report with me, sir, if I
3 could see it to refresh my memory.

4 Q Certainly. Directing your attention to the third
5 paragraph.

6 A Yes, sir. This is what it says that I spoke with him
7 that day.

8 Q So you were in error when you said he wasn't there on
9 the first day when you talked to Ms. McElveen; isn't
10 that right?

11 A No, sir, I think it was just a misunderstanding in
12 that I met with her first and later I believe the
13 question from Mr. Lee was who did I speak with first
14 and it was her first and then later with
15 Mr. McElveen.

16 Q Well, you have a note to the effect that
17 Mr. McElveen, upon hearing this news began to get
18 quite upset; isn't that correct?

19 A Yes, sir.

20 Q Did he receive the news from you or did he hear the
21 news from his wife?

22 A I would believe that his wife had talked to him
23 before they came to see us, but --

24 Q That would make sense, wouldn't it?

25 A Yes, sir, it would.

1 Q If that's not what actually happened, that would be
2 unusual, would it not?

3 A To me it -- I would -- if I was aware of something
4 like this, I would tell my spouse.

5 Q As a matter of course?

6 A Yes, sir.

7 Q And if somebody had testified that she was very
8 careful not to tell her spouse until she actually got
9 to the Beaufort County Sheriff's Office and told you
10 that would be unusual, didn't?

11 A I suppose you could classify it as unusual, yes, sir.

12 Q But --

13 MR. TEMPLETON: Judge, I'm having trouble
14 hearing on this side. Can you have the witness speak
15 into the microphone.

16 THE WITNESS: I'm sorry.

17 MR. MATHISON: Wouldn't it --

18 THE COURT: He's talking to the attorney.
19 Attorney, you need to step out --

20 MR. MATHISON: I'm trying to get my document.

21 THE COURT: I understand. He's talking to
22 you and not us.

23 By Mr. Mathison:

24 Q Sorry. So you believe you saw them both on the 27th,
25 just not together; is that what you're saying?

1 A That's correct. I spoke with her first and then
2 later with him.

3 Q And on or about March 1, did he send you a letter
4 that was entitled -- and I'm quoting, Things I forgot
5 to mention?

6 A Again, sir, could I see that just to refresh my
7 memory? I'm sorry. Yes, sir, this is a note dated
8 March 1, 2004. It is actually addressed to Hope
9 Cottage, reference, Ricky McElveen and it says --

10 Q Don't tell me what it says.

11 I asked you a question. Did you receive it?
12 Is there a star on it?

13 A I don't see a star on it. Well, yes, actually I
14 think there is a star up here.

15 Q That's your file, sir. That's everything that's in
16 your file that was obtained by Mr. McAlhaney's
17 lawyer, Corey Flemming. I'm not giving you something
18 that isn't in there. Okay?

19 A Yes, sir.

20 Q Does that confirm that Mr. McElveen was in on or
21 about February 27th, and that he forgot to mention
22 some things when he was there?

23 A Yes, sir, that does --

24 Q And he wrote you a two page letter of what he forgot
25 to mention; is that right?

1 A Yes, sir.

2 Q Okay. So it wasn't just Linda McElveen there saying
3 what was going on. It was Rick McElveen there,
4 right?

5 A Two different interviews, sir, on the same day.

6 Q So you didn't actually see Mr. McElveen -- the news
7 that his grandson had been molested? You didn't
8 witness that?

9 A When I was speaking to him of the allegation that was
10 brought forward by Ms. McElveen, if indeed that was
11 the first time he was -- he came to be aware of it --

12 Q Yes, sir --

13 A Then, yes, I would have seen him at this time.

14 Q Okay. And I believe you already testified that the
15 number of letters you received in the particular
16 matter was unusual; is that right?

17 A Yes, sir.

18 Q Was it unusual to get a letter such as this that I
19 just described, dated March 1, from the grandfather
20 of someone who had allegedly been molested?

21 A I've received other letters from people in reference
22 to follow-ups to interviews I've done, but I wouldn't
23 say it was usual to get a letter after the
24 fact, (unable to transcribe due to quality of
25 reporter's notes).

1 Q Well, I don't want you to comment on the content of
2 these --

3 A Okay, sir.

4 Q -- allegations, but would it be conservative to
5 estimate that there are twenty accusations set forth
6 until a series right down the page against Molly
7 McCullers and against Matt McAlhaney in that letter?

8 A I'd agree with that, sir, yes, sir.

9 Q Twenty?

10 A In the vicinity of twenty, yes, sir.

11 Q Would it be safe to say that virtually none of them
12 involve Jackson McElveen? In fact, isn't the
13 reference on that letter Ricky McElveen?

14 A Yes, sir, Ricky McElveen. I don't see Jackson's name
15 anywhere on it.

16 Q So it had absolutely nothing to do with the
17 investigation of the molesting thing of a child named
18 Jackson McElveen, did it?

19 A Not the actual molestation itself, no, sir.

20 Q It was character assassination against several
21 individuals; isn't that right?

22 MR. LEE: Object to the form of the question,
23 Judge.

24 THE COURT: He needs to quit doing that.
25 He's going to object to it every time, plus it's not

1 proper. Get tired of it. Jury argument, you can argue
2 all that kind of stuff you want to.

3 By Mr. Mathison:

4 Q I believe you also testified that upon you're
5 interviewing Ms. McElveen, you then made arrangements
6 for the interview, forensic interview at Hope Cottage
7 and then they arranged for the medical evaluation?

8 And in point of fact, the medical evaluation
9 wasn't done until March 4, 2004; isn't that right?

10 A I --

11 Q As reflected in your notes?

12 A Yes, sir. I believe that was the date.

13 Q But Mr. McAlhaney according to your warrant was
14 arrested on March 1, 2004; isn't that correct?

15 A I don't recall the date. I've got it right here,
16 yes, sir, March 1, 2004, was the date of the arrest.

17 Q So obviously, there was no medical evidence at all
18 one way or the other the day that you swore out the
19 warrant for Mr. McAlhaney to be arrested; isn't that
20 right?

21 A If the medical evaluation was after that, then, yeah,
22 my memory is wrong, sir.

23 MR. MATHISON: May it please the Court, I
24 need the Court's Exhibit to show him the date on the
25 medical evaluation.

1 THE COURT: Represent to him as an officer of
2 the court. He doesn't --

3 MR. LEE: We'll stipulate it is what it is.

4 By Mr. Mathison:

5 Q I'm representing to you as an officer of the court
6 that this report which is in your file was done on
7 March 4th, the interview was done on March 4, 2004?

8 A Yes, sir.

9 Q So there was no medical evidence at the time that you
10 swore out the warrant, right?

11 A That's correct, sir. I was incorrect on stating
12 that.

13 Q So that's another thing that was a little unusual in
14 this?

15 A Actually, no, sir. There's frequently no medical
16 evidence in these cases.

17 Q Well, in point of fact, it turned out that there was
18 no medical evidence in this case; isn't that right?

19 A I would disagree, sir.

20 Q I'm taking what's been marked as Court's Exhibit and
21 I'm directing your attention to page 1 of 12 pages,
22 and I'm going to ask you whether the conclusion
23 reached is -- and I'm quoting, the exam neither
24 confirms or denies any maltreatment; is that what it
25 says?

1 A That is the final line here, yes, sir.

2 Q All right. So I was correct when I said there was no
3 medical evidence at all, right?

4 A No, sir, I'd still disagree.

5 THE COURT: Don't want to pursue that.

6 Everybody heard what the doctor said. He interprets what
7 the doctor says to say there was some, and if you want
8 him to tell you why that is, you can ask him and he will
9 answer, but the doctor did not find anything conclusive.
10 Let's just let that go.

11 By Mr. Mathison:

12 Q Well, did you receive -- strike that.

13 Did you have physical evidence -- did you
14 have a document of any type when you went and swore
15 out the warrant for Mr. McAlhaney?

16 A What do you mean by a document of any type, sir?

17 Q Did you have your own notes, for example, to remind
18 you of what had been said by Mr. McElveen or
19 Ms. McElveen? Did you have those?

20 A I did not take those with me, no, sir.

21 Q They hadn't, in fact, been prepared on March 1, had
22 they?

23 A I had no notes that I had taken during the interview,
24 however, I didn't have a report typed at this point,
25 sir; no, sir.

1 Q The formal notes that I just handed you that have the
2 star, they hadn't been prepared, had they?

3 A No, sir, that report had not been published yet.

4 Q And in point in fact, it wasn't for another week or
5 so, so you didn't have your own notes, right?

6 A Not with me that day.

7 Q Okay. And what was generated by Hope Cottage was not
8 yet committed to paper, was it?

9 A Not that I'm aware of.

10 Q There is no document that reflected either what
11 people said or what people concluded from what people
12 said to present to a judge, was there?

13 A The report was not finished, no, sir.

14 Q Okay. And, in fact, the report itself is dated March
15 2, which is the day after Matt McAlhaney was
16 arrested?

17 A The report was typed then, yes, sir.

18 Q On March 2, it's dated. I have no way of knowing
19 when it was typed, do you?

20 A Based off it being dated that day, that's the day I
21 believe it was typed.

22 Q Why did they wait so long to send it to you according
23 to notes?

24 A You'd have to ask them, sir.

25 Q Again, I'm handing you in your own notes,

1 Detective -- and I'm calling your attention to the
2 third page, and does it indicate that you received
3 the forensic report on March 11, 2004.

4 A Yes, sir, that's correct.

5 Q That's ten days after Mr. McAlhaney was arrested; is
6 that correct?

7 A Yes, sir.

8 Q And your open notes are dated March 4, 2004, correct?

9 A If that's the date on the bottom of the report, yes,
10 sir.

11 Q So when you stood before Magistrate Smith to swear
12 out the warrant, it was literally you talking to her
13 with no back up, no supporting information, except
14 what was in your head?

15 A What I'd already been told, yes, sir.

16 Q What you'd already been told?

17 A Yes, sir.

18 Q Is that right?

19 A Yes, sir.

20 Q No medical evidence, no report, just what you'd been
21 told; is that right?

22 A Well, I attended the forensic interview, sir, so I
23 was very familiar with what was said during those
24 interviews.

25 Q Judge Smith is (unable to transcribe due to quality

1 of reporter's notes), in point in fact, in Jasper
2 County, is she?

3 A No, sir, she's in Beaufort County. I'm not aware of
4 her having any affiliation to Jasper County.

5 Q But there was a judge in a hearing in Jasper County,
6 wasn't there?

7 A I was called to -- I believe -- I want
8 to say it was Judge Smoak.

9 Q Yes. Where was he?

10 A He was holding court in Jasper that day, Jasper
11 County.

12 Q Specifically, did you go down to Jasper County on or
13 about March 1st when Mr. McElveen, Sr. and his
14 lawyer, Mr. Lee, approached the judge and obtained an
15 order which transferred custody of the children from
16 Molly McCullers to Richard McElveen?

17 I believe it's on the second page, Detective?

18 A Yes, sir, the last paragraph says the application has
19 been made ex parte order to remove the children from
20 the mother.

21 Q And you went down there and participated in that,
22 didn't you?

23 A Yes, sir, I was called to testify.

24 Q Okay. And ex parte means that the only people there
25 were you, Mr. McElveen and his lawyer and the judge.

1 It means Molly McCullers wasn't there, didn't it?

2 A I don't recall her being there that day, sir. I
3 believe she was in Florida, I think, sir.

4 Q On March 1? You believe she was in Florida?

5 A To the best of my recollection, sir. I know that's
6 where her dad was living and I think that's where she
7 was. I'm not positive.

8 Q Detective, after you received the report of molesting
9 from Linda McElveen, did you make any inquiry into
10 who was the custodial parent of Jackson McElveen?

11 A To the best of my recollection, I believe that I was
12 informed by the McElveens that their son was the
13 father, that Molly was the mother, but I don't recall
14 who had actual primary custody or anything at the
15 time.

16 Q Do you know whether Mr. McElveen, Sr. had any
17 custodial rights to Jackson McElveen?

18 A Legal rights? No, sir, I don't. Legal orders? No,
19 sir.

20 Q Do you know whether Jackson McElveen having been born
21 out of wedlock was in the custody solely of his
22 mother by statute in South Carolina. --

23 MR. LEE: Object to that question, Your
24 Honor.

25 THE COURT: Yeah, he's not in the Family

1 Court thing. He's not a lawyer or anything. He's a
2 detective. He investigates things. He goes in front of
3 magistrates and tells people what people have told him.

4 By Mr. Mathison:

5 Q Well, I'm handing you the order that you went down
6 the Jasper County to help --

7 THE COURT: Hold it. Don't say things like
8 that, that he went down there to help. He gets called
9 down this and he goes; that's what he's duty-bound to do.
10 You call it participating and getting ex parte order, he
11 obviously doesn't know who's what, what he's --

12 MR. MATHISON: Excuse me, Your Honor.

13 THE COURT: Yes.

14 By Mr. Mathison:

15 Q What does paragraph 8 of that order say?

16 A It says here, In so far as no order exists dealing
17 with the custody of Jackson, he is de facto in the
18 custody of his mother pursuant to South Carolina Code
19 27-9-53(B).

20 Q All right. And that order was signed by Judge Smoak
21 on or about October 2, 2003; isn't that right?

22 A As far as I know, sir.

23 Q Okay. At the moment prior to the modification of
24 that order that was obtained in Jasper County on
25 March 1, 2004; isn't that right?

1 A As far as I know, sir.

2 Q Okay. At the moment prior to the modification of
3 that order on March 1, 2004, had you or anyone
4 involved with the Beaufort County Sheriff's Office,
5 Hope Cottage or anyone else told Molly McCullers the
6 custodian of the child that there was an ongoing
7 investigation for the molesting of her child?

8 A No, sir, at that point, I don't -- don't even know
9 that we knew exactly where she was, just that she --
10 I believed she was in Florida.

11 Q Well, who had the authority to make decisions for
12 Jackson McElveen in her absence, sir?

13 A As far as I could tell from appearance being that
14 they were with McElveen's, it appeared they were.

15 Q Did Mr. and Ms. McElveen tell you that they planned
16 to take a trip to Greenwood to go to the lake over
17 the weekend?

18 A I believe they did, yes, sir.

19 Q And do you -- did they not go, but instead come to
20 see you?

21 A They did come to see me. Whether they went or not,
22 I'm not sure.

23 Q Well, trust me when I tell you the day on which you
24 interviewed Linda McElveen is Friday, February 27th.

25 A Yes, sir.

1 Q 2004 was leap year, Saturday was the 28th, Sunday was
2 the 29th. You had Mr. McAlhaney arrested on the 1st?

3 A Yes, sir.

4 Q Did anything happen other than the interview with you
5 between the 27th and the 1st?

6 A I believe I had contacted Mr. McAlhaney.

7 Q You believe you contacted Matt?

8 A Or tried to contact Mr. McAlhaney, and was eventually
9 referred to Mr. Bruce Marshall, the attorney.

10 Q Did you try to contact Matt before you had the
11 warrant issued, sir?

12 A Yes, I believe I did, sir.

13 Q Where did you try and contact him?

14 A The only place I knew at the time, sir, was through
15 his office.

16 Q What was that?

17 A It was a realty office in Beaufort.

18 MR. MATHISON: Your Honor, may we approach
19 the bench?

20 (WHEREUPON there was a bench conference out
21 of the hearing of the jury and the court reporter.)

22 By Mr. Mathison:

23 Q Detective, who provided the address on the file?

24 First on your -- the beginning of your report.

25 A Which address are we talking about? Are we talking

1 about this address, sir?

2 Q Yes.

3 A I suspect it was either Linda or Rick McElveen. I
4 don't know for certain which one.

5 Q Okay. Was there an error made in the address where
6 the child actually lived? According to your
7 testimony at the preliminary hearing.

8 A Not that I'm aware of, sir.

9 Q Well, do you know whether the child lived in Port
10 Royal?

11 A The information I had at the time, sir, is that's
12 where the incident occurred. I was of the impression
13 that the child was spending most of its time with the
14 McElveens and I think they lived on Lady's Island at
15 the time.

16 Q Who gave you that impression that they were
17 spending --

18 A The McElveens.

19 Q Mr. and Ms. McElveen told you that; is that right?

20 A Yes.

21 Q And this report, you filled out indicates the
22 incident took place between October 1st, 2003 and
23 February 25th, 2004?

24 A I believe those were the dates, sir.

25 Q One of the reports in your file which came from Hope

1 Cottage, indicates that Jackson could have had no
2 contact with Mr. McElveen -- excuse me, Mr. McAlhaney
3 for a period of at least seven days by the time
4 that -- excuse me -- Ellenburger's report indicates
5 that; is that right?

6 A I don't recall that, sir. If you'd like me to go
7 look at it, I'll -- if it says it in the report, sir,
8 then I believe you're correct.

9 Q I guess what I'm getting at is this: You believed
10 that the children were with Mr. And Ms. McElveen,
11 safe from harm on Lady's Island; that was as of
12 February 27 when you opened up your file and filled
13 out this incident report; is that correct?

14 A I'd say that's a safe comment, sir.

15 Q Why was it necessary to expedite matters to make an
16 arrest so rapidly, so rapidly that there was no
17 forensic information that had been printed or any
18 medical information that could have been gathered?

19 A It was just the standard procedure we were using at
20 the time, sir. Once we had information that there
21 was a -- or that probable cause existed, then we
22 presented it to a judge at that time. The judge
23 issued the warrant, sir.

24 Q It was standard procedure not to even interview the
25 person who was accused of this sort of conduct?

1 A If we would have contacted them or -- or if I was
2 able to contact him, I would have interviewed him.
3 We obviously did not make contact with him. It is
4 not documented in the report.

5 Q And what you're saying is that -- that the inability
6 to contact him over the weekend, that is on Saturday,
7 February 28th and Sunday February 29th, that would
8 indicate that you'd just go ahead and arrest him on
9 Monday?

10 A That's what we did with this case, sir.

11 Q That's what you did, but I'm saying is that
12 conventional or customary?

13 A If that's probable cause, yes, sir.

14 Q You indicate throughout your report that Linda
15 McElveen is the child's grandmother. Do you know
16 whether that's true or not?

17 A To the best of my belief, yes, sir.

18 Q Was that information also supplied by Linda or Rick
19 McElveen?

20 A I believe so.

21 Q If I told you that Ms. McElveen is actually the wife
22 of the child's grandfather, would that make a
23 material difference to you?

24 A It would mean she's biologically not the grandmother,
25 sir.

1 Q Detective, who told you that Molly McCullers was in
2 Florida over this weekend?

3 A I don't recall who said that or if it was said or if
4 it was just what I came to draw from doing the
5 investigation.

6 Q Did you know that Mr. and Ms. McElveen pursuant to
7 their custody relationship or visitation relationship
8 with Ms. McCullers were due to return the children to
9 Ms. McCullers Sunday evening at six o'clock?

10 A I believe we were informed of that, yes, sir.

11 Q Do you know that they did not do that?

12 A I believe I knew it at the time, yes, sir.

13 Q Do you know what they had to say or do to avoid
14 having to bring the children back?

15 A Not what they would have to say or do to like -- if
16 you're talking about the court or something like
17 that.

18 Q If, hypothetically, if I'm right and Molly McCullers
19 was not in Florida and she was, instead in Beaufort
20 County waiting to get her children back, someone
21 would have to deceive her, would they not, in order
22 to keep the children away from her?

23 MR. LEE: Your Honor, that question has facts
24 not in evidence, and just because he thinks it, doesn't
25 mean it's proven; and I object to the question.

1 THE COURT: What else do you want from this
2 witness? He's not a party to the lawsuit.

3 By Mr. Mathison:

4 Q A couple more questions.

5 A Yes, sir.

6 Q Sir, did you receive on at least one occasion an
7 e-mail from Mr. Rick McElveen saying that other
8 people had told him that Mr. McAlhaney here was a
9 deviant, gay, and capable of anything?

10 A I believe those were the terms, sir.

11 Q Okay. He indicated, didn't he, that people had told
12 him that; isn't that right?

13 A Yes, sir.

14 Q But he didn't -- he indicated that they were willing
15 to come forward; isn't that right?

16 A That's correct.

17 Q But they don't have that when they're dealing with
18 you, to they? If you'd wanted to, you could have
19 gotten a subpoena and made them come forward couldn't
20 they?

21 A If I would have --

22 Q But you didn't, did you?

23 A -- had no --

24 Q But he never gave you the names, did he?

25 A No, sir.

1 Q It was just an enormous group of people who kept
2 maligning Mr. McAlhaney who told him these things;
3 isn't that right?

4 A I apologize, sir, but I'm not sure I know what that
5 means.

6 Q I'm not sure I do either. It was a group of people
7 that couldn't be identified?

8 A That he could not identify to us, yes, sir.

9 Q And he never came forward with anybody that
10 corroborated his statements, namely that Matt was a
11 deviant, gay, and capable of anything, did he?

12 A No, he didn't.

13 Q Not a single person?

14 A No.

15 Q But low and behold, Mr. McAlhaney isn't aware of
16 letters to you from all kinds of people saying he was
17 a deviant person; isn't that right?

18 A Either he or his mom did, I believe.

19 Q And isn't it true that at the preliminary hearing,
20 you conceded that Matt's public reputation was great;
21 isn't that what you said?

22 A I believe so.

23 Q He had a decent reputation publically, a whole bunch
24 of people said that to you, right?

25 A Yes, sir.

1 Q And your concern was that from his public reputation,
2 though, one couldn't really tell what went on in
3 private?

4 A What I was investigating, wasn't done in the public.
5 It was --

6 Q Wasn't done in the public eye?

7 A Yes, sir, done in private.

8 Q But you'd concede, Detective, that in fact, he was
9 not charged correctly (unable to transcribe due to
10 quality of reporter's notes) his great or enormous
11 public reputation would be injured by having this
12 charge brought?

13 A I would agree it could be, sir.

14 Q Do you recall at any point reviewing the domestic
15 case file between Mr. McElveen and his
16 daughter-in-law, Molly McCullers?

17 A Are you talking about like a Family Court document,
18 sir?

19 Q Yes, sir.

20 A I don't recall exactly how -- I want to say
21 Mr. McElveen brought something or whether I went to
22 the Family Court and looked at something. I know I
23 received some information about what was in the file.
24 I don't recall offhand how I received it or how I
25 looked at it. If it is documented in my report that

1 would help to prompt my memory.

2 Q I'm going by what happened at the preliminary
3 hearing. Specifically on page 18 of the preliminary
4 hearing there was a question asked. Would you read
5 from there to the bottom of the page?

6 A Which part, sir.

7 THE COURT: I don't think so. I just cut you
8 off on that. I've actually heard enough about that.
9 Preliminary hearing was there.

10 That's just a pro forma kind of thing,
11 jurors. He's not a party and if he thought he conspired
12 with somebody, they should have sued him too, okay? What
13 happened at the preliminary hearing happened at the
14 preliminary hearing, essentially submitted to the grand
15 jury, he was indicted, and then the charges were nol
16 prosed. And I'm going to tell you a little bit about
17 the charge and they can get me reversed all they want.
18 Here is how things operate.

19 The grand jury consists of 18 citizens of
20 Beaufort County. When somebody alleges that a crime has
21 been committed, law enforcement usually goes in. They
22 might take one witness in there and there might be 17
23 witnesses to say he committed a crime. But that
24 evidence, standing alone, the grand jury either
25 authorizes that a person be charged or not. It may be

1 false information. This is not a jury trial. The
2 defendant does not even know that the grand jury is
3 considering bringing charges against him.

4 Officers, when somebody comes in and says if
5 you went in, any of you jurors, and said so and so stole
6 my lawn mower out of my yard, based on that information
7 an investigating officer would go before a magistrate and
8 a magistrate takes that information; and the officer
9 would just say so and so said you stole his lawn mower.

10 The magistrate then would issue an arrest warrant.

11 Family Court judges -- and I'm getting a little bit
12 irritated about all this. The purpose -- and I'm not a
13 Family Court judge. I get requests to issue ex parte
14 orders all the time. I'm the longest serving circuit
15 judge. I might have done three in my life. I always
16 advise the people to come in because I'm -- have the
17 right to do that. I have the right to do that. I don't
18 even sign them when the highway department wants to go on
19 somebody's property and take, survey although I can.

20 I say notify the people, tell them to come
21 in, let them know it's going to happen. But Family
22 Court, you -- they don't do that. Nothing is wrong for
23 Family Court judges -- the purpose of the Family Court
24 law is to protect children. If it's reported that a
25 custodial person has abused a child, physically, sexually

1 or whatever, DSS even gets involved and a Family Court
2 judge immediately takes custody from them, either places
3 it with some other custodial person or with DSS.

4 Then there is a hearing on it shortly
5 therefore, generally. If a person is indicted and
6 charged with committing a sexual crime, obviously a
7 Family Court judge is going to take custody from that
8 person or bar them from having contact with the people
9 until it's resolved, until the criminal case is resolved.
10 That's just how the system works. It may be that
11 innocent people get hurt by that, but that's not the
12 issue in this case.

13 So what happened at the preliminary hearing,
14 this officer who knows nothing about it other than he
15 interviewed a four-year-old who is basically -- can't
16 testify anyway because of the age, and the mother,
17 grandmother, who says such and such. He says that.
18 Whether he -- it's true or not is beside the point. He
19 believes it or doesn't believe it, and you can question
20 him about it forever, but we aren't retrying the
21 situation that happened at the preliminary hearing.

22 The preliminary hearing, again, is not a
23 trial. It's just where the State puts up the evidence
24 that they intend to present. You have the right, if
25 you're accused to have an attorney there to question

1 everybody. Once that procedure is done, we aren't trying
2 that and we aren't retrying all these family court cases
3 that go back to 1997, everything that happened in there.
4 I'm going to cut them down on some of that and I'm going
5 to stop the trial if anybody indicates that Judge Smoak
6 did anything, that any other Family Court judge wouldn't
7 have done or that the grand jury did something.

8 And he's mentioned that not -- didn't the
9 grand jury do this? It's just rubber stamped more or
10 less. Sometimes, and I'm the chief criminal judge here
11 right now, I haven't qualified this year's grand jury,
12 but I've qualified them over the state. I was the first
13 judge over the state grand jury. Occasionally they don't
14 present enough evidence to the grand jury to return a
15 true bill. It is rare, however. It's rare because they
16 don't try the case. They just make a determination as to
17 whether evidence presented by law enforcement standing
18 alone should answer the charges.

19 What else do you want from this gentleman?

20 MR. MATHISON: I can either tell you in front
21 of the jury or I could ask that you send them --

22 THE COURT: I'm not going to let that come in
23 if you hand it up here. That was a preliminary hearing.
24 He testified to that and --

25 MR. MATHISON: Then I need the make my

1 record, Your Honor.

2 THE COURT: Can do that after the jury is
3 gone. Got anything else to ask him, you can.

4 MR. MATHISON: One more question and I think
5 that might draw an objection too.

6 THE COURT: All right.

7 MR. MATHISON: Want me to ask it?

8 THE COURT: Sure.

9 By Mr. Mathison:

10 Q Detective, after the initial report from
11 Ms. McElveen, was it determined that allegations of
12 sexual abuse were also made against Molly McCullers?

13 MR. LEE: Your Honor, I object. That hasn't
14 come up. There's nothing -- that's not why we're here.

15 THE COURT: Irrelevant at this point.

16 MR. MATHISON: Then I'd make an offer of
17 proof on that, too, Your Honor.

18 THE COURT: Can do that too.

19 By Mr. Mathison:

20 Q Sir, you said you tried to contact Mr. McAlhaney?

21 A I believe I did, sir.

22 Q Did you leave a message for him at his office?

23 A Yes, sir, I believe there was a voicemail.

24 MR. MATHISON: Thank you, very much.

25 THE WITNESS: Yes, sir.

1 THE COURT: You can step down.

2 MR. LEE: May the witness be excused Your
3 Honor?

4 THE COURT: Sure.

5 MR. LEE: Defense would call Diane Dewitt.

6 THE COURT: Jurors, before he asks the
7 questions, I did not know Deputy Brian Baird. You know I
8 don't know him. He may have been in court sometime
9 because I've been here off and on for 20 years now and
10 then. I don't know this person. Before she says
11 anything, I don't know what she's going to say, she was a
12 guardian ad litem. Any time a child is involved in
13 litigation, they appoint an independent person; all
14 that's going to be explained and that person is
15 duty-bound to represent the interest of the child even if
16 it means taking a position contrary to their parents or
17 their custodial guardian. She, however, is not going to
18 be able to say what the kids told her specifically --
19 with all that in mind, have at it.

20 MR. LEE: You cut my time down.

21 THEREUPON,

22 DIANE DEWITT,

23 after being duly sworn testified as follows:

24 ///

25 ///

DIRECT EXAMINATION

By Mr. Lee:

Q Please state your name for the record.

A Diane Dewitt.

Q Where do you live?

A Beaufort, South Carolina.

Q Where are you employed?

A I'm self-employed as an attorney and practice in Beaufort.

Q How long have you been practicing law?

A 27 years.

Q Do you practice by yourself?

A I do.

Q Do you -- does your practice consist primarily of Family Court work?

A Mostly Family Court. I still practice some criminal law.

Q And that's where you started was with the criminal stuff, public defender?

A Five years as a public defender, yeah.

Q Is a portion of your practice doing what we call guardian work or being a guardian ad litem?

A Yes, I'm appointed by the Court on a regular basis to represent children's interests in private custody or visitation between parents or other parties.

Q And how long have you been -- how long have you been a guardian or been appointed for being a guardian?

How many years? How many times would you estimate?

A How many times?

Q Hundreds?

A Hundreds, maybe closer to (unable to transcribe due to quality of reporter's notes) times. In the 27 years that I was appointed on a regular basis except for the five years I was a public defender.

Q You don't get to pick which cases you get appointed to be guardian in, do you?

A I don't request the appointments, no.

Q You get some usually from a judge saying, hey, it's your lucky or unlucky day, you're the guardian for so and so.

A Yes.

Q And you were appointed guardian ad litem in some domestic litigation involving Rick McElveen, Sr., right?

A Yes.

Q And the two children were his grandchildren, Jackson and Ricky, III, correct?

A Yes.

Q And their mother was Molly or is Molly McCullers McElveen, right, or maybe --

1 A I don't know if that's her name now --

2 Q Okay. Molly?

3 A -- but I believe it was then.

4 Q Molly?

5 A Yes.

6 Q Would you agree that one of the things in any case
7 that you look at is to see how the children are being
8 treated by their custodians? That's important?

9 A There's actually a private guardian ad litem statute
10 that sets forth the guardian's duties and
11 responsibilities which includes, certainly,
12 interviewing the children --

13 Q Uh-huh.

14 A -- as often as necessary under whatever circumstances
15 or conditions I think are appropriate.

16 Q Uh-huh.

17 A Visiting the homes of the parties.

18 Q Talking to the parties?

19 A Talking to all the parties involved.

20 Q The lawyers?

21 A And the witnesses who they provide me names with,
22 getting school records, obtaining medical records on
23 the children, sometimes the parties, sometimes -- you
24 know, child custody evaluation or psychological
25 evaluation is ordered.

1 Q Right.

2 A The Court may order the release of mental health
3 records, parties or children. Those are the types of
4 things that are set for in the code.

5 Q When the allegations came out -- the charge against
6 Mr. McAlhaney, when did you hear about it? Do you
7 know?

8 A I believe I heard about it after it was reported to
9 the sheriff's office.

10 Q Okay. And is that -- is that common for you to get
11 that type of information if -- if it involves a child
12 that you're the guardian for?

13 A Well, if -- if it had been reported directly to me
14 initially, I think I would have had an obligation to
15 report it to --

16 Q By law?

17 A By law -- to report it to DSS or the sheriff's
18 office.

19 Q Is that the kind of thing as a guardian that you want
20 to know about when you're looking out for the
21 interest of the child?

22 A When I'm the guardian, or for that matter, just as a
23 citizen, it's the kind of thing I don't want to be
24 going on, ever.

25 Q We all don't.

1 A Occasionally -- occasionally those types of
2 allegations come up.

3 Q Okay. And we've gone through the litany of what
4 happened. On Monday, March 1, it appears that there
5 was an ex parte motion filed in this case to put
6 custody with Mr. McElveen, Sr. and Linda rather than
7 return it to Molly. Do you remember that? I can
8 refresh your --

9 A Show me.

10 Q I know it was a long time ago.

11 A It's not an ex parte motion or order. The mother was
12 represented by counsel. She had her own attorney.

13 Q Okay.

14 A And I filed a motion for an emergency hearing.

15 Q You filed a motion for an emergency hearing?

16 A I filed a motion for an emergency hearing and I
17 believe --

18 Q As guardian --

19 A I believe all I asked for -- in an ex parte -- well,
20 this is your motion.

21 Q Right.

22 A That got filed. Seems to me I filed something too,
23 an affidavit.

24 Q Right.

25 A But it seems to me, we actually had a hearing --

1 Q Right.

2 A -- in Jasper County. And, you know, the judge did
3 what he's supposed to do, which is issue an order
4 that protects the children until there's a hearing
5 where he can take testimony.

6 Q Right.

7 A But even though it's -- y'all have been referring to
8 this as ex parte. I believe that the mother is
9 represented by Mr. Dukes, and so everybody knew what
10 time the hearing was going to be in Jasper County.

11 Q And we had a hearing and her lawyer was there, right?

12 A He was a very diligent lawyer. I can't imagine him
13 not being there.

14 Q And I think Detective Baird was there.

15 A Yes.

16 Q And you were there.

17 A Yes.

18 Q And you submitted an affidavit?

19 A Yes.

20 Q Without saying what's on it, what was your
21 recommendation as guardian at that time as for the
22 custody of the kids?

23 A I had to recommend to the judge that what time the
24 investigation was ongoing and until more evidence was
25 available that -- I asked the judge to do what he had

1 to do to protect the interests of the kids.

2 Q At this point --

3 A And that was my job. That is my job --

4 Q Right.

5 A -- so to, you know, make sure the children are being
6 taken care of, that they're not being hurt --

7 Q Okay.

8 A -- and that kind of thing.

9 Q Were there any concerns you had as guardian at the
10 time about the -- that Molly McCullers' care -- about
11 care of the children?

12 A Yeah, yes.

13 Q Yeah. Had you received any -- had you heard anything
14 about any -- let me rephrase that.

15 You had some misgivings, aside from any
16 allegation against her boyfriend about Molly's
17 continued care and control of those children; would
18 you agree with that?

19 A Yes. The case was between grandparents and the
20 mother.

21 Q Uh-huh.

22 A Really didn't have anything to do with Mr. McAlhaney.

23 Q Uh-huh.

24 A He wasn't a stepparent. He wasn't a live-in
25 boyfriend.

1 Q Yeah, he wasn't even named as a party, was he?

2 A He wasn't named as a party.

3 Q Okay.

4 A He didn't have any rights to the children.

5 Q Right. Were there any issues involving abuse that
6 you were -- and the general term -- that you were
7 concerned about at that time or later on?

8 A The concerns in that case involved a present and
9 prior mental health history of the mother, possible
10 present and definite past issues of drug consumption.

11 Q Right.

12 A Or use and abuse.

13 Q Right.

14 A And --

15 Q And as guardian --

16 A -- and other things, boyfriend staying overnight with
17 the children, in violation of the court orders;
18 that's the usual allegations that come up in a
19 contested custody case.

20 Q Sure. All right. Now, skipping forward some,
21 this -- this custody case was eventually settled
22 amongst the parties, wasn't it?

23 A Yes.

24 Q Okay. Did you have a part in that settlement? Did
25 you make any recommendations or put in your two cents

1 or --

2 A I -- I investigated the case from both sides and, of
3 course, needed to make sure that whatever the end
4 arrangement was that the children were safe at both
5 households, that they maintained contact with the
6 parties and -- you know, so I investigated the
7 residents where they ended up at and their family
8 circumstances and --

9 Q And again, it was Molly against Rick, Sr., right, as
10 parties?

11 A And his wife.

12 Q Right.

13 A I believe the little boy's father was also a party.

14 Q But Matt McAlhaney wasn't involved at all, was he?

15 A No.

16 Q And you ultimately agreed and everybody agreed to the
17 custody arrangement which was letting the boys stay
18 with Rick and Linda, right?

19 A Yes.

20 Q And you agreed with that?

21 A Yes, with the mother maintaining contact and having
22 visitation rights and her -- her (unable to
23 transcribe due to quality of reporter's notes) became
24 involved.

25 Q Would you agree that the -- that arrangement was --

1 was due to problems with Molly? Would you agree with
2 that, that issues with her as far as care and
3 custody, control of the kids, not with Matt
4 McAlhaney, right?

5 A Correct. The end result -- oh well. It --

6 Q I'm not trying to ask -- may not be artfully --

7 A Okay.

8 Q -- phrased.

9 A During the investigation, everyone -- though the
10 mother was represented by an attorney results of her
11 evaluation and then a hospital visit due to an
12 overdose, and things of that nature are the reasons
13 why the mother lost custody of the children.

14 Q Not because of Matt McAlhaney?

15 A No.

16 Q And I know this happened a long time ago, but during
17 your stint as guardian, did you have anything to do
18 with the ultimate charging and arresting of Mr.
19 McAlhaney on these charges we talked about?

20 A No.

21 Q Okay. Did Rick McElveen force you to do anything
22 that you formally wouldn't do in the best interest of
23 the children?

24 A Throughout -- are you referring to throughout the
25 case?

1 Q Yeah.

2 A No.

3 Q Okay. When -- when the case was eventually settled,
4 did you believe as guardian that Rick and Linda's
5 home was a safe, nurturing place for the children to
6 be?

7 A Yes.

8 MR. LEE: That's all I have, Your Honor.

9 MR. TEMPLETON: No questions, Judge.

10 THE COURT: All right.

11 **CROSS-EXAMINATION**

12 By Mr. Mathison:

13 Q Diane, isn't it true there were two hearings in terms
14 of the transfer of custody of the McElveen --
15 Mr. McElveen's grandchildren?

16 A There may have been more than two.

17 Q Wasn't there an emergency hearing on March 1,
18 pursuant to which the transfer was made summarily by
19 restraining order?

20 A I don't want -- I didn't bring my file.

21 Q Well, the order is in evidence, and it doesn't appear
22 to be here just at the moment?

23 A This is -- somebody handed that to me.

24 Q That's (unable to transcribe due to quality of
25 reporter's notes), but that's not what was in

1 evidence.

2 Ma'am, there's a restraining order dated
3 March 1, signed by Judge Smoak, which immediately
4 transfers custody from Mr. and Ms. McCullers to
5 Mr. And Mr. -- or Mr. McElveen and a hearing is set
6 where Ms. McCullers can show cause on March 3 why
7 that should not remain permanent. I'm handing you to
8 order.

9 A Okay. That would be the emergency hearing.

10 Q Yes, ma'am. In that emergency hearing, was not a
11 hearing at all, somebody else showed up other than
12 Ms. McCullers before the judge and got him to sign
13 it, right?

14 A Yeah, ordinarily that's --

15 Q Okay. It wasn't --

16 A -- the process.

17 Q -- wasn't your motion, was it? It was Mr. Lee's
18 motion?

19 A It does not read like it was my motion.

20 Q Right. It was the motion that he handed up which was
21 his motion. You simply went along with it; isn't
22 that right?

23 A No, I wouldn't have just gone along with something.

24 Q I understand.

25 A I would have checked into the allegations and -- and

1 I do recall that the mother herself had a lawyer.

2 Q Yes, ma'am.

3 A So I would imagine there was some communication with
4 him.

5 Q And there was actually a hearing subsequently on the
6 rule to show cause which was scheduled by Judge
7 Smoak, that is to say on March 3; isn't that right?

8 A Yes, I remember going to Ridgeland.

9 Q And March 3 was a Wednesday of that week so the
10 custody was transferred on March 18^e, with no one
11 being there; and then there was a hearing on it on
12 March 3; isn't that what happened?

13 A I believe so based on those papers.

14 Q Now, who was it that approached you with information
15 that would lead you to prepare an affidavit to
16 transfer the custody? Who specific?

17 A I probably was contacted by --

18 Q Do you know, ma'am?

19 A -- probably either the grandparents or the father.

20 Do I know? No. I didn't bring my file. It's
21 outrageous (unable to transcribe due to quality of
22 reporter's notes).

23 Q I can understand. Do you know whether Detective
24 Baird contacted you?

25 A No, I don't.

1 Q Do you know whether there was any forensic or medical
2 evidence that was put in front of you before you
3 wrote your affidavit?

4 A No.

5 Q So where did the --

6 A I haven't read my affidavit lately either.

7 Q Well, this information in it, do you know where it
8 originated?

9 A Off the top --

10 MR. LEE: If she said she doesn't know where
11 it originated, she doesn't know what's in there.

12 THE WITNESS: Off the top of my head, no, but
13 I'm sure it was from -- I heard it from someone
14 initially. It would either be a call from an attorney or
15 one of the grandparents or the father or even perhaps the
16 mother's lawyer.

17 By Mr. Mathison:

18 Q Okay. So it could have originated with any of the
19 parties; is that right?

20 A Correct.

21 Q Could it have originated with Detective Baird or not?

22 A I don't think so, but I would have talked to him.

23 Q After someone else told you about it?

24 A Right. I would have contacted whoever the
25 investigating officer was, probably.

1 Q All right. Well then, if the information that was
2 given to you initially was flawed, how would you find
3 out about it?

4 A You hope that -- that once an investigation is
5 complete, other evidence comes forth, or that
6 evidence is corroborated or verified.

7 Q Right.

8 A It is either discredited or is verified.

9 Q For example, these things have a tendency to change
10 and kind of grow like (unable to transcribe due to
11 quality of reporter's notes) over time, don't they?
12 Family Court cases?

13 A Well, cases involving children who make allegations
14 change, often change, especially the younger the
15 child is; that's why the judge, you know -- we have a
16 motion hearing, emergency hearing, but the -- the
17 case isn't fully heard at that time.

18 Q Fewer than six months beforehand in the same case
19 hadn't Molly McCullers been awarded temporary custody
20 by order of Judge Smoak?

21 A Yes.

22 Q And at the time, she was given temporary custody
23 after a hearing held on September 29th. You
24 recommended that she have custody; isn't that
25 correct?

1 A I wasn't present at this hearing.

2 Q You're talking about this hearing on September 22.

3 A Yes, it's -- yes, that's the hearing I'm talking
4 about. It is a temporary order and I think I was
5 appointed as the guardian ad litem for the children
6 at that hearing.

7 Q Okay.

8 A So, I didn't know the parties at the time that order
9 was issued.

10 Q Do you know of any evidence other than the arrest of
11 Mr. McAlhaney that was adduced after September 22
12 that caused your recommendation to change from Molly
13 McCullers having custody to Mr. McElveen having
14 custody?

15 MR. LEE: Your Honor, that question is
16 incorrect. It didn't make -- she didn't make a
17 recommendation. She just got appointed on that date so
18 that question is assuming facts not in evidence.

19 THE COURT: And incidentally, jurors, like
20 I'm over -- I'm from Richland, Kershaw County, but I'm
21 stationed here for a year starting last July. I have
22 jurisdiction in all five counties that comprise the 14th
23 Judicial Circuit on matters involving several cases and
24 some civil cases, all right. If I'm holding court in
25 Jasper, which I did last week and somebody from Beaufort

1 needs something, some order or some emergency hearing,
2 these attorneys would come to Jasper where I'm holding
3 court, not me stop court in Jasper and come here, if they
4 needed a quick hearing on Monday and a more forma hearing
5 on Friday the two hearings would be heard in Jasper even
6 though there might be a Beaufort County thing, but I
7 wouldn't hear it unless it was an emergency.

8 When you do a temporary order, you don't want
9 to take children from somebody more than a couple days
10 without having a full hearing just based on an affidavit.
11 So it's not like Judge Smoak was sought out. He is a
12 resident judge of this circuit even though he's primarily
13 in Beaufort County simply because they have more court
14 here.

15 By Mr. Mathison:

16 Q Ms. Dewitt, sitting here today without your file, do
17 you know whether it was Mr. McElveen or Ms. McElveen
18 or one of the lawyers that told you enough
19 information that caused you to write an affidavit
20 writing a change in custody?

21 A I'm certain it was after -- I don't know who called
22 me first, and I could have come in and had messages
23 from everybody, but I can tell you, I would not have
24 written that affidavit without talking to every
25 person who might have some information that I could

1 read.

2 Q Did you talk to any -- either of the children?

3 A Let me see my affidavit. I --

4 Q I don't have it. It's been --

5 A It is attached to the motion.

6 MR. LEE: Got it right here.

7 THE COURT: Show it to her, but this is just
8 a --

9 THE WITNESS: Amends --

10 THE COURT: -- cannot testify to what is in
11 that evidence. All kind of extraneous findings are in
12 there. All he's asking is where you got the information
13 to base the affidavit on, not what the affidavit says.

14 While she's doing that, a Family Court judge
15 is not going to sign an order taking custody away unless
16 a guardian ad litem recommended it. That's just the
17 bottom line on a temporary basis. It is a drastic,
18 drastic measure.

19 THE WITNESS: The affidavit was based on
20 other information, based on my investigation to that
21 point in the case including information received from a
22 private investigator, video tape, also that I watched.

23 By Mr. Mathison:

24 Q The investigator worked for whom, ma'am?

25 A The other -- not the mother's --

1 Q Mr. --

2 A -- other parties.

3 Q Mr. McElveen; isn't that correct?

4 A Yes.

5 Q Okay.

6 THE COURT: So what else do you want her to
7 say.

8 THE WITNESS: Interviews with teachers. I
9 had already been working on the case for a couple of
10 months.

11 By Mr. Mathison:

12 Q Why did you decide to make a recommendation on the
13 morning of March 1, which is the same day that my
14 client was arrested?

15 A I'm sure I didn't know when your client was being
16 arrested.

17 Q But you knew you wanted to move the children as fast
18 as possible; isn't that right?

19 A Yes, because I believe they were supposed to go back
20 to their mother.

21 Q So, (unable to transcribe due to quality of
22 reporter's notes) were supposed to go back to --

23 A Or at least --

24 Q Pardon me?

25 A The grandparents had custody of the oldest child.

1 The mother had temporary custody of the youngest
2 child and I -- and I believe that the children --
3 maybe they alternated weekends at one place and then
4 the next so the kids were together every weekend at
5 alternating party's homes and I believe the children
6 were -- at least Jackson was due to go back to his
7 mother on Monday. In addition -- in addition you
8 (unable to transcribe due to quality of reporter's
9 notes) find a judge on a Monday in court and I would
10 imagine Judge Smoak in Jasper was the closest judge,
11 and there wasn't one here.

12 Q Is Mr. McAlhaney's unfortunate brush with the law
13 mentioned in your affidavit?

14 A Yes. Yes. Also indicates that I --

15 Q Don't tell me anything else. Need to keep it (unable
16 to transcribe due to quality of reporter's notes)?

17 A You asked the question. My affidavit was based on
18 the -- all the information I had and the people I
19 interviewed.

20 Q Do you know whether you actually submitted that
21 affidavit before he was arrested?

22 A No, I don't.

23 Q How would you know he was going to be arrested?

24 A I'm sure I -- I would have asked.

25 Q Somebody had to tell you that, right?

1 A Yes, probably I --

2 Q Mr. McElveen or his lawyer?

3 A I would imagine I interviewed Detective Baird.

4 Q I thought you told me you didn't interview Detective
5 Baird?

6 A No, I did. I know that I did before I prepared my
7 affidavit.

8 Q Okay. Did he have anything with him, a forensic
9 report or any kind of evidence or did he --

10 THE COURT: He just interviewed him. That's
11 all. He might have been lying to her through his teeth.
12 He's an officer and she took him for what he said and
13 reported it in there. It's not like guardian ad litem
14 get hundreds of thousands of dollars.

15 How much do they pay you to do this? On each
16 case? They don't pay you much.

17 THE WITNESS: No. The judge sets the fee and
18 it is usually a low hourly rate and one party or the
19 other doesn't pay their share.

20 THE COURT: Right. It's not a very
21 remunerative thing. It is public service more or less.
22 You do get some compensation for it and sometimes the
23 court will order both parties to pay the guardian and one
24 of them doesn't pay. The other party anyway certainly
25 won't pay the guardian who took a position against them,

1 and the guardian has more to do than sue somebody for
2 150, so just eats the time. All right.

3 By Mr. Mathison:

4 Q Prior to your investigation with the person who gave
5 you the information that led to you (unable to
6 transcribe due to quality of reporter's notes) had
7 Mr. McElveen was going to be arrested for molesting a
8 child, did Mr. McElveen or anybody on his behalf ever
9 submit an affidavit setting forth anything even
10 remotely suggesting that about Matt McAlhaney?

11 A Not to me.

12 Q You've never seen that document?

13 A If there was something like that filed in a Family
14 Court case, I'm sure I had been given a copy of it.

15 Q Do you have any specific knowledge or recollection of
16 that at this juncture?

17 A No.

18 Q It was all done verbally, based on what somebody told
19 you on or about March 1?

20 A Are you talking about my affidavit?

21 Q What you did on March 1 was the product of what
22 somebody else told you on or about March 1?

23 A It was a product of the -- the investigation to date
24 in serving as guardian ad litem in that particular
25 custody case and everyone else listed in this

1 affidavit, the video tape, a PI's report, some other
2 information on mother, interviewed the police
3 officers who were present at the forensic
4 interview --

5 Q All right. Hold it. You have put in the affidavit
6 and the information that was available to you, and
7 signed it and submitted it?

8 A Yes.

9 Q All right. Have you ever been a participant in a
10 case as a guardian ad litem or as a lawyer where
11 there were false allegations of child abuse?

12 A Yes.

13 Q It is not an infrequent occurrence, is it?

14 A Well, no one knows how often.

15 Q Just answer my question. Is it an infrequent
16 occurrence or frequent occurrence?

17 A I'd say pretty regular.

18 Q Pretty much standard operating procedure in Family
19 Court under certain circumstances; isn't it?

20 A I wouldn't say standard operating procedures, but I
21 would even in my (unable to transcribe due to quality
22 of reporter's notes) cases, I'd say about five cases
23 a year, there are allegations made of some kind of
24 physical abuse or something.

25 Q And how many times do those prove to be false?

1 A You never really know if they're false.

2 Q So you're presuming that they're all true?

3 A It's difficult to tell if allegations are true or not
4 true when they involve children making the
5 allegations.

6 MR. MATHISON: Thank you very much.

7 THE COURT: All right. You're free to go.

8 MR. LEE: Judge, at this point I plan on
9 calling two more witnesses.

10 THE COURT: Good for you.

11 MR. LEE: Just telling you. Mr. McElveen,
12 Sr. and Mr. McElveen, Jr. I would respectfully ask the
13 court to consider letting us get out of here today and I
14 will promise neither one of the direct examinations will
15 take more than 30 minutes a piece in the morning and I
16 think we could have the charge and get it to the jury by
17 lunchtime.

18 I don't think y'all have but a couple of
19 witnesses you named.

20 MR. TEMPLETON: Depends on what happens in
21 the -- whenever the remaining two witnesses go up and
22 then we'll have a matter of law to take up with the
23 Court, you know, and then we've got potentially three
24 witnesses and run rebuttal.

25 MR. LEE: Just asking.

1 THE COURT: Which motel do y'all want -- no,
2 y'all don't want to --

3 MR. LEE: They look a little tired to me,
4 Judge.

5 THE COURT: Mr. Lee represents that he has
6 two witnesses that will take less than an hour. He's got
7 a couple of witnesses that will take less than an hour.
8 Well, might take more, but bottom line, all the testimony
9 will be in by lunchtime tomorrow .

10 Is that fair, from your standpoint?

11 MR. LEE: Yes, sir.

12 THE COURT: And then they have something
13 that -- it may be late tomorrow before you get the final
14 summations of law or where he may wait until Friday
15 morning. It depends upon the time, but it does not
16 matter in the scheme of things whether we go ahead today
17 or tomorrow.

18 Mr. Lee says if he can have the rest of the
19 day to prepare it he's cut down on the time his witnesses
20 will take tomorrow. So he's representing that as an
21 officer of the court and we'll hold him to it and we'll
22 take a break for today.

23 Y'all probably have other things -- not like
24 we can finish all the testimony today and get the thing
25 first thing in the morning anyway, so be back and try to

1 move it up to 9:15 -- no 9:20. The juror taking notes,
2 don't be sending them to New York times yet.

3 JUROR: They're just for me.

4 (WHEREUPON the jury left the courtroom.)

5 THE BAILIFF: Jury is clear, Your Honor.

6 MR. MATHISON: May it please the Court?

7 THE COURT: We're waiting for a few proffers.

8 MR. MATHISON: I would like to make my
9 proffer here.

10 THE COURT: Sure.

11 MR. MATHISON: If you recall, Mr. Lee
12 enlisted testimony from Detective Baird that Mr. McElveen
13 did not in any way guide or shepherd the efforts that
14 were undertaken -- excuse me -- Mr. McElveen did not
15 guide or shepherd the efforts that were undertaken with
16 respect to the prosecution of Mr. McAlhaney. I was about
17 to ask him whether on the order at the temporary -- at
18 the preliminary hearing, Mr. Baird made the following
19 answers in response to questions by Mr. McAlhaney's
20 lawyer.

21 I'm at page 18 -- at line (unable to
22 transcribe due to quality of reporter's notes).

23 And the question is: All right. Now, you
24 know when the McElveens filed for custody of these
25 children?

1 Answer: I do not.

2 Question: Do you have a copy of the
3 complaint? The custody complaint?

4 Answer: No, I don't.

5 Question: Have you asked for it from the
6 McElveens.

7 Answer: No.

8 Question: Do you intend to do so?

9 Answer: I have been told that the entire
10 file is open for my review with --

11 Interruption.

12 Question -- Family Court?

13 Answer: Family Court.

14 All right. Did anyone provide you with
15 copies of divorce documents from Matthew McAlhaney?
16 Those are the same documents we heard about yesterday.

17 Answer: No.

18 I've been told that's in the case file.

19 Answer: No.

20 Ive been told that's this the case file.

21 Answer: Okay, excuse me.

22 Question: Okay. Who told you that?

23 Answer: Scott Lee. Rick.

24 And then there's an interruption -- who is
25 the McElveen's custody attorney? And then he finished

1 and Rick McElveen.

2 I submit, Your Honor, that this is highly
3 relevant evidence --

4 THE COURT: It is totally irrelevant. One
5 and two, it knocks Scott out of the case, which we
6 weren't going to do, plus --

7 MR. MATHISON: Why would this knock him out
8 of the case, sir?

9 THE COURT: He is represented in there as
10 having told this officer all that, but to all your
11 answers, as I'm sitting here eagerly seeing what they
12 say, did you have it, did you have it, did you visit,
13 have you read it; and the answer was no, no, no, no, no,
14 no, which sounds perfectly correct for not letting all
15 that in a preliminary hearing being read to the jury.

16 MR. MATHISON: Forgive me, Your Honor.

17 THE COURT: The last sentence, maybe.

18 MR. MATHISON: Yes, sir.

19 THE COURT: Would just ask him the last
20 sentence and a question rather than to try to read that
21 which I was not going to allow to happen. I don't even
22 see that --

23 MR. MATHISON: I think it is relevant in
24 response to the testimony that there was no control
25 attempted and I don't see how this compromises Mr. Lee at

1 all because on this side, we can all understand how the
2 system works. Guardian ad litem works by responding --

3 THE COURT: All of y'all have impugned the
4 system. That's everybody. I personally take offense to
5 that, which is why I've been a little heavy-handed. It's
6 like Judge Smoak did something in the -- in the darkness
7 of the night over there in Jasper County. I mean he's
8 doing his job for goodness sakes. Sorry he suffered from
9 it, but that's what he's supposed to do.

10 If somebody comes in for a temporary
11 restraining order with allegations a child is physically
12 or sexually abused, he has to sign an order. He doesn't
13 even have any choice about it. If he doesn't, he gets
14 kicked out the next week, so --

15 MR. MATHISON: May it please the Court, I
16 believe this should have been allowed in.

17 THE COURT: Read that last sentence that you
18 want in from the preliminary hearing. That's a court
19 record.

20 MR. MATHISON: You will allow me to do that?

21 THE COURT: Read it to me so I will know
22 whether I will or not. I don't have it up here.

23 MR. MATHISON: Answer: The Family Court.

24 Question: All right. Did anyone provide you
25 with copies of divorce documents from Matthew McAlhaney?

1 Answer: No. I've been told that that's in
2 the case file.

3 Okay.

4 THE COURT: No, no, no, no, no. See, you're
5 going over the whole thing again.

6 MR. MATHISON: It is not a good question
7 until you get high enough above to find out what's being
8 asked so the question is okay and who told you that, that
9 being I've been told that it is in the case file and the
10 answer is Scott Lee and Rick McElveen.

11 THE COURT: All right. If he didn't look at
12 it, though, he didn't look at it. What difference does
13 it make? This is what I will allow you to do. At a
14 preliminary hearing, Officer Baird was asked information
15 concerning if the divorce proceedings were furnished to
16 him. He says no, but was advised by whoever that it was
17 available by McElveen. You can write it down, run it by
18 Scott and you can ask him, but not -- I'm not reading
19 that to them. All that you want in is that McElveen told
20 Baird divorce proceedings were available. I think that's
21 all you want.

22 MR. MATHISON: Your Honor, may it please the
23 Court? I don't mean to sound churlish, but I haven't had
24 an opportunity to respond other than in the presence of
25 the jury, but I believe you could characterize what you

1 said to the jury while I was trying to ask this question
2 as a charge on the facts.

3 THE COURT: Could have been. You could get
4 reversed on that.

5 MR. MATHISON: I understand. But I need to
6 state an objection on the record because it was an
7 extensive charge on the facts.

8 THE COURT: No, it was telling about the law
9 because y'all are attacking the system even through him,
10 and you can get me reversed on that.

11 MR. MATHISON: I don't hope to get you
12 reversed, Your Honor. What I have to do is protect my
13 record.

14 THE COURT: You are protected.

15 MR. MATHISON: What I understand is that
16 you're going to allow me to tell the jury that basically
17 this question, the one area of it that you deem
18 appropriate, was, in fact, asked and answered the way it
19 was answered in here. I just wanted to be clear. I
20 don't think it solves the charge on the facts, Your
21 Honor.

22 THE COURT: Are you talking about -- I don't
23 understand now what you talk about when I give you what
24 you want.

25 MR. MATHISON: Your Honor, you explained

1 literally in -- in large measure how the system works.

2 THE COURT: Had to because nobody else has,
3 and the system is under attack from all of y'all; and you
4 know, you don't treat it like that, talk it up, but I --
5 Smoak didn't do anything that any Family Court judge
6 would not have done. The guardian ad litem didn't do
7 anything. She may have made erroneous conclusions.
8 Baird, who I don't know from Adam might have made
9 erroneous conclusions. Officers tend to believe victims
10 and --

11 MR. MATHISON: And guardians ad litem have
12 to pretty much guard against the possibility of the
13 allegation. I'm not denying that those aren't -- but I
14 don't think in the middle of my questions the jury should
15 have been charged on that.

16 THE COURT: Because you can't hammer him on
17 irrelevant (unable to transcribe due to quality of
18 reporter's notes) I was concerned. If he's a party, he's
19 a party. Anyway, you are protected on all that. If you
20 don't like it and so forth, I'm not trying to do that.
21 If y'all -- if y'all just ask questions without
22 editorializing and captioning everything and saving all
23 that for the jury argument, I wouldn't have to jump in
24 there.

25 MR. MATHISON: I'd be the first to concede

1 that I'm often editorialized, but I'm not editorializing
2 in that exchange.

3 THE COURT: But you had up to that point
4 because -- which is why I did it because I had to tell
5 the jury, right or wrong in my preponderance, how the
6 system operated and that Ms. McAlhaney from a system's
7 standpoint was treated like everybody else in the system
8 when a complaint is made. It could have been originated,
9 could have been false, all that is your case, but the
10 system -- what Judge Smoak does, what the guardian ad
11 litem does, that's not subject to attack unless they have
12 somehow colluded with people.

13 MR. MATHISON: Well, you suggested I was
14 alleging that they had, Your Honor, and I don't think
15 that's in the complaint. I think our theory of the case
16 is, if you put bad information in the system, you get a
17 bad result out of the other end of the system. That's
18 our theory.

19 THE COURT: And you can argue that.

20 MR. MATHISON: Taping you, Your Honor.

21 MR. LEE: Judge, I would like to --

22 THE COURT: I haven't set what he can tell
23 them yet. All -- all he wants to get in as I understand
24 his position, is that the officer at the preliminary
25 hearing said the information was offered to him by them.

1 He said he didn't take it, which is why I don't think it
2 is even -- comes in but --

3 MR. LEE: I want to make absolutely sure what
4 is coming in or --

5 THE COURT: Told him to write it down and run
6 it by you so y'all would be in accord as to what he said.

7 MR. LEE: I'd appreciate that part, but I
8 need it (unable to transcribe due to quality of
9 reporter's notes) short, you know, precision in words, is
10 decision in thought.

11 THE COURT: I don't need it lengthy.
12 Anything else?

13 MR. LEE: No, sir.

14 THE COURT: How long do you really think
15 you'll be tomorrow.

16 MR. LEE: I honestly don't expect to put my
17 client Rick and Rick, Jr. -- I mean, I don't think my
18 direct is going to take more than 30 minutes.

19 THE COURT: Well --

20 MR. TEMPLETON: Each? Thirty minutes each?

21 MR. LEE: Yeah, at the most. What am I going
22 to ask them? Did you make all this stuff up? Do you
23 want -- I mean --

24 THE COURT: Of course, cross-examination --
25 cross-examination takes about an hour or until he starts

1 crying, whichever comes first. All right.

2 MR. LEE: Quite frankly, I thought it was a
3 good stopping point for all of us.

4 THE COURT: We don't have to get it to the
5 jury tomorrow if y'all need time. It's going on since
6 '97. A couple of more hours won't -- okay. Have a good
7 night.

8 MR. LEE: Nine --

9 THE COURT: Y'all be here by 9:20 again.

10 (WHEREUPON court was in recess for the day.)

11 THE COURT: Settled the case yet?

12 MR. LEE: No, sir.

13 MR. MATHISON: No, sir.

14 THE COURT: Awe shucks. Y'all ready to go?
15 Bring the jury. Usually I try to encourage it, but I
16 didn't figure there was any use in this case, so --

17 (WHEREUPON the jury entered the courtroom.)

18 THE COURT: And the jury has been very
19 punctual. We haven't waited on them at all. Still only
20 get \$10 a day.

21 THE BAILIFF: \$12.50, sir.

22 MR. LEE: The defense would call Rick
23 McElveen, Sr. to the stand Your Honor.

24 ///

25 ///

1 THEREUPON,

2 RICHARD K. MCELVEEN,

3 after being duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 By Mr. Lee:

6 Q Mr. McElveen, are you married?

7 A Yes, I am.

8 Q You are married to Linda McElveen?

9 A I am.

10 Q How long y'all been married?

11 A 32 years.

12 Q Have any kids together?

13 A Yes, we have three grown children.

14 Q Who are they?

15 A I have my youngest daughter, Charlotte.

16 Q Right.

17 A (Unable to transcribe due to quality of reporter's
18 notes) was between the two of us. We were both
19 married prior to our marriage and then I have Ricky,
20 my son from a previous marriage, and her daughter
21 Jennifer from a previous marriage, but we had both of
22 those children -- when we got married, they were both
23 only a year-and-a-half old.

24 Q How many grandkids do you have?

25 A I have nine grandchildren.

1 Q We're obviously talking about two grandchildren in
2 particular, Jackson and I believe Little Ricky or
3 Ricky, III, right?

4 A Ricky, III, yes, sir.

5 Q Right. Now, who do they live with?

6 A They both live with us.

7 Q Tell us a little bit about how long you've lived in
8 Beaufort?

9 A I have lived in Beaufort since January of 1960.

10 Q And what business are you or were you engaged in
11 primarily in Beaufort?

12 A For many years, since early 1971, I've been in the
13 marine business, boat sales, repairs, repairs -- in
14 the early years and eventually leading up to sales
15 and service.

16 Q Okay. Do you work now?

17 A I do. I do some work. Not a lot. I've got a full
18 time job again, stay-at-home grandfather. How about
19 that?

20 Q Can you tell the jury a little bit about a typical
21 day in your life?

22 A Typical --

23 Q Day.

24 A Typical day?

25 Q Say a Tuesday.

1 A Okay. Well, I mean I -- I get up around 5:30 every
2 morning. That's my 30 minutes of quiet time before I
3 start picking the boys up. It's --

4 Q When you mean the boys, who are you talking about?

5 A Jackson and Ricky. They both go to school --

6 Q Okay.

7 A -- go to school. Jackson's actually -- can stay a
8 little -- a little later in the bed because he
9 springs right out of bed. Ricky is a teenager now.
10 He is a little more sluggish. Unable to transcribe
11 due to quality of reporter's notes) -- get the boys
12 up, breakfast, get them dressed, ready for school. I
13 leave around 7:15 to take Ricky to his school and
14 then come back to the house and at that time Linda
15 has got Jackson dressed and ready to go; and then I
16 take him and one of my other grandchildren to their
17 school, and continue back and it's about nine o'clock
18 when I get back to the house, so I have -- at two
19 o'clock, it's a reversal, so from nine to two is my
20 time to get done what needs to be done unless there's
21 a field trip or PTA meeting or whatever or the
22 teacher calls and says hey, you need to come down
23 here and look at these --

24 Q Do the boys -- do their mom, Molly or dad, Ricky, Jr.
25 take part in any of the school activities, anything

1 like that?

2 A No, sir.

3 Q Do you?

4 A Absolutely.

5 Q So at two o'clock, you're picking the boys up. What
6 happens in a typical day after that? Do they do
7 anything after school?

8 A Well, sure. I mean by the time the role is reversed,
9 it's probably about quarter to four when he gets home
10 and then there's -- there's always some sports
11 program going on when we get home whether it be
12 soccer, baseball, basketball; and there are times I
13 still coach kids when I don't have a child on the
14 team, such as I'm doing right now.

15 Then it's eat dinner, before we go or when we
16 get back and then there's the homework, you know, get
17 them bathed and -- well, they bathe themselves,
18 but -- and get them to bed and we start all over
19 again the next morning.

20 Q How about on the weekends? Do you spend time
21 together on the weekends?

22 A We spend every spare minute we have together. We
23 hunt, fish, do it all.

24 Q How about during the summer?

25 A During the summer we -- actually, you know, I'm

1 blessed to have the time that I have now. We spend
2 most of our summer at our lake house.

3 Q That's up at Greenwood?

4 A Up in Greenwood, yes, sir, you know, just fishing,
5 boating.

6 Q Is it safe to say that almost from the outset that
7 you've had a big involvement in the children's
8 upbringing and caretaking?

9 A I think that's very safe to say.

10 Q It appears from previous testimony that around 1997
11 or so, there was a Family Court custody action that
12 was just for Ricky, III, right?

13 A Yes, sir.

14 Q And can you tell us a little bit about what -- what
15 precipitated that or what kind of caused that to go
16 into motion?

17 A Sure. It was a pretty volatile relationship between
18 Ricky and Molly, a lot of problems, and we felt
19 like --

20 Q Talking about your son Ricky and --

21 A My son Ricky and his wife, Molly.

22 Q How old were they at the time?

23 A They were both young. Molly was probably 17 when she
24 became pregnant. She may have been 17 when he was
25 born and Ricky was only maybe a year older.

1 Yeah, you know; and at the point in time that
2 we intervened, Ricky, my son, didn't seem to have a
3 whole lot of interest in -- in the child and we had
4 after several years of being around Molly becoming
5 increasingly concerned about her (unable to
6 transcribe due to quality of reporter's notes) and --
7 and we -- we tried to work through it, up, as long as
8 she was kind of under -- under our -- our eye, if you
9 will, so we could be there to help.

10 We'd do it, but then she had packed up and
11 taken off, is what she had done with the child, just
12 unannounced.

13 Q Now, at this period, I guess, twelve years ago, how
14 old were you?

15 A How old was I 12 years ago? 45, 44.

16 Q Was this some kind of midlife crisis where all of a
17 sudden you wanted to raise a small child?

18 A No, sir. I -- these --

19 Q Why did you do it?

20 A -- think midlife crisis requires wanting sports cars
21 and not children, no, sir.

22 Q Were you concerned about young Ricky -- little
23 Ricky's welfare at that point?

24 A Absolutely.

25 Q Let's fast forward a little bit. Jackson's born and

1 at that time you and Molly had joint custody of
2 Ricky, III, right?

3 A Yes, sir.

4 Q Okay. And then Jackson came along after Ricky and
5 Molly reconciled and then they broke up again, right?

6 A They were divorced in '97. It wasn't too long after
7 that. I hope I'm not wrong on these dates. Six or
8 nine months later that Molly showed up. They wanted
9 to work things out and next thing we know, there's
10 another child.

11 Q Ultimately, that separated again?

12 A They split up again, yes, sir.

13 Q Were you still having to take an active role in
14 taking care of the children?

15 A Absolutely.

16 Q Was that by choice or necessity?

17 A Necessity. Absolute necessity. I mean, you know, I
18 don't want to go into great detail, Scott, but I
19 mean, you know, we went through all this -- through
20 this -- the Family Court trial was horrendous and the
21 burden of proof on us was -- it was incredible to try
22 to prove that, you know, a mother's not capable of
23 taking care of her children is tough enough, but when
24 you then -- when you walk in and tell a judge that
25 you're a grandparent, you can multiply that burden by

1 100, I think.

2 Q All right. So after Jackson was born, you
3 essentially -- though there was no court order, you
4 essentially were thrust upon to take care of these
5 kids?

6 A Right.

7 Q And even though there wasn't a custody order, Jackson
8 when you'd see them, wouldn't they be together?

9 A Absolutely.

10 Q Did y'all attempt not to split them up so that
11 Jackson and Ricky were not at the same place at the
12 same time?

13 A No, sir, never. Always -- always kept -- I mean
14 there were many attempts to split them up by other
15 folks, but not by us. Those children needed to stay
16 together.

17 Q Are the boys close?

18 A Absolutely.

19 Q They're what, five years apart?

20 A Four.

21 Q Is little Ricky protective of Jackson?

22 A Absolutely.

23 Q Does he look up to his older brother when --

24 A He does. He challenges him a lot, but you know, he's
25 ten and-a-half years old and you know, while he does

1 look up to him, he still contends that he's better at
2 basketball and baseball and yada yada yada and so --
3 better fisherman.

4 Q Even though there wasn't a formal custody order,
5 Jackson and Ricky were spending a lot of time with you
6 and your wife at your house?

7 A Yes, sir.

8 Q I want to fast forward a little bit to 1993. You
9 still have issues or concerns about the child's
10 wellbeing while they're with Molly?

11 A In 2003?

12 Q Yes. 2003. I'm sorry.

13 A Yes, sir.

14 Q Okay.

15 A The concerns have increased. I mean, they've gotten
16 much, much worse. We have been through so much
17 with -- I mean, we've actually, you know, gone to
18 their home and found out she had gone to work and
19 forgot there were children in the house.

20 We've gone there and found a two year old
21 babe in his crib with a mattress on top of it to keep
22 him from climbing out, and nobody in that house,
23 so -- I mean, I could go on and on.

24 Q And when did you become aware that Molly had started
25 dating the plaintiff?

1 A It would have been probably early summer maybe.

2 Q Okay.

3 A The early summer after her and Ricky had split up.

4 Q At that point, did you have any concerns about the
5 children's welfare?

6 A My concerns were -- were incredible by that -- by
7 that point.

8 Q Okay. Can you tell us what may have initiated that
9 or what caused you to notice a change or acceleration
10 as you say?

11 A We already had all the -- all the outlining issues we
12 had, you know, a mother who -- you know, it's a
13 terrible thing to say, but a mother who really had no
14 concern for her children's welfare, you know, she had
15 been through numerous back-to-back wrecks, and you
16 know, self-medicating herself; and up and down and
17 all and then -- then all of a sudden as if we don't
18 have enough trouble, enough worries, you know, then
19 we -- the introduction of Matt into the picture
20 and --

21 Q Did you notice any change in the children after --

22 A We saw the changes, Scott. We saw them readily and
23 you know, it's so difficult. I hope nobody ever has
24 to go through this Family Court process, but it's so
25 difficult you can't just pick up the phone and say,

1 hey this happened, that happened and so forth, but,
2 yes, the boys were starting to act out aggressively,
3 maybe -- maybe that's the best terminology.

4 We were actually getting phone calls from
5 their schools and their behavior problems, things
6 that we had never had before. They were using
7 language now like cross-dressing transvestites, you
8 know and down --

9 MR. MATHISON: Objection, Your Honor.
10 Putting words in the children's mouth.

11 THE COURT: He's just saying it was -- not
12 that it was true, but that's what he heard, right?

13 Go ahead.

14 THE WITNESS: Using gay terminology, panty
15 waist, just --

16 MR. MATHISON: Sorry, Your Honor.

17 THE COURT: Yeah.

18 MR. MATHISON: I'm objecting.

19 THE COURT: You really can't do that.

20 By Mr. Lee:

21 Q You can't talk about what they said?

22 A I'm sorry.

23 Q I'm asking about what you observed as far as?

24 A All right. We were --

25 THE COURT: Hold it. I sustained it. Why

1 are you still standing? Anything else you want me to do?

2 MR. MATHISON: No, sir, not at the present
3 time.

4 THE COURT: All right. I don't know. I
5 don't know what he's going to say, you know, he said
6 something that's basically harmless at one point, and
7 then takes advantage of it through his attorney and
8 amplifies it and he makes his objection again and I
9 sustain it, so strike everything he said.

10 All right. He didn't say any of that, what
11 the kids said. The exception to the hearsay rule is you
12 can repeat something that you -- if you acted on it,
13 whether it was true or not, you know. But forget it.
14 These kids aren't testifying. He can't say what they
15 said.

16 By Mr. Lee:

17 Q Did you have any concerns about any drug use by -- by
18 Molly and the plaintiff?

19 A Yes, sir, I did.

20 Q Now, there was an incident about -- that happened in
21 July which is well before any court hearings that we
22 heard a little bit about, I think, when he read the
23 deposition or might have been in Mr. McAlhaney's
24 testimony about a spanking that happened at the time?

25 A Yes, sir.

1 Q You remember that?

2 A I certainly do.

3 Q What about that sticks out in your mind?

4 A What sticks out in my mind was the -- the worry and
5 concern about his older brother's part and then the
6 actual seeing the bruises that was left on his little
7 behind.

8 Q Can you tell us about that?

9 A Well, sure I can. You know Jackson was only four and
10 we had been alerted to the spanking that had taken
11 place that day and then that night when it was time
12 to give him a bath, I was absolutely horrified when I
13 undressed him and put him in the tub.

14 Q Did it appear that it was more than a swat on the
15 behind?

16 A Absolutely. It was repeated slaps to his little
17 behind.

18 Q In your mind, do you consider that some type of
19 abuse?

20 A Absolutely, it's abusive.

21 Q Is it your understanding that young Ricky witnessed
22 this?

23 A Yes, sir.

24 Q Is it in your mind abuse to have one child watch
25 another one get --

1 A Absolutely abusive for both of those children.

2 Jackson for having to go through it and Ricky for
3 having to witness it.

4 Q Do you believe that they -- that either one of the
5 boys or both were left unsupervised while -- during
6 this time?

7 A Yes, sir. I do. On many occasions.

8 Q At any time did you ever -- let me back up. This
9 incident that we'll talk about in a minute at the
10 ball field, did you -- did you know anything that you
11 were concerned about with regard to Jackson and the
12 plaintiff at the ball field?

13 A Concerned about with Jackson --

14 Q Yes.

15 A -- and the plaintiff at the ball field.

16 Q Right.

17 A Yes, I mean the ball field incident needs a little
18 bit more -- you know, it's typical of them to do just
19 bits and pieces of what happened that day --

20 Q Right.

21 A -- was that they had brought both of the children to
22 the ball field, I believe.

23 Q They being plaintiff and Molly?

24 A Matt and Molly were together that day and they had
25 brought them there and I appreciate them coming

1 because it was at my request that Ricky come to the
2 ball field for his tryouts, and the only thing I had
3 asked Molly was when they were done to let me have
4 that baseball bat because it was a brand new bat,
5 brand spanking new, had just been purchased, was a
6 rather expensive bat to be honest with you.

7 Q Had you had any previous problems with Molly --

8 A Never returning anything, ever.

9 Q Okay.

10 A So the first time -- problem that I noted was it --
11 was myself and my son Ricky and another gentleman.
12 We were standing there talking while the tryouts were
13 going on and Matt walked in front of us, dragging
14 Jackson by the hand, literally is dragging him while
15 he's kicked and screamed and --

16 MR. LEE: Your Honor, I would object and ask
17 he not be instructed not to respond to testimony. I
18 think that's improper.

19 THE COURT: Go ahead.

20 MR. LEE: I think that's improper.

21 MR. MATHISON: May it please the Court, I'm
22 not sure what that was all about.

23 THE COURT: That's because your client, every
24 time he says something, says ugh, but he's been around.
25 He understands the parallels at this point. I don't have

1 to remind him.

2 By Mr. Lee:

3 Q Go ahead.

4 A It wasn't the fact that he walked 50 yards in away
5 from us, he walked three feet in front of us, and at
6 that point, my son said, Let go of his hand. And my
7 son went up and actually drew his fist back and I
8 grabbed hold of him, and I said you're not doing this
9 here in front of all these children.

10 Okay. And Matt let go of his hand and walked
11 off. Needless to say --

12 Q Do you consider that any type of abuse?

13 A About slowly dragging that child and he's screaming
14 for his father or grandfather and the way he was
15 dragging him in front of us was absolute torture for
16 that baby.

17 Q Go ahead.

18 A The next thing I know, my wife comes up to me and
19 she's shaking. She is not even -- the ball field is
20 a large complex and she's got two of my
21 granddaughters over on the playground where there's
22 little things to play and --

23 Q You're not going to be able to testify what she said,
24 but you can -- did you --

25 A All right. Well, she -- he taunted and teased her

1 and --

2 MR. MATHISON: Objection, Your Honor.

3 Basically he's saying --

4 THE COURT: I know. I sustain it.

5 THE WITNESS: My apologies. I'm really
6 not --

7 By Mr. Lee:

8 Q All right.

9 A I just need y'all to know, I'm not trying to do
10 anything underhanded here.

11 Q So you laid the ground work for what was going on?

12 A So the final scenario was, I decided it was best to
13 move away from the situation. I was actually in the
14 far bleachers. Matt's standing there where he's
15 certain I'm watching him, flipping up the baseball
16 bat and hitting up the bottom of his feet, walking up
17 and tapping a pole with it and I don't know -- I
18 don't know how to measure what a man can take. I
19 really don't. And I try to take as much as I can.

20 But I walked up to him and I snatched the bat
21 out of his hands. I never said a word to him. It's
22 my baseball bat. I took it straight to the car. He
23 waited until I got halfway in front of the car, in
24 front of all these people and yelled out Rick
25 McElveen, you ain't never going to snatch a bat out

1 of my hand. I didn't break a window out, but through
2 it in the truck and walked back up to him and said
3 the constant teasing and taunting has got to stop.

4 And I said why don't you be a man -- I admit
5 I say why don't you be a man and let's settle our
6 differences.

7 Q And at this point you were upset?

8 A Unbelievably upset.

9 Q Did y'all fight?

10 A No, sir.

11 Q When was the last time you've been in a physical
12 fight with anybody?

13 A I -- you know, I was asked that question and I
14 thought about it, and I thought about it, and the
15 only time I can remember being in a fight was in high
16 school.

17 Q Now, the plaintiff has made a pretty big deal about
18 your 1997 assertion --

19 THE COURT: All right, now. He didn't
20 object, but I believe you're editorializing too.

21 MR. LEE: I apologize. You're right.

22 THE COURT: I sustain.

23 By Mr. Lee:

24 Q I shouldn't characterize that way. There was some
25 testimony earlier about an assertion in a 1997 case

1 that Molly was abused as a child.

2 A Yes, sir.

3 Q What was the source of your information for that?

4 MR. MATHISON: Objection.

5 THE COURT: Well, I don't know. So --
6 without going into it, he can say, I think. Go ahead.

7 THE WITNESS: Sir, my information on any of
8 my allegations have been made to me by folks and Molly
9 was the one --

10 THE COURT: All right.

11 MR. MATHISON: Objection.

12 THE WITNESS: Took us a long time --

13 THE COURT: I sustain. He can say the source
14 and he did.

15 By Mr. Lee:

16 Q The incident about an Emmet Decker who's a security
17 guard --

18 A Yes, sir.

19 Q -- can you tell us about that.

20 A I can.

21 Q Again, try not to say what people said and that sort
22 of thing to the extent that you can?

23 A Well, the phone call that I made to Emmet Decker was
24 based on what -- what Molly had said and done. Once
25 again, you know, some folks might think that you

1 don't need to put your nose where it doesn't belong,
2 but you've got to understand the whole picture here.

3 We're trying to keep these two together and
4 we're trying to -- every time there's an issue of
5 anything from a bad check to a -- to a bad night, you
6 know, we're doing our best. Molly had wrecked
7 another automobile. The highway patrol called me to
8 come out there because she didn't have proof of
9 insurance.

10 As it turned out it was an automobile that
11 she had purchased and forged signatures on. Okay. I
12 talked to the highway patrolman and I said, this is
13 difficult. I don't know. Does the dealership have
14 the insurance on it? Does she have a certain amount
15 of time before she can put -- I don't know, sir.

16 Q Okay.

17 A I really don't. (Unable to transcribe due to quality
18 of reporter's notes) Molly's over this crying and
19 she starts talk taking stuff out of the car because
20 it's absolutely destroyed and she's taking luggage, a
21 clear vase with flowers, and I said Ricky give you
22 flowers.

23 She said, No, this is why I wrecked the car
24 this morning and she said this man -- and she started
25 telling me about Emmet Decker he's putting a hot of

1 pressure on me. He's wanting me to go to the Bahamas
2 and buying me gifts and I said, Emmet, leave the girl
3 alone. That's all I said.

4 Q Let's talk about the letter to Governor Sanford.

5 A Yes, sir.

6 Q What was the purpose of that letter?

7 A You know, that letter --

8 Q First of all, tell us, did you know Mark Sanford at
9 the time?

10 A Yes, sir, I did.

11 Q How did you know him?

12 A I've known Mark for a number of years through the
13 boat business, but in or around maybe 1989, Mark and
14 I almost went into business together. We almost
15 opened up a marina facility together a (unable to
16 transcribe due to quality of reporter's notes) ship.
17 I had recently parted ways with a partner I had been
18 involved in and Mark and I were pretty close, and as
19 a congressman, he'd call -- he called regularly and I
20 think we were pretty close, and sometimes he'd call
21 and say what was going on.

22 Q What was the purpose of that letter?

23 A The real purpose, and I hope somebody can read it and
24 understand it was -- was not to admonish anybody. I
25 was extremely upset. I've got a mountain -- I've got

1 a burden that's just incredible to overcome in this
2 Family Court situation.

3 All I'm asking for is a fair playing field.
4 That's all I was asking for. The attorney came in
5 with a -- with an affidavit.

6 Q You're talking about Molly's attorney?

7 A Yes, sir.

8 Q Okay.

9 A Molly came in with an affidavit as people had
10 delivered many affidavits. People can say what they
11 want.

12 Q You presented affidavits?

13 A I presented this affidavit, but in this particular
14 affidavit he stood up and said -- Your Honor -- this
15 is exactly what he said. He said if you don't think
16 my client, speaking of Molly, is a fit and proper
17 person free of alcohol and drugs, I have an
18 endorsement here from the governor's sister-in-law;
19 that was totally uncalled for, and I think it put me
20 at a grave disadvantage.

21 Q Did you feel like it was unfair?

22 A Absolutely.

23 Q That letter, did you type it yourself?

24 A Yes, sir, I did.

25 Q Did you ever put the plaintiff's name in it?

1 A No, sir, I did not.

2 Q Did it seem important to you that Mark Stanford knew
3 who you were talking about?

4 A No, sir, that was not the intent of the letter.

5 Q Is that why you left his name out?

6 A Yes, sir.

7 Q And did you send that letter to anybody else?

8 A No, sir.

9 Q When was the last time you saw that letter?

10 A I didn't even keep -- save a copy of it on my
11 computer. I sent that letter out to Governor Sanford
12 after making many attempts to talk to his brother
13 John and --

14 Q Who lives here in Beaufort?

15 A Yes.

16 Q And --

17 A And -- and I had the feeling that John thought it was
18 a big joke. So at that point in time, I felt like if
19 I really was indeed a friend of the governor's that
20 he needed to know that -- folks, get him in trouble
21 using a way to the governor's office?

22 Q And the next thing you heard of any of that letter is
23 when --

24 MR. MATHISON: Objection.

25 THE COURT: We can go ahead at this point.

1 By Mr. Lee:

2 Q Did you receive a letter threatening a lawsuit on
3 behalf of Mr. McAlhaney because of that letter?

4 A Yes, sir.

5 Q Did you later see that letter in this book that has
6 been published?

7 A Yes, sir, I did.

8 Q Let's talk a little bit about the visit you had from
9 Mr. McEachern over there --

10 A Okay.

11 Q -- that he spoke about. Did you ever see that letter
12 he's talking about?

13 A No, sir, he's wanted you to believe he mailed a copy
14 of the letter or gave a copy of the letter. I never
15 saw the letter.

16 Q Is it your understanding it was given to Ms. Dewitt;
17 the guardian ad litem?

18 A She was the guardian ad litem, and that's the last
19 thing he said before she left my facility that day
20 was, By the way I've given a letter to Diane Dewitt.
21 You may want to read and I called Ms. Dewitt the next
22 morning.

23 Q Were you able ultimately to see the letter?

24 A No, sir.

25 Q You were not permitted to?

1 A No, sir.

2 Q What essentially was the conversation with Mr.
3 McEachern -- back up.

4 Where was the conversation that took place?

5 A It took place at Battery Creek Marina.

6 Q He came to your place of business?

7 A Yes, sir, he came to my place of business.

8 Q Did he ask or request you to drop the custody suit?

9 A Absolutely.

10 Q Okay. Did he want you to issue a public written
11 apology --

12 A Yes, sir.

13 Q -- to Matt?

14 A Yes, sir.

15 Q And did he threaten to -- did he suggest that you
16 were going to get sued by Mr. McAlhaney?

17 A Yes, sir.

18 Q And were you worried about being sued over that
19 letter?

20 A I think anybody would worry about being sued, but to
21 the point of what they were offering, which was for
22 me to drop the custody suit in lieu of them not suing
23 me, absolutely not.

24 Q That the point you were standing behind when you had
25 put in that letter?

1 A Yes, sir.

2 Q Did you have evidence that there was a drug issue as
3 well as an abuse issue?

4 A Absolutely, yes, sir.

5 Q And when you said you were going to give him time
6 after being threatened to be sued, what did that mean
7 when you said, I'll give him the time he needs?

8 A I don't remember that exact phrase, but the only
9 thing was that he continued to hammer home before I
10 finally asked him to leave; that, you know, he was --
11 he was very diligent in making statements such as
12 I've known you a long time; you've always been a good
13 guy; we really don't want to have to do this to you;
14 drop the lawsuit; drop the custody battle.

15 My response to him was do what you've got to
16 do. If he wants to sue me, rest assured, we'll see
17 each other in court.

18 Q So, McEachern was getting involved in a lawsuit on
19 behalf of -- who is not a party, who is getting
20 involved in a lawsuit on behalf of his nephew who
21 wasn't a party to the case --

22 A No, sir --

23 MR. MATHISON: Objection. Editorializing
24 again.

25 THE COURT: Sustained.

1 THE WITNESS: No, sir.

2 MR. LEE: Sorry, Judge.

3 By Mr. Lee:

4 Q During the time the custody case was going on, were
5 you periodically in touch with Diane Dewitt, the
6 guardian ad litem?

7 A Yes, sir.

8 Q Did she ask you to provide information regarding the
9 children?

10 A Absolutely, yes, sir.

11 Q And you did that?

12 A I did.

13 Q And why -- all along, why were you doing -- why were
14 you -- why were you providing information? Why were
15 you involved in the custody dispute.

16 A Why was I involved in the custody dispute.

17 Q Right.

18 A I would like to think that any person that has two
19 children that were in as grave danger as these two
20 children were would step up to the plate and get
21 involved. Somebody had to protect these two kids.

22 As for why, I was giving her information, it
23 was my understanding that, you know, she's got a job
24 to do. There was information coming from all sides
25 as far as I know, but you know, I -- you have to lay

1 out where -- where your issues are.

2 Q Was anybody else stepping up to help these kids, in
3 your opinion?

4 A Not in my opinion, no, sir.

5 Q Was your son, Ricky, Jr.?

6 A No, sir.

7 Q Was Molly?

8 A Absolutely not.

9 Q One more thing, do you remember when you first
10 learned of Jackson's disclosure?

11 A When did I first learn about it?

12 Q Yeah.

13 A Yes, sir.

14 Q When was that?

15 A At the Beaufort County Sheriff's Department when I
16 went down there to find out what was going on.

17 Q Did you in any way attempt to control the
18 investigation of Detective Baird?

19 A Absolutely not.

20 Q Did you have any prior relationship with Brian Baird?

21 A Never met him before in my life.

22 Q Were you asked to provide information to him?

23 A Yes, sir.

24 Q Were you given any kind of guidelines as to what
25 information --

1 A No, sir, he just told me that anything that I knew or
2 heard was to be provided to him.

3 Q Were you aware during all this time that the
4 plaintiff and plaintiff's people were providing
5 information to him as well?

6 A Was I aware of that?

7 Q Yeah.

8 A I don't know if I was absolutely aware of it, but I
9 was certain of it.

10 Q Again, were you seeking a level playing field?

11 A Absolutely. That's all I asked for.

12 Q Did you feel like you had let Jackson down at that
13 point?

14 A Had let him down?

15 Q Yeah. I don't want to put words in your mouth, but
16 if you'd just tell us how you felt, obviously?

17 A I had let him down.

18 Q Were you upset?

19 A Absolutely. At a lot of things.

20 Q Okay. Did you attend the bond hearing the day after,
21 Mr. McElveen --

22 A Yes, sir, I did.

23 Q Did you have a chance to speak with the magistrate?

24 A She asked me if I had anything to say and I did.

25 Q Did you at any time threaten the magistrate with

1 setting the bond?

2 A Gosh, no. Absolutely not.

3 Q Were you ever charged or accused of that -- other
4 than in here?

5 A No, sir.

6 Q Did you say anything to the magistrate regarding any
7 of your concerns?

8 A Yes, sir, I did.

9 Q What did you tell her?

10 A By that point, the only thing I had learned from the
11 sheriff's department was that when -- when Matt was
12 arrested --

13 Q Again, you can't testify as the to --

14 MR. MATHISON: Your Honor?

15 THE WITNESS: What they said?

16 By Mr. Lee:

17 Q You can't testify as to --

18 A I had reason to believe --

19 MR. LEE: Same objection?

20 MR. MATHISON: Yes, sir.

21 THE COURT: He's withdrawn it.

22 THE WITNESS: My apologies. I had reason to
23 believe that there were going to be some repercussions
24 and --

25 ///

1 By Mr. Lee:

2 Q That's fine.

3 A Sir?

4 Q That's fine.

5 A Okay.

6 Q Did you ever tell anybody that you were going to
7 chuck the law?

8 A No, sir.

9 Q Did you know what that means?

10 A I don't.

11 Q Did you ever threaten anybody to take the law into
12 your own hands or do any vigilantism?

13 A Absolutely not.

14 Q Did you conspire with your wife and Billy Joe Byrd
15 and your son to have the plaintiff punched in the
16 parking lot at Breakwater?

17 A Absolutely not.

18 Q Now, on the date that happened it's, was -- December
19 24th, was Ricky, Jr. living at home?

20 A Scott, I'll be as honest as I can. Ricky had moved
21 around so much, my wife said that she thinks he was
22 living in an apartment --

23 MR. MATHISON: Objection.

24 By Mr. Lee:

25 Q You don't know where he lives?

1 A No, sir.

2 THE COURT: I know he just asked -- that's
3 harmless. Let it go.

4 MR. MATHISON: Unless she's going to testify
5 again, it's not harmless.

6 THE COURT: It's harmless. He either knows
7 or he doesn't know or he thinks he might have lived so
8 and so and that's his answer. You can question --

9 MR. MATHISON: I don't mind what he says he
10 knows. I mind if he says it's his wife who recalls
11 something and he did and it's what he said.

12 THE COURT: He did and it's harmless. Go
13 ahead.

14 THE WITNESS: I'm sorry.

15 By Mr. Lee:

16 Q That is fine.

17 A I don't know where he was living. I --

18 THE COURT: Right. His answer is he does not
19 know.

20 By Mr. Lee:

21 Q Could you describe how much contact you were having
22 with your son at that time?

23 A It was very limited in a period of six months time
24 that I may have seen him once.

25 Q Did you speak to him when he called the house that

1 night?

2 A No, sir.

3 Q What were your feelings when you had heard about what
4 had happened the (unable to transcribe due to quality
5 of reporter's notes) case between he and the
6 plaintiff?

7 A You know, my wife made me aware of it the next
8 morning. And, you know, we were -- we were both
9 visibly upset, but, you know, Ricky had been warned
10 and warned and warned to try to stay away from what
11 could become a bad situation.

12 Q Warned by who?

13 A By his mother. By me.

14 Q To try to steer clear of --

15 A Steer clear of that particular area he roams, yes,
16 sir.

17 Q But you in no way conspired with anybody to have that
18 happen, right?

19 A Absolutely not.

20 Q Do you approve of what happened?

21 A No, sir, I don't.

22 Q There was some testimony about the use of the word
23 deviant at some point; I think in one of your letters
24 to Brian Baird. What conduct did you think was
25 deviant?

1 A Deviant? Deviant? Well, I mean, I think that could
2 be construed in a number of ways. My interpretation
3 of the word deviant is somebody that just doesn't
4 follow the normal guidelines of what society wants us
5 to do and I had good reason to believe through my
6 research and my efforts that Matt was a deviant.

7 Q And that was --

8 A His behavior was deviated, if you will.

9 Q That was your opinion?

10 A Yes, sir.

11 Q Let me ask you about your relationship with Molly's
12 parents?

13 A Yes, sir.

14 Q Mr. and Ms. McCullers.

15 A Right.

16 Q Has that been patched up in the last year or so?

17 A Oh, it's been patched up longer than that.

18 Q Okay.

19 A I mean, you know, the McCullers --

20 Q Do you allow and encourage visitation of the kids
21 with them?

22 A Absolutely. It's part of the whole picture. It's
23 part of the whole well-roundedness, if you will.

24 Q Do you prohibit them or Molly from seeing the kids
25 when they want to?

1 A I've never done that.

2 Q Does Molly have to have their supervision when she
3 has the kids?

4 A She still requires there supervision, unfortunately.

5 Q Was there any particular reason why you patched up
6 the relationship with the McCullers?

7 A I think the reason is that they came to realize that
8 we weren't bad people trying to -- trying to hurt
9 their daughter. I mean, there's been apologies made
10 to us.

11 Q Do you believe they are looking out for the best
12 interest of the children?

13 A The best interest of those children is what we
14 both -- both sides want.

15 Q While you disagreed in the past, y'all agree on that?

16 A Absolutely.

17 Q There was testimony of some Julia Peters that worked
18 at the furniture warehouse?

19 A Yes, sir. I'm stunned, absolutely --

20 MR. LEE: Judge, I know I said 30 minutes and
21 I'm at 45 minutes and --

22 THE COURT: I'm putting no pressure on you.

23 MR. LEE: I can feel it though.

24 THE COURT: Promise made, debt unpaid.

25 Whatever.

1 By Mr. Lee:

2 Q Tell us a little bit about that?

3 A I guess (unable to transcribe due to quality of
4 reporter's notes) in the mind of the people sitting
5 in this courtroom, it's probably trivial, but it's
6 just so 360 degrees that I was stunned when I heard
7 what the woman had to say.

8 Q Let me back up. Prior to Furniture Warehouse -- you
9 did go to Furniture Warehouse that day, right?

10 A Yes, sir.

11 Q And she said she sold you a bed?

12 A Yes, sir.

13 Q Prior to that, have you ever heard of her, saw her or
14 anything?

15 A No, sir. She was the county jail's clerk.

16 Q And she just happened to be the one, you know, that
17 came up to you as they often do?

18 A That's it, said, What can I help you with.

19 Q You didn't know her from Adam as they say, right?

20 A No, sir.

21 Q Were the boys with you?

22 A Both of them.

23 Q Were they with you when you were having a
24 conversation with her or were they milling around?

25 A No. At the point in time where she brought up the

1 conversation they had both asked for a dollar bill to
2 go to a vending machine to get a drink.

3 Q Okay. Now, tell the jury what happened in -- with
4 the incident with Julia Peters.

5 A The -- the furniture that I was buying was for
6 Jackson, the youngest one. Ricky already had a
7 complete bedroom suit and -- as -- as we were
8 waiting, it was the only set they had and I told her
9 that was acceptable with me as long as the mattresses
10 were new and wrapped in plastic and all.

11 I know they were actually disassembling this
12 bedroom set to load up into a trailer that I had
13 brought and she kept commenting on how beautiful
14 these boy's eyes were and --

15 Q You talking about Jackson and Ricky?

16 A Jackson and Ricky and how beautiful their eyes were,
17 and I said they're absolutely gorgeous children; and
18 she said are these your kids and I said they're
19 actually my grand kids, but the youngest lives with
20 me and I said we're upgrading a larger bed and the
21 bunk bed was for cousins or friends that spend the
22 tonight. But -- (unable to transcribe due to quality
23 of reporter's notes) out of the clear blue,
24 absolutely not one word of what I've just said was
25 said beyond the fact that these children lived with

1 me, and she asked me how long I'd lived in Beaufort
2 and I said, I've lived here all my life; and she said
3 do you know Matt McAlhaney.

4 It took a second for me to wonder, is she
5 joking or is she being real. And she and I said I've
6 heard of him and she went onto say, I don't know if
7 you've heard of what's happened to him, but he's
8 dating this absolutely gorgeous young woman and her
9 father-in-law is a mental monster. He had him
10 arrested for sexually abusing a child. And I said
11 you're kidding me, and she said absolutely not and I
12 said how can you have him arrested and she said
13 you've got to know this guy.

14 He has connections in the sheriff's
15 department and went on with this list and called me a
16 mental monster. And the only thing I interjected at
17 one point in time, she said -- I said I think the
18 grand jury indicted him. And she said I'm not sure
19 about that. And I said what is this guy's name and
20 I'd said it's similar to his name and I can't think
21 of it and I he would my checkbook up and I said is
22 that his name by any chance?

23 God as my witness, she turned white and
24 almost fainted and started repeatedly apologizing to
25 me and telling me while she was sorry that she lived

1 across the street from Matt's mother and that she had
2 only heard one side of the story. And I said
3 absolutely right. You only knew one side and I did
4 make kind of a threat. And I said I have a feeling
5 my attorney's going to be calling you on this. And
6 as I was leaving, the owner and his wife were getting
7 in the car and --

8 Q Be careful about anything someone may have said.

9 A Okay.

10 Q You had a conversation with them?

11 A I had a conversation with them.

12 Q Was there any reason for you to go up to a complete
13 stranger and share details of this whole incident?

14 A No, sir.

15 Q You've been in business over 30 years in Beaufort; is
16 that right?

17 A Yes, sir.

18 Q Bought and sold a lot of boats, parts and that sort
19 of thing?

20 A Yes, sir.

21 Q Had you had disputes along the way with customer's
22 complaints?

23 A All part of doing business.

24 Q Have you had to go to magistrate's court and collect
25 money?

1 A Bad checks, collect debt that's not paid, you know,
2 there was a few times folks felt like we hadn't done
3 a good job, so sure, that's the way you solve
4 disputes.

5 Q Now, this booklet that we talked about, we know --
6 that we've heard about -- do you believe that that
7 hurt your business in any way, that booklet?

8 A Scott, I can't put credence into what it's hurt or
9 what it hasn't hurt.

10 Q Do you think it has damaged your reputation?

11 A I'm certain it has. I mean, we've all -- this is, is
12 a small town. We hear talk, you know, I -- you know,
13 I --

14 Q Are you concerned about the damage that book did to
15 your reputation?

16 A I don't know that I'm really concerned about it to be
17 honest with you.

18 Q What are you concerned with.

19 A I'm concerned about these children. That's all. And
20 the potential -- publication of their names at some
21 point in time in the future is going to damage them.

22 Q Are you ready for this to be over with?

23 A Yes, sir, I am.

24 Q Has it cost you a lot of money?

25 A It's cost me a tremendous amount of money.

1 Q Time?

2 A Time.

3 Q Have you endured criticism of you and your family?

4 A Tons of it, more than anybody could ever imagine.

5 Q Has anything happened with regard to your son that
6 concerns you? Ricky?

7 A In regards to my son?

8 Q Yeah.

9 A Up --

10 Q Has he been exposed to anything you're concerned
11 about?

12 A I'm sorry?

13 Q Has he been exposed to anything your concerned about
14 as a result of this case?

15 A Well --

16 Q Let me back up. Did Ricky, Jr. know much about your
17 divorce in the 1970's?

18 A Absolutely nothing.

19 Q He didn't?

20 A No, sir.

21 Q But does he now?

22 A That's just one of the tons of things that they've
23 thrown at us, but to make (unable to transcribe due
24 to quality of reporter's notes) child -- well, he's
25 not a child. He's 33 years old, 34 years old. To

1 make that child sit in a deposition and read my
2 divorce decree from 33 years ago was just another
3 attempt to weaken family; and I can assure you that
4 hasn't happened, but --

5 Q And that was his deposition in this case?

6 A Yes, sir.

7 Q What effect do you think it's had on your wife?

8 THE COURT: Has to say that, if any -- just
9 say objection.

10 MR. LEE: Jurors -- I'm through.

11 THE COURT: They think it's time too -- they
12 will object if I keep hammering. They don't object,
13 maybe they should object so fair is fair.

14 Go ahead.

15 By Mr. Lee:

16 Q One last question. Did you conspire with anybody
17 regarding the arrest of Mr. McAlhaney?

18 A Absolutely not.

19 Q Did you in any way control the sheriff's office?

20 A No, sir.

21 Q Hope Cottage?

22 A No, sir.

23 Q Brian Baird?

24 A No, sir.

25 Q Any judges that you know of?

1 A No, sir. Anybody that would like to research this,
2 other than this side here, will find that I have
3 never done anything that isn't totally above board.

4 Q How about Diane Dewitt? Did you manipulate her or
5 control her?

6 A No, sir, I sure didn't. I was actually afraid of her
7 if you wanted to know the truth.

8 Q Afraid of her?

9 A Well, I was. She was pretty harsh, I thought. I
10 mean just her demeanor scared me a little bit.

11 Q Did you believe at all times she was looking out for
12 the best interest of the children?

13 A Yes, sir, I do. I believe that's all she cared
14 about.

15 Q Do you believe that the custody arrangement that was
16 consented to by everyone in late 2003 was in the best
17 interest of the kids?

18 A Their's absolutely no question in my mind.

19 Q Are they doing well?

20 A These children are happy. They're prospering.
21 They're perfectly normal, happy young guys and, you
22 know, as I got out the truck last night a little --
23 little beat down mentally --

24 Q Right --

25 A -- the youngest was standing in the driveway. They

1 were ready for a game of horse. How do you say no?

2 Q Well, that's all my questions. I'm sure Mr. Mathison
3 probably has a few --

4 A I'm sure too.

5 THE COURT: We're going down the line.

6 MR. LEE: I'm sorry. All right.

7 THE COURT: Jurors, before Mr. Templeton
8 comes, you recall yesterday I told you that I go over the
9 whole case once the plaintiff rests from the plaintiff's
10 standpoint, which is just procedurally not telling you
11 what to believe or disbelieve. The plaintiff has to put
12 various things in to get beyond a point where various
13 things are dismissed and I didn't tell you, but when we
14 started the case, it was against A, B, C, D, and E. And
15 also Battery Creek Marina and Great Pumpkin, LLC. We
16 didn't hear one word about either of those entities, so I
17 just missed them.

18 Okay. So even if it's brought up later by
19 anything you have -- any interest somebody has in Great
20 Pumpkin or the marina, they're not a party to the
21 lawsuit. Okay.

22 **CROSS-EXAMINATION**

23 BY MR. TEMPLETON:

24 Q Good morning, Mr. McElveen.

25 A Good morning, sir.

1 Q As you know, I represent Mr. McEachern?

2 A I know that very well.

3 Q If I heard your testimony correctly, you are not able
4 to quantify any damage that was caused by any action
5 of Mr. McEachern to your business; is that right?

6 A Quantify meaning --

7 Q Out of money or --

8 A -- a monetary amount?

9 Q Credibility?

10 A No, sir. This has never been about money to me. You
11 know, there's damage -- there's damage that will last
12 a lifetime, but there's no way to quantify it as
13 you --

14 Q Do you believe that there's been any damage caused to
15 your business by any act of Mr. McEachern?

16 A I can't say that there is. You know, I'm not in
17 business any longer and I don't know if I choose to
18 go back into business what the results would be, but,
19 no, sir, I can't -- I can't say there is.

20 Q You're currently in business running a boat marina
21 now, aren't you?

22 A No, sir, I'm not.

23 Q You're not? McElveen marina is not your business?

24 A No, sir, it's not.

25 Q Okay. You --

1 A And I'd like to say for the record that I have not
2 invested one dime in that facility. I have
3 absolutely nothing to do with it.

4 Q Fair enough. The other question, next, as I
5 understand your testimony was reputation. Are you
6 claiming any damage to your reputation by any act of
7 Mr. McEachern?

8 A To my reputation?

9 Q Yes, sir.

10 A No, sir. I'm at the time of my life where -- no,
11 sir, I'm not --

12 MR. TEMPLETON: Sir, I don't have any other
13 questions for you.

14 MR. MATHISON: May it please the Court?

15 THE COURT: Sure.

16 MR. MATHISON: My client has got some matters
17 he wishes to take up and I haven't had an opportunity to
18 talk with him.

19 THE COURT: That's fine. We'll take a break.
20 How about that?

21 Jurors don't talk about the case. He said he
22 was going to question him for 30 minutes, so we're 20
23 minutes ahead anyway.

24 THE WITNESS: Am I allowed to get down?

25 THE COURT: As soon as the jury leaves.

1 THE WITNESS: I'm sorry. Thank you.

2 (WHEREUPON the jury left the courtroom.)

3 THE COURT: Hold it one second, Mr. --

4 THE BAILIFF: The jury is clear.

5 THE COURT: Fair is fair.

6 Mr. McElveen, you are free to step down.

7 THE WITNESS: Thank you.

8 THE COURT: Hold it. You cannot confer with
9 Scott Lee about anything that he may ask you. You can
10 talk about the weather and you can even say how did I do.
11 He can just answer good or bad without anything else.
12 All right?

13 MR. LEE: Judge, we won't even speak.

14 THE COURT: That's fine. Since I did that to
15 you, I need to do that to him.

16 (WHEREUPON a short recess was observed.)

17 THE COURT: Mr. Mathison, out of curiosity,
18 do you have any witnesses you want to call.

19 MR. MATHISON: Based on his examination if I
20 (unable to transcribe due to quality of reporter's notes)
21 better job ordinarily, I may have to.

22 THE COURT: We'll talk about it.

23 (WHEREUPON the jury entered the courtroom.)

24 THE BAILIFF: Jury is seated, Your Honor.

25 THE COURT: You may proceed.

CROSS-EXAMINATION

By Mr. Mathison:

Q Mr. McElveen, did you have (unable to transcribe due to quality of reporter's notes) before appearing in this case today?

A You said extensive?

Q Yes, sir.

A I would say no.

Q Have you been involved in excess of 60 lawsuits according to your answers to Mr. McEachern's interrogatories?

A If you're calling a magistrate's complaint a lawsuit, yes, sir, probably over 30 years.

Q I'm going to hand you up your answers that were prepared by your lawyer, and he was asked to identify every civil action where damages were sought either as a plaintiff or as a defendant that you had appeared in; and would it be correct that there are in excess of sixty cases listed?

THE COURT: Jurors, under the rule, interrogatories are just questions that one set of attorneys give to another. Answers are taken as true, so the bottom line is, if it says that, you can explain it, but right now, they're true. That's true.

THE WITNESS: Yes, sir, it appears over 28

1 some odd years, there were sixty.

2 By Mr. Mathison:

3 Q You had been in the court sixty times in suits over
4 damages; is that right?

5 A That's correct.

6 Q And ask the reason that you've left out your
7 substantial experience in domestic relations cases?

8 A I don't understand domestic relations. Are you
9 talking about Family Court?

10 Q Yes, sir. You have experience there as well, don't
11 you?

12 A Certainly, yes. I would say.

13 Q I believe that in response to Mr. Lee's question, you
14 indicated that in 1997, your son, Ricky McElveen, Jr.
15 had started a domestic case against his then wife,
16 Molly McCullers; is that right?

17 A No, sir, I don't remember saying that, but I said
18 that I -- in 1997 --

19 Q No, sir?

20 A -- that was a case that -- where he was going to get
21 a divorce, but at that point in time, we stepped in
22 on behalf of Ricky, III.

23 Q After he started the case in his own name as the
24 plaintiff, you later intervened; is that correct?

25 A That may have been how it went down, yes, sir.

1 Q Wasn't it true that he stepped aside and deferred to
2 you in terms of custody? He said he wanted you to
3 have custody and he did not want to have custody?

4 A I don't know. He said he wanted me to have custody,
5 but he did not seek custody.

6 Q And that is the '97 case that that was instituted by
7 Mr. McElveen, Jr. Did you pay his legal fees to
8 bring the case, sir?

9 A I don't know if I did or not.

10 Q Please answer the question.

11 A I just did.

12 THE COURT: That's an answer.

13 THE WITNESS: I don't know. Really, I don't.

14 By Mr. Mathison:

15 Q Your view of your substantial experience in
16 litigation, Mr. McElveen, can you explain why no
17 questions were asked of Julia Peters, the nice lady
18 who came from Furniture Warehouse to testify --

19 MR. LEE: Object to his characterization,
20 Judge.

21 THE COURT: That's fine. Trial strategy --
22 something his attorney puts up with. He doesn't control
23 that.

24 By Mr. Mathison:

25 Q Were any questions asked, sir, during the period,

1 Ms. Peters was here about what you allege she said to
2 you?

3 A I don't recall any questions being asked.

4 Q Why was that? Why would you not ask questions to
5 develop your theory of what happened?

6 THE COURT: Forget that. One witness
7 testifies, another witness testifies -- didn't happen.
8 That's conflicting testimony and y'all researched it, you
9 being the jury and believe it or not. I've heard a lot
10 of testimony conflicting so far.

11 Go ahead.

12 By Mr. Mathison:

13 Q Do I recall your testimony correctly that Julia
14 Peters expressly indicated that you were a monster?

15 A Yes, sir.

16 Q Okay. That's actually a term that you use with some
17 frequency; isn't it, Mr. McElveen?

18 A A monster?

19 Q Yes, sir.

20 A Not that I'm aware of.

21 Q I'm handing you your affidavit dated 13 January 1997,
22 the one you submitted in the case that your -- your
23 son brought. The one you can't remember whether you
24 paid for or not.

25 A Right.

1 Q I'm asking you to turn to the second -- third page --
2 second page I believe and highlighted there, there's
3 an allegation. Would you read that to the jury,
4 please?

5 MR. LEE: Tell us when that -- the date was.
6 I'm sorry.

7 MR. MATHISON: I did. 1997 case.

8 MR. LEE: Thank you.

9 THE COURT: Affidavit filed in the litigation
10 between --

11 THE WITNESS: There's no highlight on page 2.

12 By Mr. Mathison:

13 Q Forgive me. Hand it back. That's because it's come
14 apart. I apologize. I'm pointing you to paragraph 7
15 and I'm asking you to read, starting with the
16 sentence that says, I contacted her father --

17 A I contacted her father who assured me that there was
18 no such job, and that Molly was there visiting with
19 them. He stated that Molly needed to be met
20 occasionally that she was a monster capable of
21 anything to get her way.

22 Q That's your affidavit. You wrote that. Is that
23 right?

24 A I would assume so. I didn't say.

25 Q And you're putting those words in someone else's

1 mouth, aren't you?

2 A I think I was just relaying what her father had said
3 to me.

4 Q So her father is the one that used the terminology,
5 monster capable of anything?

6 A That's the way my sentence read, yes, sir.

7 Q And now, today, you come in here and you tell the
8 court that Julia Peters, a person you'd never met
9 came up to you and said in so many words that you
10 were a monster?

11 A No, sir, she said I was a mental monster.

12 Q A mental monster?

13 A Yes, sir.

14 Q And is it a fact, Mr. McElveen, that the terminology,
15 capable of anything, is language that you used in
16 describing the plaintiff to the Beaufort County
17 Sheriff's Office when you said that he was -- and I'm
18 quoting -- deviant, gay, and capable of anything?
19 Did you use that terminology?

20 A I think so, yes, sir.

21 Q Okay. So if I understand correctly, you don't
22 believe that Ms. Peter's testimony is trustworthy
23 because of this conversation that she had with you
24 where -- which indicates she had prior knowledge of
25 the arrest of Mr. McAlhaney; is that right?

1 A The question was lengthy. I think you're asking me,
2 do I believe what she said and the answer is
3 absolutely not.

4 Q Isn't it true that you don't believe that what
5 Ms. Shelava says either, do you?

6 A Ms. Shelava -- I don't recall saying anything that
7 was terribly -- terribly out of place to be honest
8 with you. I don't think she said a whole lot.

9 Q I see. Did you or your wife testify that Ms. Shelava
10 had gotten prior knowledge of Matt's arrest because
11 Ms. Shelava had a friend at the courthouse?

12 A Well, as I understand this proceeding, I can't say
13 that because that never came out of my mouth.

14 Q Did it come out of your wife's mouth, sir?

15 MR. LEE: I'm going to object to hearsay.

16 THE COURT: Works both ways, so you can't do
17 it. Call her again and ask if you want to.

18 By Mr. Mathison:

19 Q Do you believe Mr. Emmet Decker, the person who
20 someone alleged had had several relations with Molly?
21 Do you believe that he's truthful and honest?

22 MR. LEE: I don't think --

23 THE COURT: I know. Why are you doing that?

24 Listen, jurors, y'all pass on whether
25 somebody testified truthfully or not on something.

1 Everybody in this case -- believe it or not, I don't
2 believe they like each other too much, so their
3 opinions -- I'm not going to say whether they like
4 somebody or not because I probably can guess what the
5 answer is.

6 By Mr. Mathison:

7 Q You testified you had a telephone conversation with
8 Mr. Decker, didn't you?

9 A Yes, sir, I did.

10 Q You had a telephone conversation with Mr. Decker
11 since your deposition was taken?

12 A I --

13 Q November 21, 2008?

14 A Since then?

15 Q Yes, sir.

16 A No, sir, absolutely not. I have only spoke to the
17 man one time in my whole life.

18 Q Okay. I'm going to hand you your deposition and ask
19 you to turn, please, to page 346?

20 MR. LEE: Your Honor, unless he's impeaching
21 him with his deposition, I think it is proper for him
22 to --

23 THE COURT: Well, we don't know that yet.

24 MR. LEE: I know and I'm trying to avoid the
25 problem.

1 THE COURT: We'll see.

2 Bottom line, jurors, I don't recall in the
3 abstract. I don't know what who's going to say.

4 THE WITNESS: I'm on page 246.

5 By Mr. Mathison:

6 Q Look at line 21.

7 A All right, sir.

8 Q And the question was asked, and I'm quoting, did you
9 threaten a man named Emmet Decker? What was your
10 answer, please?

11 A My answer would have been --

12 Q No, sir. What was it?

13 A I beg your pardon?

14 Q What was your answer?

15 A I've never spoke to Emmet Decker in my entire life,
16 ever.

17 Q So on which occasion were you telling the truth?
18 When you told me the answer in November of 2008 or
19 when you just said that you talked to Emmet Decker on
20 the telephone within the last few minutes?

21 A My answer that I said just a minute ago would be
22 accurate if you -- if you want me to go through it, I
23 did not recognize the name Emmet Decker, or who he
24 was or anything about him.

25 Q Sir?

1 A I spoke to Emmet Decker once on the telephone.

2 Q Sir.

3 A Okay.

4 Q Let's follow-up on that. You didn't recognize Emmet
5 Decker?

6 A I don't think I did, no, sir.

7 Q Let's look down at page 247.

8 A All right.

9 Q Did I ask you at page -- nine -- page, at 9, and
10 didn't you threaten that if he did anything or said
11 anything that you would go to his employer?

12 A No, sir, I did not, was my answer.

13 Q Yes, sir. And then I questioned you and said, Who
14 was his employer?

15 A A man named William Cochran.

16 Q And then what did you say?

17 A Continue on line 14 is that what you want me to do?

18 Q Yes, sir, I do?

19 A A man named William Cochran. A man who had some
20 principal about him.

21 Q On line 16 --

22 MR. LEE: Judge, I object. He can't impeach
23 him with this. He can read his deposition and -- it is
24 improper to do that.

25 THE COURT: I don't need to tell you why it's

1 proper. He says he didn't know anything about it.

2 Now he says he's showing he did, which he
3 can. But, we're not keeping him up here nine and-a-half
4 hours.

5 Go ahead.

6 By Mr. Mathison:

7 Q So you knew Mr. Cochran was Mr. Decker's employer?

8 A Yes, sir, I did.

9 Q So you knew Mr. Decker?

10 A I knew that Mr. Decker worked at (unable to
11 transcribe due to quality of reporter's notes).

12 Q So what you just told me within the last two minutes
13 wasn't true?

14 A That -- that I never spoke to him?

15 Q Yes, sir.

16 A I said I -- I said I've spoke to him one time on the
17 telephone.

18 Q Did I ask you, and I'm quoting now at line 16 on page
19 247, Did you go --

20 A I did.

21 Q -- Did you go to Mr. Cochran?

22 What was your answer?

23 A I certainly did.

24 Q And then I said: And did you tell Mr. Cochran the
25 story that I just said, that he had sex with your

1 daughter-in-law?

2 A My answer was: Most certainly did not.

3 Q So you knew who Mr. Decker was?

4 A Right.

5 Q And you went and talked to his employer?

6 A Yes, sir.

7 Q And then though, you testified you never talked to
8 Mr. Decker in 2008, you're now telling me you did
9 talk to Mr. Decker?

10 A You're confusing me, Mr. Mathison. I'm trying to
11 tell you way back whenever this took place in '97 or
12 '96, or whatever year it was, that I did not know
13 Mr. Decker. I spoke to him one time in my entire
14 life.

15 During this deposition it says here that I
16 told you in the deposition that I did not speak to
17 Mr. Decker. I did not recognize who Mr. Decker was.

18 Q But you knew who Mr. Decker's employer was,
19 Mr. Cochran?

20 A Certainly anybody knew Mr. Cochran was in charge of
21 all (unable to transcribe due to quality of
22 reporter's notes) the developing company at Dataw
23 Island. Anybody that had any business dealings in
24 Beaufort would have known that.

25 Q In your domestic litigation with Molly McCullers,

1 that is the lawsuit that was started in 1997 by your
2 son in which you later intervened, was the allegation
3 made that Emmet Decker had had relations with Molly
4 McCullers and had impregnated her, and that she had
5 had an abortion as a result?

6 A I would have to say no. I don't recall anything such
7 as that. Molly had an abortion at one time, but I
8 don't know that anybody has ever thought that
9 Mr. Decker was the one that was involved in that.

10 She had an abortion at some point in time
11 after Ricky was born. Ricky, III. But I have never
12 suggested or ever thought that Mr. Decker even has
13 the capacity to impregnate a young girl like that.

14 Q Because Mr. Decker is a 60-year-old man; is that
15 right?

16 A I'm sure he's elderly.

17 Q And in the context of that litigation, was an
18 affidavit prepared which is included in this booklet
19 where he says that categorically he didn't do that
20 despite the fact that you accused him of it?

21 MR. LEE: Objection.

22 THE COURT: Forget that. He says he didn't
23 and that's not part of this case. He says he does not
24 know. What else do you want him to say? Decker says he
25 didn't do it.

1 By Mr. Mathison:

2 Q Mr. McElveen, prior to having your deposition taken
3 in this case, did you receive answers to
4 interrogatories in which Mr. McAlhaney identified all
5 his witnesses?

6 A I'm sure I did.

7 Q Was one of those witnesses Mr. Bobby Cooler?

8 A I believe he was, yes, sir.

9 Q And Mr. McElveen -- when Mr. Cooler's name came up
10 during your deposition, did you call him a crook?

11 A I did call him a crook. Probably wasn't -- wasn't
12 the proper name to call him, but, you know, there's
13 some extremely bad blood between the two of us being
14 previous partners and --

15 Q And extremely bad blood makes using the word crook
16 appropriate?

17 A Well, Mr. Mathison, I'll be honest with you. You
18 know, the man and I was in business for many years,
19 and I'm not going to go into the here's and why's of
20 what he's done wrong in his business. I'm just not
21 going to do it, so I'll leave it at, yes, I did say
22 he was with crook.

23 Q And did Mr. Matt (unable to transcribe due to quality
24 of reporter's notes) one of the people from whom you
25 bought Battery Creek Marina; is that correct?

1 A Yes.

2 Q Did you say Mr. (Unable to transcribe due to quality
3 of reporter's notes) was dishonest?

4 A I don't know if I've ever used the word dishonest or
5 not. I had some real serious problems with the
6 closing on Battery Creek Marina that Mr. (Unable to
7 transcribe due to quality of reporter's notes) was
8 behind.

9 Q Did Mr. (Unable to transcribe due to quality of
10 reporter's notes) ever call you a liar, sir?

11 A To my knowledge, no, sir.

12 Q What was the bad outcome of the transaction with
13 Mr. (Unable to transcribe due to quality of
14 reporter's notes)?

15 A I had numerous problems with Mr. (Unable to
16 transcribe due to quality of reporter's notes) in the
17 closing of Battery Creek Marina. I don't know how
18 far in detail I want to go in --

19 Q Is (unable to transcribe due to quality of reporter's
20 notes) --

21 THE COURT: Is (unable to transcribe due to
22 quality of reporter's notes) going to testify?

23 MR. MATHISON: He is under subpoena, Your
24 Honor.

25 THE COURT: That's not an answer to my

1 question. If he's not going to testify, he says he
2 doesn't have him, he can say he's on a witness list if he
3 said X or Y, about him, but that's it.

4 By Mr. Mathison:

5 Q Did you say Mr. (Unable to transcribe due to quality
6 of reporter's notes) partner, Mr. Osborn was
7 dishonest?

8 MR. LEE: I object to the entire relevance of
9 this.

10 THE COURT: His position -- not that I need
11 the amplify it -- is that character is an important issue
12 in the case .

13 Is that not your position?

14 MR. MATHISON: It is.

15 THE COURT: He can explore that, but very
16 briefly.

17 MR. LEE: All right.

18 THE COURT: One question on -- anybody that
19 hasn't testified, we don't care about business dealings
20 and disputes that people had and we've heard enough about
21 1997 divorces and '78 divorces and things like that, but
22 he can question about any derogatory statement that he
23 thinks he said.

24 Jurors, the attorneys ask questions they like
25 expert witnesses specifically that they would like to

1 receive -- goes for all attorneys, but an answer is, yes,
2 no, or I don't know. You can't make somebody remember
3 something and they may be lying when they say they don't
4 know or they may be truthfully saying, I don't recall.
5 But that's for y'all to decide.

6 Lawyers can't make them remember something or
7 answer. If they did we wouldn't be here. If they could
8 say did you malign or defame so and so purposefully, and
9 you know and so forth -- answer is going to be no, or we
10 wouldn't be here, right?

11 Go ahead.

12 By Mr. Mathison:

13 Q Did you say Mr. Osborn was dishonest?

14 A I would say I never said anything about Charles
15 Osborn. He may be involved in the sale of Battery
16 Creek Marina, but he was someone I don't know much
17 about to be honest with you. So I don't know why I
18 would have said anything like that about Mr. Osborn.

19 Q Am I correct that you indicated that you believed
20 that as a result of the swat on the backside that
21 Jackson received at a mall in Columbia that he had,
22 quote, bruises on his bottom?

23 A I didn't say.

24 Q Is that right? Is that your testimony?

25 A Yes, it is.

1 Q And I believe in response to a question from your
2 counsel, you said that you certainly thought that was
3 child abuse?

4 A Absolutely.

5 Q And I believe that you said that you thought it was
6 child abuse because Ricky had to watch it? Is that
7 correct?

8 A I think that's abusive to his brother, yes, sir.
9 That's what I said.

10 Q Both of them were abused as a result of this bruising
11 that was watched by Ricky; is that what you're
12 saying?

13 A That incident and a number of others, yes, sir.

14 Q That happened on July 28, 2003; is that right?

15 A Sir, I'm not going to comment on that. I don't have
16 the dates down as good as you do.

17 Q Okay. But on September 8, 2003, didn't you prepare
18 an affidavit to support your lawsuit which was
19 actually filed three days later on September 21,
20 2003? Did you prepare an affidavit to support your
21 own lawsuit?

22 A I am absolutely not keeping up with you to be honest
23 with you. Are we back to Family court business? Is
24 that what we're talking about?

25 Q Yes, sir, we're in Family Court and your lawsuit of

1 2003-DR-07-1245 --

2 A Did I prepare an affidavit? I'm absolutely certain I
3 did.

4 Q Yes, sir. Isn't it a fact that there is absolutely
5 no mention of this spanking, swat on the back-end,
6 bruising, child abuse? There's no mention of any of
7 that in this particular affidavit? I'm handing you
8 your affidavit and ask you to confirm it for me.

9 A To confirm, there's no mention of that (unable to
10 transcribe due to quality of reporter's notes)
11 incident.

12 Q Yes, sir.

13 A You want me to read this entire affidavit?

14 THE COURT: No. Just say it's not in there
15 if --

16 THE WITNESS: I'll take your word on it.

17 By Mr. Mathison:

18 Q Sir, if it was that important, you came in here and
19 told the jury all about this bruising on the child's
20 rear, and why didn't you put it in a document that
21 was designed to get custody of the child?

22 A It's just that that was a Family Court fight with
23 Molly. Matt wasn't any part of that. Today is --
24 this fight is with Matt. Does that make any sense?

25 Q Didn't you take time to call Matt a drug addict in

1 your affidavit?

2 A Sir, I had reason to believe Matt had an addiction to
3 drugs, so I'm going to take your word it's in there.

4 Q Yeah, it's in there.

5 A Yeah.

6 Q Blank, blank addict and drug addict, but this event
7 you claim you witnessed where you held your
8 grandchild in your arms and he had bruises on his
9 backside, that didn't end up in the affidavit, did
10 it?

11 A No, sir, and neither did the night after his forensic
12 exam, and I held that child in my arms as he cried
13 himself to sleep. That didn't end up in the
14 affidavit either.

15 Q Ain't it true, Mr. McElveen, from the date of your
16 affidavit, which is September 3 --

17 A September 8.

18 Q Excuse me. September 8.

19 A Right.

20 Q Three days before you actually filed the suit until
21 the following February, there's not a single mention
22 in the Family Court file according to (unable to
23 transcribe due to quality of reporter's notes) than
24 authority -- than the guardian ad litem of any abuse
25 of any description by Matt McAlhaney towards either

1 one of your grandchildren.

2 MR. LEE: Your Honor, I think that does not
3 characterize the testimony correctly. He is assuming
4 facts that are not in evidence. They know what was said.
5 The jury knows.

6 THE COURT: Okay. The jury heard whatever
7 the guardian said, so --

8 By Mr. Mathison:

9 Q Did you submit any evidence yourself in the form of
10 an affidavit or any other document that can be found
11 today that indicates between September 8, 2003 and
12 February 26, 2004 that you considered Matt McAlhaney
13 to have done anything abusive to your grandchildren?

14 A I can't answer that question. There were many, many,
15 many documents throughout that where (unable to
16 transcribe due to quality of reporter's notes).

17 Q Name one.

18 A What do you mean, name one?

19 Q One document that you submitted to the Family Court
20 that reflects abuse by Matt McAlhaney toward your
21 grandchildren.

22 A Sir, what I'm suggesting is there's many documents
23 that were going back and forth, and by then I think
24 people were already involved such as the guardian ad
25 litem and the people that's supposed to do their

1 business in the Family Court.

2 Q I'm just asking you to name a single document that
3 you authored or (unable to transcribe due to quality
4 of reporter's notes) that says Matt McAlhaney had
5 done anything abusive. One.

6 A I assume what you're leading to is that I didn't
7 submit one and if you say I didn't, then I didn't.
8 Matt McAlhaney wasn't my concern. These children
9 were my concern.

10 Q Which was it? That was your answer until you
11 realized in your first affidavit you called Matt
12 McAlhaney some names and then after I pointed out
13 there's no mention of any abuse from and after the
14 date of that affidavit. Now you're saying that Matt
15 McAlhaney wasn't important to you?

16 A I'm saying at that point in time, gaining custody of
17 these children and getting them away from their
18 mother and Matt, Mr. McAlhaney was important to me,
19 but, you know, to go into a court, unfortunately and
20 say this or this or this or that, you've got to have
21 the documentation. You've got to have the proof. I
22 don't know. Maybe it was a period of time where we
23 were working on the evidence. I can't answer to you
24 why there's not a single affidavit filed from the
25 dates that you describe. I just can't answer that.

1 I assume my attorney filed documents. I
2 don't know.

3 Q Mr. McElveen, did you hear the judge tell the jury
4 that someone aware of child abuse has the obligation
5 to disclose it?

6 A Yes, sir. I do remember the judge saying that.

7 Q If this event occurred where you held your grandson
8 in your arms and he had stripes on his bottom as a
9 result of being swatted in a mall in Columbia, why
10 didn't you report him to the authorities?

11 A Well, I'll answer that in two ways. There was so
12 much going on, first of all, that while that was
13 certainly an issue, that's what we were trying to get
14 him out of. Secondly, there was an incident at some
15 point in time prior to that -- and please don't ask
16 me the date. I don't know -- in which I called the
17 sheriff's department, showed them something on the
18 child's body that wasn't done by Matt, was done by
19 their mother; and the deputy sheriff informed me that
20 unless I witnessed it that I had no cause of action,
21 and that's exactly what the deputy said. So there's
22 your answer, sir.

23 Q Well, that's interesting because -- did you witness
24 any child abuse on or about February 26 or 27, 2004?

25 Did you physically witness any child abuse, sir?

1 A I'm trying to think of what February 27, 2004
2 represents. I don't understand this date.

3 Q The day a report was made by your wife of child abuse
4 to the Beaufort County Sheriff's Office.

5 MR. LEE: I believe that was two or three,
6 Your Honor.

7 MR. MATHISON: No, sir.

8 MR. LEE: You're correct. I'm sorry.

9 THE WITNESS: Did I witness any abuse?

10 By Mr. Mathison:

11 Q Yes, sir.

12 A On that particular day?

13 Q Yes, sir.

14 A No, sir.

15 Q Did your wife witness any abuse on that day?

16 A You're asking me to answer for her again. Had
17 witnessed lots of abuse prior to that, up to that
18 date.

19 Q Well, I thought you tried to depict Matt as having
20 dragged your grandson across the ball field in front
21 of you.

22 A Yes, sir.

23 Q All right. I thought you tried to depict that as
24 abuse.

25 A It is abuse.

1 Q Why didn't you report it to someone?

2 A Call the sheriff's department and say that he dragged
3 him in front of us and let him go? I mean -- I don't
4 understand the question.

5 Q Sir, you've been to court sixty times. Why not call
6 your lawyer and put it into court?

7 A I may have been to court sixty times, but I can
8 assure you it was over funds that needed to be paid
9 or hadn't been received or bad checks, nothing like
10 this.

11 Q No, sir. We know that's not true, don't we?

12 A We, as in me and you?

13 Q Yes, sir.

14 A I don't think so.

15 Q Isn't it true that in one particular case, you sued
16 for violating your civil rights, claiming someone had
17 called your wife trash?

18 MR. LEE: I don't know the significance of
19 this.

20 THE COURT: It's (unable to transcribe due to
21 quality of reporter's notes) the significance is when he
22 said I've been in court, and why but not go into it.

23 THE WITNESS: I had already established there
24 had been another few court cases in my time, but the bulk
25 of these cases you refer to as sixty were mostly

1 magistrate's actions relating to business.

2 By Mr. Mathison:

3 Q Didn't you sue Piedmont Petroleum and the person
4 you --

5 MR. LEE: Approach, please?

6 THE COURT: I'm (unable to transcribe due to
7 quality of reporter's notes) over sixty lawsuits (unable
8 to transcribe due to quality of reporter's notes) neither
9 are y'all.

10 By Mr. Mathison:

11 Q Isn't it true, Mr. McElveen, the lawsuit you brought
12 against Piedmont Petroleum was damages for
13 defamation; is that correct?

14 A Yes, sir.

15 Q So at one point you --

16 THE COURT: That's all. He's answered that.
17 Let's move it on.

18 By Mr. Mathison:

19 Q Didn't you indicate one of the sources of your
20 concern was that all of the litigation generated had
21 upset or concerned your grandchildren and
22 specifically Jackson?

23 A All the litigation?

24 Q Yes, sir. The allegations flying back and forth.

25 A Mr. Mathison, I'm going to be honest with you.

1 You're hard to keep up with. Repeat that question,
2 please.

3 Q Do you believe that the litigation either preceding
4 or concurrent with this has injured your
5 grandchildren and that people know that there are
6 problems surrounding their upbringing?

7 A What people know, sir, I can't say; and as for those
8 children, I think they are very secure and very safe,
9 and they have a very sound environment and I don't
10 think that I would let any of those kind of (unable
11 to transcribe due to quality of reporter's notes) in
12 or around them. I'm even very careful about the
13 schools they attend, and who are at those schools.

14 Q Yes, sir. On October 31, 2005, did you in your
15 capacity as guardian ad litem, bring a lawsuit for
16 Jackson McElveen against my client, Mr. McAlhaney?

17 MR. LEE: I fail to see the relevance of
18 this.

19 THE COURT: It's that -- I don't want to say
20 he thinks it's relevant. The answer is yes or no and we
21 can get on with life, maybe two questions about it.

22 THE WITNESS: This is a lawsuit in Jackson's
23 name?

24 By Mr. Mathison:

25 Q Yes, sir.

1 A Yes, sir, I did.

2 Q Did you identify Jackson by name at the beginning of
3 the lawsuit so that anybody who walks into the
4 courthouse can pick it up and look at it?

5 A I don't have that much litigation experience.

6 Q Sixty lawsuits is not enough experience?

7 A Not enough to file that document. No, sir, you need
8 to ask my attorney that. My attorney filed that for
9 me.

10 Q Look at it, and see what it says on the front. Does
11 it use Jackson's name directly?

12 A It is, Jackson's name directly, yes, sir.

13 Q I'm not going to go into them, but is there a laundry
14 list in your Complaint of things that all allegedly
15 were done to him?

16 A You say you're not going to go into them. Do you
17 want to read every one?

18 Q I want you to answer my question.

19 So there's a laundry list of things that were
20 done to him?

21 A Appears to be, yes, sir.

22 Q And you put this document -- you and your lawyer put
23 this document in public records?

24 A My attorney put it in public records, I didn't, no,
25 sir.

1 Q And were you removed as the guardian ad litem in this
2 case, Mr. McElveen?

3 A Up --

4 MR. LEE: Judge, he's getting into some legal
5 issues and if you want to explain what it really means to
6 the jury, we can do that, but --

7 THE COURT: I don't know anything about it
8 because I haven't seen it, so it's hard for me to explain
9 it.

10 By Mr. Mathison:

11 Q Were you removed as a guardian ad litem?

12 MR. LEE: I just objected to the question,
13 Your Honor. I assume you sustained it?

14 THE COURT: When you hit themes that -- we've
15 been here for four days and somethings brought up that we
16 haven't discussed, I don't know what to rule -- I don't
17 know whether it's relevant, irrelevant or whatever, so he
18 filed a lawsuit on behalf of the child in the child's
19 name, which normally is brought in John Doe's name so
20 they aren't identified; I can tell you that much, jurors.

21 Is that all you want?

22 MR. MATHISON: No, sir, I have two more
23 questions.

24 THE COURT: Before he objects, I don't want
25 to look like I'm ruling against you. If you are correct

1 just step up and we'll find out what you're talking
2 about.

3 It's hard to (unable to transcribe due to
4 quality of reporter's notes) time so we'll take another
5 break, see if I can speed it up a little. Don't talk
6 about the case quite yet.

7 (WHEREUPON the jury left the courtroom.)

8 THE COURT: Mr. Mathison, it can't really
9 take an hour. Just speed it up. Talk a little faster.
10 Ask it one time. He's going to deny it. Impeach it,
11 move on with it.

12 MR. LEE: Judge, as to the last thing, I
13 would suggest saying someone's removed as a guardian
14 imputes some type of problem, something like that I
15 think --

16 THE COURT: He has -- you have the right on
17 redirect to say what you -- weren't you removed because
18 he objected and wasn't it dismissed and wouldn't you
19 still re-file it, you know, but -- I can't keep him from
20 going into the first time because he's the lawyer and I'm
21 just the judge.

22 Oh no, Mr. Templeton wants to interject.

23 MR. TEMPLETON: No. No. No. No. For
24 planning purposes, so I can tell my witnesses, I -- you
25 know, I had previously told them this morning I'm going

1 to -- if it's all right with the Court, I'm going to push
2 them back to two to give -- and I'm thinking that's
3 probably not going to be right anyway, but I just don't
4 want to get sideways with the scheduling, but it sounds
5 like we're going to go at least until lunch.

6 THE COURT: We are, sounds like, because once
7 he finishes, it's going to take him a while to -- in his
8 opinion to rehabilitate.

9 MR. LEE: I don't think it is going to take
10 very long.

11 THE COURT: Whatever.

12 MR. TEMPLETON: I will do that then, Judge.

13 THE COURT: Out of an abundance of
14 caution, (unable to transcribe due to quality of
15 reporter's notes), an attorney who's here from Camden
16 originally, he says there's a guy on the jury who's from
17 Camden originally named Belton McCarthy, and I don't know
18 which one he is, never seen him. Something comes up with
19 jurors from Camden and I'm from Camden. They said he
20 used to play golf with the guy I play golf with and I
21 knew.

22 MR. LEE: He's on the end in the front.

23 THE COURT: I assumed he was the guy with the
24 golf t-shirt or sweater on.

25 (WHEREUPON the jury entered the courtroom.)

1 THE BAILIFF: Jury is seated, Your Honor.

2 THE COURT: You may proceed.

3 By Mr. Mathison:

4 Q I had asked you about this case that you filed on the
5 behalf of Jackson McElveen using Jackson McElveen's
6 name as plaintiff. Were you removed as the guardian
7 ad litem?

8 A If that's the hearing that I think I remember, which
9 was not in front of a Family Court judge --

10 Q It was in front of a circuit judge. That's right.

11 A I think the concern was -- I wasn't removed for any
12 reason other than the concern was that since I was
13 the custodial parent and the grandfather that they
14 didn't want me to be the guardian ad litem. I
15 certainly was the one I felt would best represent the
16 interest of the child.

17 Q Were you removed as guardian ad litem?

18 A I just answered your question, yes, sir, I was.

19 Q And after you were removed as the guardian ad litem,
20 was the case, in fact, dismissed?

21 A I can't answer that. I don't know.

22 THE COURT: Just tell him it was dismissed
23 and move on, if you've got a document.

24 By Mr. Mathison:

25 Q Handing you a document called stipulation. Does it

1 indicate that it is dismissed?

2 A It says stipulation of dismissal without prejudice.

3 Q Yes, sir.

4 MR. LEE: I would ask you to instruct the
5 jury what that means.

6 THE COURT: It means you can re-file it or
7 somebody can. Just dismiss. It is still out there. In
8 theory, but it can't be out there forever because you've
9 got statute of limitations problems, sometimes, sometimes
10 you don't. The child was a minor, but the statute told
11 probably so y'all don't need to know that. I'm not going
12 to define for you (unable to transcribe due to quality
13 of reporter's notes) time like elderly. Y'all probably
14 know what that is.

15 By Mr. Mathison:

16 Q The case you filed was on October 31, 2005; is that
17 correct?

18 A Yes, sir.

19 Q And it was dismissed thereafter, and --

20 A I --

21 Q -- and how long after the plaintiff, Mr. McAlhaney,
22 sued you in this case did you file that case with
23 your grandson's name on the face of it?

24 A I honestly couldn't answer that question. I don't
25 know the --

1 THE COURT: Tell him. We want to move it on.

2 By Mr. Mathison:

3 Q Summons in this case, sir, is dated July (unable to
4 transcribe due to quality of reporter's notes), 2005?

5 A On this case here?

6 Q Yes, sir.

7 A Okay.

8 Q So your case for your grandson with his name on the
9 front of it was filed, what, roughly three months
10 after this?

11 A Yes, sir.

12 Q And then got dismissed; is that right?

13 A That's correct. Dismissed without prejudice, uh-huh.

14 Q Mr. McElveen?

15 A Yes, sir.

16 Q Did you claim that your first wife was guilty of
17 abuse and neglect?

18 A My first wife?

19 Q Yes, sir.

20 A Sir, I'll be honest with you. I don't know what was
21 claimed. That was 33 -- 34 years ago. I don't have
22 a clue.

23 Q Isn't there a reported case in this jurisdiction
24 indicating that you sought to regain custody of your
25 child?

1 MR. LEE: I don't think he can introduce a
2 reported case.

3 THE COURT: He's going to give the jury the
4 cases -- he can.

5 By Mr. Mathison:

6 Q Very well then. Did your first wife, Elaine Bennett
7 McElveen obtain a divorce from you on the grounds of
8 physical cruelty?

9 A I believe that's what the grounds were.

10 Q And after she got the divorce, did you go back while
11 the case was on appeal and make an effort to get
12 custody of your son, Rick, Jr.?

13 A While the case was on appeal?

14 Q Yes, sir.

15 A I would say no.

16 Q Was a decision issued indicating during the periods
17 you sought to gain custody of your son you failed to
18 provide support for your first wife, which is the
19 reason that she couldn't provide necessities for your
20 son?

21 MR. LEE: Judge, I object to this. Are we
22 going to retry this case.

23 THE COURT: We aren't retrying a Family Court
24 case from 35 years ago.

25 ///

1 By Mr. Mathison:

2 Q Mr. McElveen, would you consider the abuse of your
3 first wife as found by the Court to be as you
4 testified in every matter, above board? Wasn't that
5 your testimony? Your every action was above board?

6 A Let me make sure I understand what you're asking me.
7 The -- are you saying that I abused my first wife.

8 Q I'm saying a court of law said you abused your first
9 wife.

10 A What you are asking is that --

11 Q Would that coincide with your understanding of
12 aboveboard?

13 A I don't think the abuse of any woman would be above
14 board, but I haven't admitted that I ever abused my
15 first wife.

16 Q Pardon me.

17 A I never admitted that I abused my first wife. I
18 guess I admitted it if I signed the document, didn't
19 I? The fact of the matter is what I'm trying to tell
20 you is I never abused my first wife. At the point in
21 time in my life, sir --

22 THE COURT: Hold on. That's why we aren't
23 going into that. He'll tell you everything that happened
24 and why he did everything with his first wife 35 years
25 ago.

1 By Mr. Mathison:

2 Q If I understand correctly, your zeal for obtaining
3 custody of your grandchildren was to get them out of
4 an environment that you considered unsavory or
5 squalid, both in 1997 and in 2003; is that correct?

6 A That is correct.

7 Q And it was allegation to get them into an environment
8 which you described as loving and free from abuse and
9 the potential for miss behavior to happen; isn't that
10 correct?

11 MR. LEE: Judge, can we approach so we don't
12 have another problem?

13 THE COURT: I don't think you need to
14 approach. He's not going to go any further with that.
15 He's stated his reasons for that and you can (unable to
16 transcribe due to quality of reporter's notes) agree to
17 them and argue all that to the jury.

18 MR. LEE: I'm just saying he's getting ready
19 to introduce -- I can see the document.

20 MR. MATHISON: I'm not getting ready to
21 introduce any evidence at this juncture, but if you want
22 a sidebar.

23 THE COURT: I'd be interested in having
24 sidebars every two minutes. One, I took a break from the
25 jury. I'm here. I don't even eat lunch. I'm here. I

1 get here a little after eight in the mornings. If y'all
2 need to talk about things I'm available. I'm your
3 servant. That's why I get the big bucks. When you think
4 things up, I don't need to have sidebars and have the
5 jury disregard the system at that point.

6 Move it along.

7 By Mr. Mathison:

8 Q Mr. McElveen, have you abused your second wife? That
9 means Linda McElveen, in front of your children?

10 A Have I abused my wife?

11 Q Yes, sir.

12 A Absolutely not. Ever.

13 Q On July 29, 1995?

14 MR. LEE: Judge, none of this stuff is
15 admissible.

16 MR. MATHISON: Certainly is to impeach him,
17 Your Honor.

18 By Mr. Mathison:

19 Q July 29, 1995, didn't your daughter, Charlotte
20 McElveen, and your wife provide an incident report to
21 the Beaufort County Sheriff's Office --

22 MR. LEE: Objection. Hearsay.

23 THE COURT: It is hearsay, but it can come
24 in.

25 ///

1 By Mr. Mathison:

2 Q -- indicating you had beat up and abused Linda
3 McElveen?

4 A Once again, I'm going to be very honest with you. I
5 have no idea what that document says, absolutely
6 none. I've never read it.

7 Q Were you arrested, sir?

8 A I was arrested that night, yes, sir. I was.

9 Q And would you pick up the document and look at it?

10 A No.

11 Q Do I have the date correct, July 29, 1995?

12 A Yes, you do.

13 Q Do you recall what happened on that evening?

14 A I certainly do.

15 Q When I took your deposition, didn't you acknowledge
16 that you and your wife had an argument?

17 A Yes, I did.

18 Q Didn't you indicate that you tore up the house and
19 threw some things around?

20 A I threw some things around.

21 Q And didn't you indicate that you -- that your wife
22 had been intoxicated?

23 A I did say that.

24 Q You had been drinking yourself; isn't that right?

25 A I had drank some, yes, sir.

1 Q Wasn't all of this conducted in front of your
2 daughter, Charlotte?

3 A Absolutely not.

4 Q But she's the person on the report --

5 THE COURT: Okay. We've covered that issue,
6 now. He's got it in. He was charged and arrested.
7 That's been disposed of one way or another.

8 Let's move on with another issue.

9 By Mr. Mathison:

10 Q Mr. McElveen, do you have your deposition up there,
11 sir?

12 A I do.

13 Q Look at page 96.

14 A I'm there.

15 Q And at page 10 -- excuse me line 10 --

16 MR. LEE: Your Honor, I thought you just said
17 if we would quit asking about this.

18 THE COURT: I did. If it is about this case,
19 we're moving on with it. He was charged, and he has
20 admitted all of that. Let's move on. We aren't retrying
21 that incident. You've got enough in there to argue that
22 to the jury. We're not going on overkill one and two. I
23 am a time manager.

24 MR. MATHISON: This is pertinent in the
25 meantime to an issue other than just abuse, Your Honor.

1 THE COURT: Represent that it is, you can go
2 into it.

3 By Mr. Mathison:

4 Q Did I ask you the following question, Mr. McElveen:
5 Did the law enforcement officer that responded to the
6 call to come by your house make up what's in the
7 report?

8 What was your answer?

9 MR. LEE: That was impeaching him with
10 someone that -- the person is not even here. I mean --

11 THE COURT: Forget that. Move on to another
12 issue. This is why we don't retry the 60 cases that were
13 filed. If he recalls them he will have said, Well, I did
14 this because of that, I did this because of that, so and
15 so, and such and such, didn't agree with that. Still
16 don't.

17 I'm not interested in retrying all that. But
18 that he committed or was charged with abuse is relevant
19 to the issues. I don't know whether he did or not.
20 There you go.

21 Jurors, each attorney has their own style.
22 I'm not running each of these attorneys down. One of my
23 law partners, which I try many cases with, he drove me
24 crazy. He always asked at least three times, the same
25 thing. He couldn't stand it. He'd ask three times.

1 However, he won most of his cases so I kept my mouth
2 shut. So, there you go.

3 Each attorney has their own style and Mr.
4 Mathison has taken a person's deposition as we learned
5 nine and-a-half hours.

6 MR. MATHISON: That's not correct, Your
7 Honor.

8 THE COURT: Well, whatever. A length of
9 time.

10 MR. MATHISON: Can't even --

11 THE COURT: It is hard to compress what you
12 covered, things you think are relevant in an hour. It is
13 hard to compress it so he has problems, and one of his
14 problems doesn't have anything to do with the case, but
15 it is my trying to time manager the thing. Okay.

16 I'm not going to keep him from asking
17 anything that he feels about relevance. What he feels is
18 relevant, Mr. Lee sometimes thinks is not, but they have
19 their own theories. Don't hold anything against any
20 attorneys by my time management rulings I've made.

21 With that said, keep it short and proceed,
22 Mr. Mathison.

23 MR. MATHISON: Yes, sir.

24 By Mr. Mathison:

25 Q Mr. McElveen, which, if any, abuse were you referring

1 to when you wrote this letter dated September 29,
2 2003 to Governor Sanford?

3 A I'm trying to find the sentence that I made.

4 Q The sentence is actually --

5 A On the second page?

6 Q No. It is in the third paragraph, I believe. See
7 the second sentence?

8 A Right, and been abusive to the children.

9 Q Yes, sir. What abuse were you talking about when you
10 wrote that?

11 A Well, I mean, I've already outlined some of the
12 somethings that I saw, but the -- you know, there are
13 other identity items I can't discuss because I can't
14 tell you what the children said.

15 Q I understand that, but are you telling me that
16 children told you something as of September 29? Is
17 that what you're saying?

18 A That's what I'm saying, yes, sir.

19 Q So -- but nothing that the children said made it into
20 this affidavit on September 8, that you prepared; is
21 that right?

22 A No, sir.

23 Q So whatever it was wasn't important enough for you to
24 take into Family Court and say it in a place where it
25 was privileged, but it was important enough for you

1 to put it into a letter to a person you characterized
2 as your good friend Governor Mark Sanford. Is that
3 what you're saying?

4 A No, sir, that's not what I'm saying at all. You
5 asked me to tell you why I used the word abusive
6 toward the children, and my understanding is telling
7 you sitting in this courtroom, I can't tell you all
8 the reasons why. Are we on the same track here or am
9 I not answering the question?

10 Q Mr. McElveen (unable to transcribe due to quality of
11 reporter's notes) Mr. McElveen, you're not just a
12 friend of Governor Sanford but a contributor, aren't
13 you?

14 A Yes, sir.

15 Q You give money?

16 A I think I contributed some money in his first
17 campaign, yes, sir. I had a lot of confidence in
18 Governor Sanford.

19 Q And you've hosted some events for them, have you not?
20 You and other prominent people here in Beaufort?

21 A I've never hosted an event for Governor Sanford
22 unless I'm forgetting something. I don't recall.

23 THE COURT: He has already testified that he
24 was good friends with him that he considered going into
25 business with him. We don't need to go into all that.

1 By Mr. Mathison:

2 Q Did you expect that Governor Sanford as your friend,
3 could do anything to influence your domestic
4 relations case as a result of your writing the
5 letter?

6 A Absolutely not. I wrote that and when the jury reads
7 it, I hope there's nothing in the letter, but to
8 understand other than the fact that I think he needs
9 to caution his newfound sister-in-law.

10 Q She got sideways with you because she put the
11 affidavit in saying Molly was a good mom and --

12 A Sir, I've already been down this with you. It was
13 not the affidavit. People are entitled to put down
14 any affidavits they want in (unable to transcribe due
15 to quality of reporter's notes) case. My argument
16 and my being angry was the fact that --

17 THE COURT: He has already said that. Don't
18 say it again.

19 Go on. We'll have to call the attorney and
20 say what he said, and he's not involved in this case.

21 By Mr. Mathison:

22 Q If I understand correctly -- strike that.

23 Did you see Mr. McAlhaney at the hearing that
24 took place on September 22, 2003?

25 A I'm not sure which hearing that was, sir.

1 Q The hearing where the order was issued the following
2 week, that is on September 29. It denied you
3 temporary custody.

4 A He may have been there. I don't know. The only
5 hearing I remember him being at was the very initial
6 hearing, the first hearing in which the judge recused
7 herself because she was friends with him.

8 Q You're talking about a hearing that was supposed to
9 take place on September 15?

10 A Mr. Mathison, you're throwing these dates at me, and
11 I just can't keep one of the dates. You're asking me
12 a question. I'm telling you the only time I remember
13 Matt McAlhaney being at the hearing was the very
14 initial hearing. I don't remember him being at any
15 other hearings.

16 Q I'm handing you this document, which is --

17 MR. LEE: We'll stipulate the first one was
18 supposed to be on the 15th and the second was on the
19 22nd.

20 MR. MATHISON: Your Honor, may I please
21 conduct my --

22 THE COURT: No, no, no. We're moving on on
23 that. Things aren't in dispute, we don't need to waist
24 time with. That's all. He said he only remembered one
25 time.

1 That might be a bald-faced lie, jurors. I
2 don't know. Y'all judge that, but not to hammer it. To
3 show whether he was there, whether he was not there, they
4 can stipulate he was there both times, if he was. You
5 don't know.

6 By Mr. Mathison:

7 Q I have handed you the order, sir, revamping the
8 hearing held on September 22, 2003.

9 A Right.

10 Q And would you look down in the second or third
11 paragraph. Does that indicate that your counsel and
12 Ms. McCullers counsel were both notified of the
13 outcome of that hearing at 2:30 p.m. on September 29?

14 A That my counsel and Molly's counsel were notified?

15 Q Yes, sir.

16 A And at -- I see where one signed it on 10/2 and
17 one --

18 Q No, sir. I'm asking you to look at the first page.

19 THE COURT: Just tell him. He's not a
20 lawyer. Tell him what it says in the -- he's not going
21 to contest it.

22 By Mr. Mathison:

23 Q Says your counsel and Ms. McCullers' counsel were
24 notified at the temporary hearing and did not get
25 custody at --

1 MR. LEE: Can we read the one sentence? It
2 said they had a conference call and we'll agree to that
3 on the (unable to transcribe due to quality of reporter's
4 notes) at 2:30.

5 By Mr. Mathison:

6 Q Did you write your letter to Governor Sanford dated
7 September 29 before or after you found out that you
8 had lost at the temporary hearing?

9 A Sir, once again, I'm going to explain to you the best
10 way I know how --

11 Q Please answer my question, sir. Did you do it before
12 or after. And then you can explain.

13 A All right. I wrote the letter on September 29 and
14 this order was dated -- it said it came before me on
15 September 22, so, yes, sir. I would have written the
16 letter after this hearing that you're speaking of.

17 Q No, sir. I'm asking you whether you wrote it after
18 you learned that you had lost at that hearing. That
19 is, did you write the letter after you had been
20 informed that Judge Smoak had ruled against you.

21 A And I'm going to tell you something that you're just
22 going to have a hard time believing. I don't
23 remember losing any -- any hearing. I remember
24 hearings being extended. I remember hearings
25 being -- I don't know that I've ever lost a hearing

1 in regards to this Family Court case.

2 Q You were moving for temporary custody, weren't you?

3 A Yes, sir.

4 Q It was your motion being heard wasn't it?

5 A Yes, sir.

6 Q And I'm calling your attention to paragraph one of
7 the directives on the second page and I'm asking you
8 doesn't it say and I'm quoting, that the
9 grandfather's motions regarding temporary custody are
10 denied? Is that what it says?

11 A May I see that?

12 Q Sure.

13 A May I read line two?

14 Q Certainly.

15 A That Diane P. Dewitt is appointed guardian ad litem
16 and shall be empowered. The point I'm trying to
17 imply to you, sir, is that this was an ongoing case.
18 This wasn't a final decision in which --

19 Q I didn't ask you whether it was a final decision,
20 sir. I asked you whether what you wanted was denied?

21 A I'm going to answer your question one more time. I
22 have no recollection of losing any cases -- I
23 remember numerous setbacks in which the judge wasn't
24 sure, was unsettled, needed time, whatever, whatever,
25 but I don't recall ever hearing that I lost a Family

1 Court --

2 Q I don't mean to be argumentative, Mr. McElveen --

3 A I think you do, sir.

4 Q -- but I didn't. I just read you a paragraph that
5 said you lost.

6 A I did. And so if you would like me to read this now
7 and admit that that's what -- but I'm telling you
8 prior to reading this document, I had no knowledge
9 that I'd ever lost. I knew there were many setbacks.

10 Q Isn't one of the one (unable to transcribe due to
11 quality of reporter's notes) you wrote to Governor
12 Sanford because you're angry about losing?

13 A Absolutely not. I wrote that letter to Governor
14 Sanford because of an attorney's remarks in the
15 courtroom that I -- I felt gave the other side an
16 unfair advantage. That's the only reason I'd ever --
17 that letter ever got written.

18 Q But didn't that make you angry?

19 A Absolutely.

20 Q So you wrote the letter because you were angry about
21 what had happened in court; is that correct?

22 A Yes, sir.

23 Q Did you believe the governor's sister-in-law in
24 writing that letter had somehow influenced the
25 outcome to your disadvantage?

1 A No, sir, I did not. There is no reference to that.

2 Absolutely not. I think my attorney handled it just
3 fine.

4 Q Handled what, sir?

5 A What you just suggested and what I'm trying to
6 explain to you, the reason the letter was written,
7 that this was something I felt inappropriate that had
8 taken place in the courtroom to try to give them the
9 upper hand.

10 Q Did you have any contact or communication with Matt
11 McAlhaney from the time you saw him at the hearing
12 whether it was the one that didn't take place on the
13 15th of September or the one that did take place on
14 the 22nd of December took -- I mean September until
15 the events at the baseball field in February?

16 A Did I have any --

17 Q Contact or communication with Matt McAlhaney.

18 A To my knowledge, no. Somehow I feel like you're
19 going to tell me I did, but I don't recall any.

20 Q Yes, sir. Why would you have been upset at Matt
21 McAlhaney upon seeing him at the baseball field?

22 A I wasn't upset with Matt. I was upset at Matt's
23 actions at the baseball field.

24 Q Actions in what regard? You (unable to transcribe
25 due to quality of reporter's notes) you thought he

1 was, quote, dragging Jackson; is that right?

2 A Did I think that?

3 Q Yes, sir.

4 A No, sir, I'm a grown man with two eyes. I know what
5 he was doing. I didn't think anything. I saw what
6 he did.

7 Q How was that provocative?

8 A I don't know how to answer that, how -- how a man can
9 stand there and watch his child being drug in front
10 of him.

11 Q What do you mean? That Jackson had drug his feet and
12 somebody was pulling him along some place he didn't
13 want to go? Is that what you're saying?

14 A That's exactly what I mean.

15 Q And you watched Mr. McAlhaney do that, and you didn't
16 do anything about it?

17 A I didn't have the opportunity. My son told Mr.
18 McAlhaney to let go, and he did.

19 Q How many people were at the baseball tryout?

20 A I couldn't tell you. Maybe 150.

21 Q Other than you and your son, do you have any
22 testimony to that?

23 A No, sir.

24 Q But a whole bunch of people saw it; is that true?

25 A I'm telling you three people saw it, is what I'm

1 telling you.

2 Q The three being you and Mr. McElveen, Jr. --

3 A Yes, sir, and another man that was standing there at
4 the time.

5 Q Is he here to testify?

6 A No, sir.

7 Q And you admit that you jerked the bat out of his
8 hands, right? Because it was your bat?

9 A Yes, sir.

10 Q Right?

11 A I did take the bat out of his hand, yes, sir, I did.

12 Q And did you confront Mr. McAlhaney when he allegedly
13 dragged your child in front of you? Grandchild?

14 A No, sir, my son confronted him.

15 Q According to you, you had to intervene to stop that?

16 A I did.

17 Q But if I understand the bat --

18 A -- a value I can't believe -- bat that Mr. McAlhaney
19 was tossing around and --

20 Q Did you think he was going to break it?

21 A You know, I realize I've got a jury of twelve people
22 watching me, but that's absolutely ridiculous where
23 you're headed with this, that the baseball bat was
24 more important to me than that child, don't even go
25 down that road? I'm not answering your question and

1 I'm sorry, jurors. I've been through a nightmare,
2 with this mess.

3 Q Yes, sir. You snatched the bat away yourself; is
4 that right?

5 A I've told you that four times now, Mr. Mathison.

6 THE COURT: He has. He's told you that.
7 He's going to say the same thing every time. Why go over
8 it again?

9 By Mr. Mathison:

10 Q Is the bat metal or wood?

11 A Metal. (Unable to transcribe due to quality of
12 reporter's notes).

13 Q And you took it to your truck; is that right?

14 A I told you that already too. I threw it in the back
15 seat of my truck.

16 Q You came back and confronted Matt; is that right?

17 A The only reason I walked back up to Matt is because
18 he was continuing to run his mouth outside, so
19 numerous people could hear him. And all I said to
20 Matt was be an adult, Be a man you know you want to
21 keep poking and running. That's what he's doing, is
22 constantly taunting and teasing and then hiding. Be
23 a man, let's ride down the road. We're on St.
24 Helena, there's plenty of places to go park, let's
25 resolve our issues.

1 Q You asked him to go fight?

2 A I just told you what I said, Let's ride down the road
3 and resolve our issues.

4 Q He declined to do that?

5 A He did.

6 Q That was on or about February 21; is that right?

7 A Whatever date we decided that took place. I don't
8 have the dates in my head. I'm sorry. I didn't
9 study dates.

10 Q And the following weekend, y'all were supposed to go
11 to Lake Greenwood in the snow; is that right?

12 A That was the weekend of the 27th, right?

13 Q That's right.

14 A Yes, sir.

15 Q You were going to go up there despite the fact that
16 you found out that it was -- there was going to be
17 snow on the ground?

18 A I've never checked the weather forecasts when we left
19 to go to Lake Greenwood.

20 Q But isn't it true, sir, that you didn't go at all,
21 but instead stayed here?

22 A Absolutely not true.

23 Q Did you leave on Friday to go to Lake Greenwood?

24 A I can't remember if it was Thursday evening or Friday
25 morning, but we did leave. I think we left Friday

1 morning. I'm pretty sure it was Friday morning.

2 Q Did you take the children to school on Friday morning
3 and drop them off?

4 A I don't -- you're asking me a question I can't
5 answer, Mr. Mathison. I don't know. I don't know.
6 It may be that they didn't go to school that day. I
7 don't know. I mean, if you've got some records that
8 shows they weren't in school that day then my answer
9 would be yes, sir, I took them out of school.

10 Q Did you call the Beaufort County Sheriff's Office on
11 February 27th or did your wife, Mr. McElveen?

12 A Call the sheriff's department on the 27th? The day
13 that --

14 Q Yes, sir.

15 A The day that I went to the lake?

16 Q Did you call the sheriff's office on February 27?

17 A I don't know why I would have.

18 Q Did you call the sheriff's office on February 27th?

19 A I don't know why I would have.

20 Q Do you know whether your wife called the sheriff's
21 office on February 27, 2004?

22 A I do not know.

23 Q Did you and your wife go to the sheriff's office on
24 February 27, 2004 instead of going to the lake in the
25 snow?

1 A Mr. Mathison, I'm going to answer your question
2 again. I went to Lake Greenwood on February 25th,
3 26th, 27th, whatever day it was. It was either late
4 Thursday evening or Friday morning. I went to Lake
5 Greenwood with those two boys and we --

6 Q You're quite certain of that?

7 A I'm absolutely positive.

8 Q Did you take your wife with you?

9 A I think my wife stayed home. In the wintertime, we
10 go up there a lot, but I don't think she went on that
11 trip. I can't say for sure.

12 Q You heard Detective Baird testify yesterday, didn't
13 you, Mr. McElveen, that you were present in his
14 office on February 27, 2004.

15 A Sir, I don't remember him saying that. I've got to
16 be perfectly honest with you. I couldn't hear a lot
17 of what Detective Baird said yesterday.

18 Q So you don't know whether you were there on February
19 27th?

20 A At the Beaufort County Sheriff's Office?

21 Q Yes, sir.

22 A I can -- I can 99 percent tell you for sure that I
23 was not at the Beaufort County Sheriff's Office on
24 February 27th. If that's a Friday or a Saturday.

25 Q Yes, sir, that is a Friday.

1 A Okay.

2 Q So if he testified to that effect that you were there
3 and he was --

4 MR. LEE: There's -- it is what it is.

5 THE COURT: He's going to object every time
6 and rightfully so.

7 By Mr. Mathison:

8 Q Did you go to the Beaufort County Sheriff's Office on
9 Saturday or Sunday?

10 A No, sir, I was out of town at Lake Greenwood with
11 both the children.

12 Q On March 1, 2004, which was Monday -- I think we've
13 established that 2004 was a leap year, haven't we?

14 THE COURT: He's not contesting that. Move
15 it on.

16 By Mr. Mathison:

17 Q You wrote a letter to Hope Cottage and sent a copy of
18 it to Mr. Baird, didn't you?

19 A If you say I did, I did, I didn't say.

20 Q In the letter is entitled, Things I forgot to
21 mention; is it not?

22 A Okay.

23 Q And then you ran threw a series of twenty or
24 twenty-five defamatory comments about --

25 MR. LEE: Object to the question, Your Honor.

1 Putting a spin on --

2 THE COURT: There are things in there. Move
3 on.

4 By Mr. Mathison:

5 Q Did you write a number of comments about either Mr.
6 McAlhaney or Ms. McCullers on the children?

7 A Yes, I would say, yes, I did.

8 Q So I guess what I'm asking you is, if you didn't go
9 on February 27th, when the detective says you did,
10 and when your wife did and you didn't go on the 28th
11 and you didn't go on the 29th, how was it that you
12 had mentioned something and thus wrote a memo, a two
13 page memo, to supplement what you've said before?

14 A Let me see if I understand this question. You are
15 difficult to keep up with.

16 Why or how did I write a letter on March 18
17 if I was at the lake? Is that why you're asking.

18 Q I'm asking you how you'd write a letter reminding
19 him -- reminding yourself that you'd already been
20 there and talked to him and then sent additional
21 information if you'd never been there and talked to
22 him.

23 A I talked to him initially.

24 Q When was initially?

25 A I don't remember. We (unable to transcribe due to

1 quality of reporter's notes) that yesterday, I
2 thought. What day that I went down to the sheriff's
3 department and learned of the allegations Jackson had
4 made.

5 Now, we're into a totally different area, I
6 think. This is not the time that the allegations
7 were made, I don't believe.

8 Q I understand.

9 A You know, I'm sure there's some relevance to what
10 you're asking me, but I want to tell you one last
11 time that I was at Lake Greenwood with those two
12 children that weekend.

13 Q And not in Detective Baird's office or at Hope
14 Cottage or any of the other places?

15 A For the fourth and final time, no.

16 Q Okay. Do you recall whether you took the children to
17 school in Beaufort on the morning of Friday, February
18 27th?

19 A For the second time, no, sir, I do not recall.

20 Q Would that be consistent with your going to the lake?

21 A A lot of things could have been consistent with --
22 with taking those children out of school on a Friday.
23 It may be that we left them in until eleven, which
24 gives them credit for the day. It may be that they
25 didn't have school that day. I couldn't tell you,

1 Mr. Mathison. I honestly don't know.

2 Q And do you know whether Mr. McAlhaney was arrested on
3 the day you wrote this letter to Mr. Baird?

4 A No, sir, I do not.

5 Q So you don't know whether he was arrested on March 1,
6 2004?

7 A No, sir. I know he was arrested, but I do not have
8 any idea -- I couldn't even tell you right now what
9 day he was arrested.

10 Q That would have been less than a week after your
11 altercation at the baseball field?

12 A I see where you're headed with this now. It would be
13 less than a week, yes, sir.

14 Q And when I asked you whether Matt's arrest was
15 important to you, did you tell me that the arrest of
16 him was immaterial, didn't matter to you?

17 A I don't know if (unable to transcribe due to quality
18 of reporter's notes) is a good choice of words. I
19 think what -- at that point in time and to this day
20 what was important to me was those children. If
21 Beaufort County Sheriff's Department arrested Matt,
22 then so be it, but I didn't lose any sleep one way or
23 the other. I had those children safe, sound and
24 secure and I didn't have to worry about them any
25 longer.

1 Q Would you look at your deposition page 227, please,
2 line 12.

3 A Line 12.

4 Q In response to my question. Is it just a coincidence
5 that you got what you want, is final custody of
6 Jackson and Ricky on -- excuse me -- that's not the
7 right -- not the right reference.

8 You did use the term immaterial there, but
9 that was not in reference to what I was asking you.
10 Your testimony is, while you wouldn't use the word
11 immaterial, it was not important what happened to him
12 as long as you got the children; is that basically
13 it?

14 A No, sir, that's not what I'm saying at all, okay?
15 There's times and places for everything. My
16 immediate concern was the welfare and safety of those
17 children.

18 Q Indulge me here for a minute. Let's assume for
19 the -- for the moment that this case is about family
20 taking place and we have established that somebody
21 went to the sheriff's office on February 27th and
22 made a report; and that somebody filed warrants on
23 March 1, which was Monday; and that Matt was arrested
24 on Monday. Let's just assume that 's correct, even
25 though you don't know it.

1 A No.

2 Q Okay. Was there any point between your having the
3 custody of the children, your having physical
4 possession of them on Thursday the 26th and Monday
5 the first that you or your wife did not have those
6 children? Was there any -- was there any moment when
7 you didn't have those children?

8 A Any moment that I didn't have them?

9 Q Yes, sir.

10 A If I understand your question, I'm going to say no,
11 there was no moment that those children weren't in my
12 care and custody and control.

13 Q What was the hurry in getting Mr. McAlhaney arrested
14 if the children were in no (unable to transcribe due
15 to quality of reporter's notes) of being anywhere
16 near him or his mother?

17 A Sir, I -- I don't understand why you're saying in a
18 hurry and this and that. I didn't have Matt
19 McAlhaney arrested. The Beaufort County Sheriff's
20 Department arrested him. I didn't have a thing to do
21 with that.

22 Q Yes, sir. The --

23 A Are you agreeing with me?

24 Q The answer is that there was no hurry was there
25 because you had the children and they were safe.

1 They were already with you, weren't they?

2 A You're saying in a hurry to have him arrested and I'm
3 trying to tell you I had absolutely nothing to do
4 with his arrest. That was up to a number of folks.
5 We were being sent here and there and everywhere.
6 This interview. That interview. This and that.

7 People needed to meet with a child and -- and
8 all kind of things going on, so I -- you know, I -- I
9 think what you're suggesting is that I was in a hurry
10 to have him arrested, but that I had the kids for the
11 weekend, so, therefore, I backed off until after the
12 weekend was over, then when I went back I had him
13 arrested.

14 That's absolutely ridiculous.

15 Q I'm not suggesting that at all. What I need to know
16 is after Matt was arrested, did your lawyer get the
17 custody of these children immediately transferred;
18 that is from Molly McElveen to you?

19 A Yet --

20 MR. LEE: Judge, haven't we been through this
21 ad nauseam?

22 THE COURT: We have. We can have that in
23 jury argument. We don't need to hash it and rehash it.

24 MR. MATHISON: I haven't been over this with
25 this witness.

1 THE COURT: He has been over it enumerable
2 times.

3 MR. LEE: It is uncontroverted. Does he want
4 he to stipulate to the dates that we --

5 THE COURT: You can question him forever and
6 not that he is true or untrue, his position in X. What
7 you disagree with, but that's for the jury to determine.

8 By Mr. Mathison:

9 Q Mr. McElveen?

10 A Yes, sir.

11 Q Looking at the order, was custody transferred on
12 March 1 -- that is, was Molly McCullers restrained
13 from getting her children back?

14 A Yes, sir.

15 Q So there was absolutely no reason to be concerned
16 from the moment that order was signed and isn't it a
17 fact that order was signed long before in the
18 morning, and Mr. McAlhaney was arrested that
19 afternoon?

20 A Well, this says the 3rd day of March.

21 Q No, sir. It doesn't if you'd look at the restraining
22 order?

23 A Look at what?

24 Q The restraining order.

25 A Notes of Motion and Motion.

1 Q Yes, sir. I said the restraining order. Do you see
2 where it says Ex Parte Restraining Order?

3 A Okay. All right. Okay. So that was --

4 Q Was done on March 1; isn't that right?

5 A I'm looking for a date, sir. You know, I'd really
6 like to just agree with you to be honest with you.

7 MR. LEE: Judge, we'll agree with it. We
8 will stipulate. March 18.

9 THE COURT: All right.

10 By Mr. Mathison:

11 Q So there was no reason to be concerned about the
12 welfare of your children from and after a date and
13 time in that order was there? You had them and you
14 had a right to have them, right?

15 A This wasn't a final order. I mean there's plenty to
16 worry about, Mr. Mathison, but are you asking me was
17 I okay with the fact that I had this? Absolutely
18 ecstatic. I knew for a few more days they were going
19 to be taken care of until the next hearing was
20 scheduled. This wasn't a final hearing.

21 Q Correct me if I'm wrong, but I thought you said what
22 happened with Matt was important as long as the
23 children were taken care of.

24 A I'm trying to explain to you the children were my
25 number one prior to and --

1 THE COURT: He's going to say that every
2 time.

3 Go ahead.

4 By Mr. Mathison:

5 Q Why did you keep sending e-mails to the Beaufort
6 County Sheriff's Department maligning my client's
7 character --

8 A Because the Beaufort --

9 MR. LEE: I object to the question.
10 Argumentative. Calls for a legal conclusion.

11 THE COURT: Ask.-- he sent letters, but can
12 argue to the jury why later.

13 By Mr. Mathison:

14 Q Did you send an e-mail on March 25 to Brian Baird
15 addressing him Brian by his first name in which the
16 third sentence says, they all say Matt is gay, a
17 deviant, or capable of anything?

18 A Does it say Rick at the bottom?

19 Q Yes, sir, it does.

20 A If it says Rick at the bottom, then I sent that, yes,
21 sir.

22 Q How many other e-mails did Rick send to his e-mail
23 pen pal, Brian?

24 MR. LEE: Judge, this is outrageous. Come
25 on.

1 THE COURT: Strike that. Don't do things
2 like that, Mr. Mathison.

3 By Mr. Mathison:

4 Q How many other e-mails?

5 A How many do you have, sir?

6 Q Pardon?

7 A How many do you have? I need to ask you a question
8 for a change.

9 Q Nine?

10 A How many --

11 Q Nine. I'm not --

12 A How many e-mails do you have for my --

13 Q I'm not certain.

14 A I'm not either because I need you to tell me how many
15 you have to tell me how many I sent.

16 THE COURT: He does not know how many you
17 have. Tell him how many you sent is the question.

18 By Mr. Mathison:

19 Q I'm asking you why was it necessary for you to
20 continually drag Mr. McAlhaney's name through the
21 mud?

22 MR. LEE: Objection.

23 THE WITNESS: I feel like we're back round
24 the circle began because the Beaufort County Sheriff's
25 Department asked me to provide them with any information

1 I had. At some point in time, maybe they wanted
2 documentation instead of just hearsay. Beaufort is a
3 small town, Mr. Mathison. People talk, okay? There was
4 a lot of talk going on at that time. People were coming
5 up and telling things and then you go to try to tell your
6 attorney, and need documentation and proof so there's
7 your answer. I did what I was asked to do every step of
8 the way.

9 By Mr. Mathison:

10 Q In other words, you're telling me Detective Baird
11 asked you to go out in the community and dredge up
12 stuff about Matt? Is that what you're telling me?

13 A That's ridiculous. Absolutely ridiculous. He said
14 no such thing.

15 Q Did you have anybody ever come forward and agree to
16 say something negative or nasty about Matt?

17 A I think that there were a few people that had agreed
18 to come forward. Several of them got scared off.

19 Q Well, I'm quoting now from the first two lines of
20 your March 25th e-mail to Mr. Baird.

21 A Right.

22 Q And it says, and I'm quoting, if you have anything
23 that I can do to help, please call me. I hit wall
24 after wall, numerous folks have lots to say except
25 when asked to come forward. They all say Matt is

1 gay, a deviant or capable of anything.

2 A Yes, sir.

3 Q Okay.

4 A I stand by that statement.

5 Q I understand, but other than yourself is there anyone
6 you know who's on the record as saying that?

7 A No one on record, sir. The letter -- the sentence
8 you just read explains it all. Hit wall after wall.
9 These people want to come forward, but --

10 Q Did you hear me ask Sergeant Baird if he really
11 thought there were people out there that knew, that
12 why didn't he get a subpoena and go find them?

13 A I don't recall you asking that question. Honest to
14 gosh, I could not hear what Mr. Baird's answers were.

15 Q Isn't it true that while you couldn't subpoena him,
16 he could. He has that authority doesn't he?

17 A I would assume so.

18 Q Okay. Did you continually keep reciting -- and I'm
19 quoting again from your e-mail dated March 27, 2004,
20 that Matt McAlhaney was, quote, capable of anything?

21 A Yes. I believed it then. I believe it now. But I
22 believe that folks do not want to come up -- that was
23 based on what people were telling me and I was very
24 honest in that e-mail by saying you know, we hit wall
25 after wall. They want to help, but yet they don't

1 want to get involved. If that's their opinion, then
2 that's fine. There wasn't -- and then the few that
3 were going to come forward were either sent a copy of
4 the booklet or some weird phone call was made to
5 scare or intimidate them or some lawyer sent them a
6 threatening letter if they spoke. So what are they
7 supposed to do. (Unable to transcribe due to quality
8 of reporter's notes).

9 Q If I understand correctly, the language, capable of
10 anything, first appears in your affidavit in 1997 in
11 another domestic case with Molly McCullers McElveen;
12 isn't that right? They were capable of anything came
13 first.

14 A Sir, I think there's been some people in my time that
15 are capable of anything and if you want to know the
16 truth, Molly and Matt McAlhaney are two peas in a
17 pod, and both of them are capable of anything. I
18 stand by that statement still.

19 Q And that's a term you like to put in other people's
20 mouths as well? Capable of anything?

21 THE COURT: That's jury argument on that.

22 One, two, you ask questions he answers them.
23 Y'all are now getting where you're just combatting with
24 each other. If he doesn't answer any questions, if you
25 ask Mr. Mathison, I will direct him to answer.

1 MR. MATHISON: May I have a moment, Your
2 Honor to confer with co-counsel.

3 THE COURT: All right. Jurors they're not
4 really co-counsel. He just misspoke.

5 MR. MATHISON: My colleague, I should have
6 stated, Your Honor.

7 By Mr. Mathison:

8 Q Mr. McElveen, do you have a net worth of \$2 million?

9 A I'm not sure as of this minute what my net worth is,
10 but I'm sure it's less than \$2 million. I'm certain
11 of that.

12 Q But as of the date your deposition was taken, which
13 was in November of 2008 --

14 A Right.

15 Q -- was it \$2 million?

16 A It probably would have been close to that. You're
17 talking about a net worth, sir. That changes with a
18 lot of things.

19 Q Earlier you said some things about your son which I
20 frankly won't repeat except to say this. Did your
21 son pay support for these children during the period
22 that you've had them since you got sole custody of
23 them?

24 A You're asking me has my son paid any support?

25 Q To you, yes, sir.

1 A No, sir, he has not.

2 Q During the period that you and Molly were sharing
3 them, that is in 2003 and 2004 was he paying support?

4 A Two --

5 MR. LEE: Judge, I'm not sure what the
6 relevancy of this is.

7 THE COURT: We're not going to go there.
8 That's a Family Court matter. I'm not going to go there.
9 He either paid or didn't pay. Call him and ask him.

10 By Mr. Mathison:

11 Q You have no recollection at the bond hearing of
12 saying you were going to chuck the law?

13 A I would assume that in any judge's office or hearing
14 that it's recorded, and I would suggest someone go
15 get it. I have never said such a statement, chuck
16 the law.

17 Q I believe you said you didn't understand what chuck
18 meant; isn't that right?

19 A Whether I understand it or not, I've never made the
20 statement to my knowledge.

21 Q You're a baseball coach, Mr. McElveen, don't you know
22 what the word chuck means?

23 A No, sir, we don't chuck a baseball. We throw it.

24 Q I see. I've never heard the word chuck before and if
25 you'd like to know what I said to Judge Darlene Smith

1 that day I can -- Mr. Mathison, are you listening?

2 THE COURT: He does not want to hear, I don't
3 think, but do you want to tell him what --

4 THE WITNESS: I would like to tell you what I
5 said to Ms. Smith, the magistrate that day okay?

6 I had reason to believe after hearing from
7 the Beaufort County Sheriff's Office about the arrest
8 that Matt had made a threat on my life and all I said to
9 the --

10 MR. MATHISON: Your Honor, may it please the
11 Court --

12 MR. LEE: He opened the door, Judge.

13 MR. MATHISON: I didn't open the door to
14 that.

15 THE COURT: Yeah, he did.

16 MR. MATHISON: I asked him whether he knew
17 what chuck meant.

18 THE COURT: Asked him what he said in front
19 of her unfortunately. You then can say what he said.

20 THE WITNESS: May I continue or not?

21 By Mr. Mathison:

22 Q Sure. Go ahead.

23 A So with that in mind, the judge looked at me and
24 asked me, did I have any reason that Mr. McAlhaney
25 should not be released on bail and I said, Your

1 Honor, I'm smart enough to know you're going to let
2 him go, but I said I have reason to believe and I
3 want to make it clear that the Beaufort County
4 Sheriff's Department nor the magistrate system has
5 the resources to protect me and my family, and I want
6 Mr. McAlhaney to know that I will use whatever
7 resources I have to protect my family.

8 That's all I said. This is ridiculous about
9 chuck the law. I don't think my statement was out of
10 context for what I had been through with him and just
11 went through minutes earlier with his uncle.

12 Q Yes, sir, and if I understand your answer on whether
13 you knew where -- what the word chuck meant in that
14 context, you told me we don't chuck a baseball, we
15 throw a baseball?

16 A Yes, sir.

17 Q Is that what you told me?

18 A You're trying to get me to say that I know what the
19 word chuck means.

20 Q I assume chuck means --

21 THE COURT: He said what he said. Again,
22 y'all are getting combative. You asked questions, he
23 answered them.

24 MR. MATHISON: I don't mean to be, Your
25 Honor. I just want you to know I do not mean to be.

1 THE COURT: I understand. It is not nice
2 being on the witness stand. It is very, very tricky and
3 frustrating. Go ahead.

4 By Mr. Mathison:

5 Q In addition to other witnesses identified by the
6 plaintiff in the plaintiff's answers to
7 interrogatories who you felt were either dishonest or
8 otherwise incapacitated by lack of character. Did
9 you have anything unpleasant to say about the
10 Assistant Solicitor Angela McCall-Tanner?

11 MR. LEE: Judge, he's already published the
12 deposition to the jury for some reason.

13 THE COURT: Did already read.

14 MR. LEE: He's already done that.

15 THE COURT: He said what he said in the
16 deposition. You can read it to the jury when you close
17 it up, if you like.

18 THE WITNESS: May I comment on that though or
19 should I just leave it alone.

20 THE COURT: Should leave it alone. I'm
21 trying to get you off the stand, not that everybody's not
22 interested in what you're saying.

23 THE WITNESS: All right. Thank you.

24 By Mr. Mathison:

25 Q So that I know they got the record clear here, am I

1 correct in understanding you to say that you're
2 certain that you left to go to Lake Greenwood on
3 Thursday or Friday the 26th and 27th of February
4 instead of going to Detective Baird's office at
5 Beaufort County Sheriff's Department?

6 A Unless the judge instructs me to answer that
7 question, I told you a minute ago, I've answered it
8 four times --

9 THE COURT: Hold on --

10 THE WITNESS: -- and I'm not answering it
11 again.

12 By Mr. Mathison:

13 Q That would indicate that you have a pretty high level
14 of sophistication with your 60 lawsuits wouldn't it,
15 sir?

16 THE COURT: Okay. That's editorializing and
17 quit that.

18 MR. MATHISON: Thank you very much.

19 THE COURT: Not do that.

20 MR. LEE: Judge, I have three things I want
21 to ask him about.

22 **REDIRECT EXAMINATION**

23 By Mr. Lee:

24 Q This lawsuit that he talked about --

25 THE COURT: Hold it. Let me write down three

1 things. When we get to the fourth --

2 By Mr. Lee:

3 Q I bet I can do it. Three to (unable to transcribe
4 due to quality of reporter's notes) and then maybe a
5 couple of questions on -- first thing I wanted to ask
6 you about this lawsuit that was brought in Jackson's
7 name.

8 A Yes, sir.

9 Q And -- all right. And is it your understanding that
10 we stipulated --

11 MR. MATHISON: Objection.

12 THE COURT: That's all right.

13 MR. MATHISON: He's leading him, Your Honor.

14 THE COURT: He is. He's moving on.

15 By Mr. Lee:

16 Q Is it your understanding we stipulated at that time
17 by agreeing we were going to dismiss it without
18 prejudice?

19 A That doesn't mean it got thrown out, does it.

20 Q Yes, sir. That was your understanding?

21 A That is correct.

22 Q Number two, you did talk to Brian Baird after the
23 disclosure, correct?

24 A Yes, sir.

25 Q And that was at the sheriff's office?

1 A Yes, sir.

2 Q And you don't remember what day that was?

3 A I do not. I'm sorry.

4 Q Would you defer to Brian Baird's written report that
5 he read off of to say what day it was?

6 A Absolutely.

7 Q Do you remember whether it was a Friday or a
8 Saturday?

9 A No, sir, I do not.

10 Q Number two. Number three. I've already shown these
11 pictures to Mr. Mathison.

12 MR. MATHISON: I object, Your Honor.

13 MR. LEE: Pictures of it snowing at the lake
14 with the kids there.

15 MR. MATHISON: Not disclosed in discovery.
16 No way to corroborate --

17 MR. LEE: It is in rebuttal. He brings up a
18 climatology report about it snowing that I've never seen
19 until the other day.

20 THE COURT: Can put it in reply. Go ahead.

21 By Mr. Lee:

22 Q Hand you three pictures. Do you recognize those?

23 A Yes, sir, I do. It is the only time we've ever known
24 it to snow in Lake Greenwood and it was the weekend
25 of February 27 and we were there.

1 Q Did the kids go with you?

2 A Yes, sir, both boys.

3 MR. LEE: I ask these be introduced at
4 Defendant's Exhibit 1, 2 and 3.

5 MR. MATHISON: I object on foundation.

6 THE COURT: Ask him who took the pictures.
7 Were they that day and so forth.

8 By Mr Lee:

9 Q You recognize these pictures?

10 A Yes, sir.

11 Q You said they are pictures of the lake?

12 A Yes, sir.

13 Q On February 27th?

14 A Yes, sir. I put my hand on the Bible. This is a
15 picture of our --

16 Q Do those pictures fairly and accurately represent
17 what it looked like at Lake Greenwood on that
18 weekend?

19 A Yes, sir.

20 Q Do you know who took the pictures?

21 A I did.

22 Q Okay.

23 MR. MATHISON: No objection.

24 THE COURT: They come in and you understand
25 they could have been taken in Maine two weeks ago, but he

1 testifies they were taken that day.

2 MR. MATHISON: Your Honor, may it please the
3 Court, they've got -- there's a handwritten date on the
4 back of this nondescript handwriting.

5 THE COURT: We can certainly correct that.

6 MR. MATHISON: Still over my objection.

7 THE COURT: I understand.

8 By Mr. Lee:

9 Q On the back of those, does it indicate the date they
10 were developed?

11 A Yes, sir. They were developed at Walgreen's on May
12 13, 2004.

13 Q Okay.

14 A And --

15 Q Have you ever been to the lake when it was snowing
16 other than that time?

17 A Sir, I've been going to the lake for 30 years and I
18 don't recall it ever snowing. That was a fantastic
19 weekend for me and the boys. We had a wonderful
20 time.

21 Q It is your testimony that those pictures were taken
22 at the lake that weekend?

23 A Yes, sir.

24 MR. LEE: I would move these be introduced.

25 THE COURT: All right.

1 THE WITNESS: Can I get down.

2 THE COURT: Unfortunately, I need to ask if
3 you need to ask them about anything else Mr. Templeton?
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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

COURT OF COMMON PLEAS
2007-CP-07-2373

MATTHEW S. MCALHANEY,
Plaintiff,

vs

RICHARD K. MCELVEEN a/k/a
RICHARD K. MCELVEEN, SR.,
Individually and d/b/a BATTERY
CREEK MARINA, THE GREAT
PUMPKIN, LLC LINDA MCELVEEN,
RICHARD K. MCELVEEN, JR., and
BILLY JOE BYRD,
Defendants.

TRANSCRIPT OF RECORD

RICHARD K. MCELVEEN, SR.,
Defendant

JANUARY 21, 2010
BEAUFORT COUNTY,
SOUTH CAROLINA

vs

MICHAEL J. MCEACHERN,
Additional Party on the
Counterclaims,

B E F O R E:

HONORABLE J. ERNEST KINARD, Judge.

Deborah E. Everett
Official Court Reporter

A P P E A R A N C E S

ROBERT V MATHISON, JR., Attorney at Law
Attorney for the Plaintiff

SCOTT W. LEE, Attorney at Law
Attorney for the Defendant

MORGAN S. TEMPLETON, Attorney at Law
Attorney for Additional Party

WILLIAM W. WATKINS, JR., Attorney at Law
Attorney for Additional Party

I N D E X

NO WITNESSES INTRODUCED

EXHIBITS

COURT'S EXHIBIT NO. 1

Motions for JNOV, etc.

COURT'S EXHIBIT NO. 2

Motions for Review of Damages

1 (Whereupon the hearing commenced at 9:30 a.m.)

2 THE COURT: Here we are. I allowed you a few
3 minutes to give you a chance to settle. Apparently, y'all
4 haven't settled anything. Are you ready?

5 MR. SCOTT W. LEE: Your Honor, I've passed up
6 copies of two motions I filed along with a few cases that are
7 cited in the motion that I've provided this morning. I've
8 provided copies with opposing counsel.

9 Judge, as you know this case had a verdict last Friday.
10 You informed me that we would schedule these post trial
11 motions for today with regard to the verdict so issued by the
12 jury.

13 Judge, I think the easiest place to start probably is,
14 if it's granted, I think will make the second motion moot.
15 Our first motion on behalf of McElveen Sr., his wife, Linda
16 McElveen, and his son, Richard McElveen Jr. And I've written
17 all these out. The first basis for---and this is pursuant to
18 Rule 50 and Rule 59 of the South Carolina Rules of Civil
19 Procedure.

20 Number one, we are moving for a new trial on the
21 grounds---and I'm just trying to make a record, your Honor---
22 on the grounds the trial judge erred in failing to remedy his
23 instruction to the jury that the statutory immunity for a
24 person reporting suspected child abuse does not apply if the
25 statement is fabricated.

1 I went back and looked at my notes. I made an objection
2 at the time the charge was given. Your Honor, our position
3 is that---that---that charge could reasonably be construed
4 that if a jury believes that later on the child's assertion
5 turned out to be false that the statutory immunity would not
6 apply to the person reporting it. Even if they acted in good
7 faith.

8 In light of the argument we made at closing argument
9 prior to your charge, I think the prejudice is evident there
10 and that is the first grounds for a new trial and I believe
11 it was objected to at trial and our objection was overruled.

12 And again, our concern is that they could have
13 misinterpreted---I believe you used the word fabricated---

14 THE COURT: You just make your record.

15 MR. LEE: Yes, sir.

16 THE COURT: You could have handed up instructions
17 to the charge. I would have instructed what you presented.
18 From the facts as presented I don't see anything wrong with
19 that but I'm not ruling on anything today. For the record
20 you can put them on the record if it'll make you feel better.

21 MR. LEE: Well, it would make me feel better but I
22 think I need to do it for my client's benefit---

23 THE COURT: I understand that. Usually at motion
24 hearings you don't even bring clients so you are arguing for
25 me. Not for the benefit of your client at this point. You

1 have the absolute right to appeal if you don't get a
2 favorable ruling. Go ahead.

3 MR. LEE: I understand, your Honor. I'm not doing
4 it for his benefit, I'm doing it for the benefit of this case
5 later on down the road.

6 THE COURT: You got your grounds there---

7 MR. LEE: Yes, sir. And again, I can go through
8 these orally or if you just want me to submit this written
9 motion---

10 THE COURT: That's up to you. I'm not gonna forbid
11 you from stating your grounds on the record.

12 MR. LEE: Yes, sir.

13 THE COURT: I just don't need any great
14 elaboration---

15 MR. LEE: I know---I'm sorry. I know you are
16 familiar with the case---

17 THE COURT: We had a week long trial.

18 MR. LEE: Yes. Your Honor, the second one is for a
19 new trial based upon what we believe was an improper charge
20 was objected to regarding the---for the purpose of assessing
21 punitive damages. There was some language---punitive damages
22 are assessable against a defendant if an ordinary, reasonable
23 person would have checked further before reporting what was
24 reported.

25 Number three, for a new trial on the grounds that the

1 trial judge failed to adequately remedy Plaintiff's counsel
2 eliciting testimony regarding Defendant's counsel---meaning
3 me---statements and actions, after repeated admonishments to
4 refrain from doing so.

5 That came up quite a few times. I understand that you
6 instructed the jury that I wasn't able to defend myself, but
7 in our opinion it continued to go on and we had no way of
8 defending those accusations---

9 THE COURT: And I admonished him every time and
10 explained it to the jury.

11 MR. LEE: Yes, sir. The fourth for a new trial in
12 that despite that you told us on a sidebar that you were not
13 going to allow anyone to attack the system. Plaintiff's
14 counsel, nevertheless, incorporated that into future
15 arguments and his ultimate closing argument to the jury. We
16 refrained from doing so based upon your previous
17 admonishment.

18 Five, for a new trial on the grounds that the trial
19 judge failed to direct a verdict in Defendants' favor at
20 close of Plaintiff's case and at subsequent times the motion
21 was renewed. Essentially a JNOV, which we are compelled to
22 make.

23 Judge, number six. For a new trial on Plaintiff's civil
24 conspiracy claim against McElveen, Jr. on three grounds.
25 One, that the jury failed to offset the uncontroverted amount

1 of three hundred dollars paid to Plaintiff as criminal
2 restitution. That was actually the minimum and I believe the
3 Plaintiff even testified that three hundred of that went
4 towards his damages.

5 Junior testified that he paid like fifty-six hundred and
6 there was an argument that most of that applied to Milton
7 Kelly who broke his leg. We believe that was improperly---it
8 was not offset as it should have been. The award was six
9 hundred and thirty-five dollars, which is five hundred
10 dollars which is what the Plaintiff testified was the damage
11 for his car getting keyed. The hundred and thirty-five
12 dollars in medical bills so it's easy to see where they got
13 the six hundred and thirty-five dollars---

14 THE COURT: All that's an admission but I also have
15 those charges on humiliation and embarrassment, pain and
16 suffering and so forth. That is a way they could have
17 arrived at it.

18 MR. LEE: Yes, sir. And third is that by finding
19 against McElveen, Jr. and in favor of Defendant Byrd that
20 it's inconsistent verdict. I understand argument is that
21 there may have been other conspirator's but that's---that's
22 the three reasons under number six.

23 Getting to the meatier issues. Number seven, for a new
24 trial on the grounds that the verdicts were so excessive that
25 the Court, sitting as a "thirteenth juror" should set aside

1 the verdict.

2 And also sitting as the "thirteenth juror" the evidence
3 doesn't justify the verdict because justice was not served by
4 the verdict, and the evidence did not justify the result.

5 And then, perhaps most importantly your Honor, is number
6 nine. And that's for a new trial absolute on the grounds
7 that the verdicts were so excessive, so grossly excessive, so
8 as to shock the conscience of the Court and to clearly
9 indicate that the figure reached was a result of passion,
10 caprice, prejudice, partiality, corruption or some other
11 improper motives and to the extent the awards are grossly
12 excessive, they further no legitimate purpose and constitute
13 an arbitrary deprivation of property as to Mr. McElveen Sr.
14 and Jr. which, as you know, due process considerations it
15 must be---and I filed a separate motion strictly dealing with
16 the punitive damages that I can get into at some point---

17 THE COURT: Alright, now. I don't see that. Is
18 that up here?

19 MR. LEE: It is attached. There's a motion for a
20 new trial and also---and I'm happy to address those at this
21 time or continue to go through this first motion.

22 THE COURT: You're through with your first motion,
23 right?

24 MR. LEE: There's a couple other grounds that we---

25 THE COURT: Go ahead.

1 MR. LEE: Number ten, for a new trial *nisi*
2 *remittitur* on the grounds the verdicts were unduly excessive.
3 We take the position that this is clearly across the line
4 between being excessive versus being grossly excessive into
5 the grounds of---basis for a new trial absolute.

6 And eleven, for a new trial *nisi remittitur* on the
7 grounds that the verdicts were so excessive that they were
8 attenuated by passion, caprice or prejudice.

9 That's to---all of those deal with Plaintiff's cause of
10 action against---against my clients.

11 And I would also include that the verdict against Linda
12 McElveen and McElveen, Jr. were so closely related to the
13 other causes of action that the grossly excessive amount of
14 the verdict against McElveen, Sr. tainted those verdicts to
15 the extent that you can't possibly cherry-pick some of those
16 out because we believe that what went on in the jury room---
17 if they are acting improperly, it's as to the whole case not
18 just those two.

19 Your Honor, then briefly, as to Defendant McElveen,
20 Sr.'s causes of action. He had a cause of action for liable
21 against McEachern and slander against McAlhaney. For a new
22 trial. Evidence does not justify the verdict in Plaintiff's
23 favor. Judge sitting as a "thirteenth juror" should set
24 aside the verdict because justice was not served by the
25 verdict, and the evidence did not justify the result.

1 Same argument as to McElveen Sr.'s slander cause of
2 action, which was---which they found for Plaintiff under the
3 equitable theory that the extremely excessive verdict shocked
4 the conscience of the Court to such an extent so as to taint
5 the legitimacy and fairness of the verdict under the "fruit
6 of the poisonous tree" doctrine.

7 Same arguments for the liable action against McEachern,
8 which was a defense verdict. That the evidence doesn't
9 justify it sitting as the "thirteenth juror" should be
10 overturned at that the sheer magnitude and over excess of the
11 awards against McElveen Sr. so tainted the jury process as
12 to---to be clear and convincing evidence that those---those
13 verdicts are suspect, as well and the verdict should be
14 overturned in toto.

15 Those are for my New Trial Absolute, New Trial Nisi and
16 JNOV.

17 THE COURT: Alright. As far as McEachern is
18 concerned you can't seriously make those arguments; can you?
19 You want a new trial. You sat through the whole week and
20 then in your closing arguments you just asked for a dollar in
21 the way of punitive damages. Forget it. We're not gonna
22 spend another week in a trial when you only want a dollar
23 from it. That's over. That's all I move on this point.
24 Unless you want a new trial?

25 MR. MORGAN S. TEMPLETON: No, your Honor.

1 THE COURT: You agree with that; don't ya'?

2 MR. TEMPLETON: I do, your Honor.

3 THE COURT: That's how it shook down. You hit him
4 for a dollar. We don't want anything out of him. Don't want
5 anything out of him that's what you---the jury gave.

6 MR. TEMPLETON: Yes, sir. There were some
7 additional things---

8 THE COURT: Put it on the record. Got to justify
9 you coming here today.

10 MR. TEMPLETON: It was also the fact that McElveen
11 Sr. testified in cross-examination that he was not seeking
12 any actual damages that could be quantified. Additionally,
13 he did not know of any reputation damages or what I would
14 characterize as intangible damages.

15 Therefore, there was no evidence of that plus the Court
16 just indicated the closing statements made by counsel during
17 closing argument did not seek to illicit any significant
18 award from---from the jury as it relates to Mr. McEachern.

19 The other part of it is that the main theory of our case
20 was that truth is an absolute defense. We presented evidence
21 through direct cross examination of Mr. McEleveen Sr. being a
22 liar in his business as being truth.

23 There was no evidence elicited through direct
24 examination of any witness or cross examination of any
25 witness indicating that that statement was not true. So, our

1 position would be that the jury had no evidence for which to
2 find anything other than truth of an absolute defense and
3 find in Mr. McEachern's favor.

4 Last but not least, as I read Mr. Lee's motion the
5 "thirteenth juror" doctrine, which is what he has put in his
6 motion, does not apply if the trial court finds that the
7 verdict nearly inadequate or unduly liberal---"thirteenth
8 juror" doctrine can not be used to grant a new trial nisi.

9 The trial court would abuse it's discretion granting a
10 new trial nisi based on the "thirteenth juror" doctrine under
11 those circumstances and that's the Bailey versus Peacock
12 case, 455 S.E. 2d 690 dealing with an additur situation. And
13 the Scoggins versus McClellian case, 468 S.E. 2d 12, dealing
14 with a remittitur situation.

15 So, with that said we certainly agree with the Courts'
16 ruling. I think I understand the ruling denying the request
17 for a new trial as to Mr. McEarchen and we'd ask for a
18 judgment---

19 THE COURT: Obviously I'm aware of all that. I
20 just wanted it to go on the record.

21 MR. TEMPLETON: Yes, sir.

22 THE COURT: Y'all aren't the real contestants here.
23 Okay. You agree with everything?

24 MR. ROBERT V. MATHISON, JR.: No, sir. As you
25 might expect, except I do agree with you with respect to

1 Scott's first ground for JNOV or a new trial. He believes
2 the instruction was either incorrect or inflated with respect
3 to fabrication not being entitled to immunity. My
4 understanding was that your instruction indicated that it was
5 a situation where immunity would apply unless there was
6 something that indicated a lack of good faith. Specifically,
7 bad faith, such as a fabrication. If he had wanted a
8 different instruction he could have handed one up. He did
9 not. I don't believe that there was ever any confusion. I
10 believe that a fabricated story, by it's very nature, amounts
11 to a story submitted in bad faith. It would strictly be
12 immune.

13 With respect to item number two on Scott's list---
14 forgive me for not being fluent in these, but I just got them
15 moments before you did. He indicates that there was an
16 improper jury charge with respect to willful, wanton or
17 reckless. There was no objection made to any jury charge.

18 The assessment of punitive damages was done on a
19 standard charge---

20 THE COURT: I usually just do that off of my head
21 but I basically read that from Anderson's Charge so---

22 MR. MATHISON: Yes, sir. To my way of thinking it
23 was a conventional charge.

24 THE COURT: Right.

25 MR. MATHISON: It is, I believe, within the pervue

1 of counsel to submit, if they want it, a charge on the
2 constitutional limitations that come from Gore. No such
3 charge was submitted by any of the parties. Not just the
4 Defendant McElveen. None of us submitted that charge and
5 therefore I don't believe that's any basis for upsetting this
6 case on any grounds.

7 And the third is for a new trial because judge failed to
8 adequately remedy Plaintiff's counsel eliciting testimony
9 regarding Defendant's counsel statements and actions after
10 repeated admonishments to refrain from doing so.

11 May it please the Court, I believe that your
12 admonishments were directed to the verdict, if I'm correct,
13 on two or three different occasions and said that they were
14 to disregard the evidence and said that Mr. Lee was not in a
15 position to defend himself.

16 I would point out that at the outset of this case, when
17 the case was served, on July 29th, we sent a letter to Mr.
18 McElveen indicating that we believed that Mr. Lee might be a
19 witness in this case.

20 THE COURT: That---that does not matter. Here is--
21 -you were not admonished. I just explained to the jury that
22 you were stopped before beginning because it could end up
23 being a mistrial and he would become a witness and then we'd
24 have to start over. That's all.

25 MR. MATHISON: And the point---

1 THE COURT: I continued that. I never told you not
2 to do it. I only pointed out the consequences if you
3 pursued. Which you wisely did not pursue; right?

4 MR. MATHISON: Yes, sir. I did not.

5 THE COURT: Admonishment is if I turned you in for
6 a grievance. I haven't done that yet. Go ahead.

7 MR. MATHISON: In addition, I would point to
8 defamation testimony in this case that indicates that one of
9 the first three people that Ms. Linda McElveen contacted
10 about this was her husband's domestic relations lawyer who
11 happened to be Mr. Lee, and since it was her husband's
12 lawyer---

13 THE COURT: Why---why are you even going into this
14 since I've indicated that ground was not---

15 MR. MATHISON: Thank you, your Honor. Item number
16 four---

17 THE COURT: If you still want to hammer it; you
18 don't want to hammer it; do you?

19 MR. MATHISON: No, sir. I was just trying to
20 provide the grounds. Item number four. This is the
21 Plaintiff's counsel repeatedly attacked the judicial system.
22 I concede that there was a sidebar and I concede that you
23 said that specifically to me, believing that I was imputing
24 Judge Smoak for having issued an ex parte restraining order
25 which transferred the custody, summarily, from one party to

1 the other. However, after the sidebar, I made no reference
2 to that at all with the exception of my final argument---

3 THE COURT: Over everybody's objection I explained
4 all that to the jury. So that took care of that.

5 MR. MATHISON: Yes, sir.

6 THE COURT: About what ex parte orders are and so
7 forth. When you argued to the jury you mentioned that I had
8 admonished you for that. I corrected that and said I was---
9 you were not ever admonished for that---that I had instructed
10 them to the procedure. That's all. I further said something
11 like you have to say the system was abused to get the abuse
12 of process claim in.

13 MR. MATHISON: Specifically, my argument was that
14 we were not attacking the system, and that what eventually
15 happened is that a system that was designed to work on honest
16 information, properly submitted, was subverted by dishonest
17 information improperly submitted.

18 THE COURT: That was your case and I didn't
19 interfere with that.

20 MR. MATHISON: But I wanted---he's got it stated in
21 the inverse here that somehow I continued to attack the
22 system. That was not the case in my argument.

23 Item number five simply asks for a new trial because you
24 failed to direct a verdict and he's entitled to one. I can't
25 tell on what grounds those are being argued so I don't

1 believe that I need to respond.

2 Item number six indicates that there was an
3 uncontroverted three hundred dollars. That was
4 uncontroverted. On the record, the three hundred dollars we
5 have received, however, I believe that the jury could have
6 found that there was pain, suffering, shock, mental anguish
7 which we put all that in the record. They could have come up
8 with a way of coming back with the compensation. If they
9 did, perhaps were damages.

10 As the Court noted before the charge, McElveen Jr. could
11 and would be liable for conspiring with others who were not
12 necessarily parties to this case. And the jury could have
13 found that even while they were exonerating Billy Joe Byrd.

14 Item number seven asking for a new trial on the grounds
15 that the verdicts were so excessive that you sitting as the
16 "thirteenth juror" should set aside the verdicts.

17 I think what he's actually saying is he's asking for a
18 new trial absolute because the jury was moved by caprice,
19 passion, or prejudice. Those are the magic words. If I look
20 at the verdict I can see where the jury parched the testimony
21 of the Plaintiff and awarded actual damages in sums that were
22 specific---so specific that they coincided exactly with the
23 special damages, which with an abundance of caution we put in
24 the record to make sure that we had special damage if we
25 needed it.

1 So that from a practical standpoint, the thousand
2 dollars reflected in the liable verdict was in fact the money
3 paid Cory Fleming to write the letter to discourage further
4 defamation which is dated November 21st, 2003.

5 The sixty-one thousand dollars included in the slander
6 verdict, again just against Mr. McElveen Sr., was the sixty-
7 one thousand dollars that we had testimony to reflect it was
8 a loss of income during the year 2004. Based on the
9 comparative income between 2003 and 2004.

10 The only area in which there might be something that
11 needs to be addressed is punitive damages. Punitive damages
12 were awarded, not by the jury against everyone, only against
13 Mr. McElveen Sr., and only on the liable and the slander
14 causes of action. And to my way of thinking, that was the
15 jury's way of---

16 THE COURT: Actually they gave five thousand
17 punitive against Junior for smashing him in the nose.

18 MR. MATHISON: Yes sir. I don't believe anybody's
19 complained about those---

20 MR. LEE: (INAUDIBLE)

21 COURT REPORTER: Did you say something?

22 MR. LEE: That's my next motion. It includes
23 McElveen Jr.

24 MR. MATHISON: What I'm suggesting is that the jury
25 was very careful to differentiate between the Defendant's to

award actual damages, with the exception of the relatively small verdicts that were awarded against Linda McElveen and Rick McElveen Jr., did not include any reputation damage. And I believe, awarded the three point two five million dollars (3.25 Million) in punitive damages because of conduct that was proven to be reprehensible, repeated by Rick McElveen Sr. and that consequently, regardless of what the Gore Factor Review, which I agree with Mr. Lee would have to take place. Regardless of what that result is, the fact that the jury returned a large verdict on punitive damages against just one individual, who we believe was demonstratively culpable for everything that happened, should not affect your ruling on a new trial absolute. As opposed to a new trial nisi remittitur, which he's also moved for.

Again, sitting as the "thirteenth juror", we think that that would improperly invade the province of the jury and we think that the magnitude of the punitive damage award was shaped by the fact that the jury, which has not been instructed on the Gore Factors, or on other factors like Gambel versus Stevenson, would bring back a verdict which was designed and make an example and to discourage this kind of conduct occurring again and they did that. Now they may have done it excessively, in this instance, but with out the instruction they would have had no reason not to.

Consequently, we think the verdict is fair with the

1 exception of the punitive damages, which would have to be
2 reviewed under any set of circumstances under the Mitchell
3 case, which Mr. Lee has handed up to you and we agree.

4 THE COURT: Alright.

5 MR. MATHISON: Again, that would be the response to
6 item number nine, which I believe is functionally the same as
7 the one he argued before.

8 Item number ten is a new trial *nisi remittitur*. We
9 don't believe that any of the actual damages should be
10 remitted. We believe you should conduct a post-trial review
11 of the punitive damages and apply the Gore Factors as
12 announced by the case---as announced in the Mitchell case,
13 which was decided in September, a re-hearing denied in
14 December. It is the freshest, most significant precedent
15 we've gotten in South Carolina. There is the Duncan case
16 that was decided by the Court of Appeals about a month
17 earlier. We are offering to argue from that case because
18 there's slightly different language but with respect to
19 McElveen Sr.'s causes of action, there was only one
20 allegation that went to the jury against Mr. McAlhaney, that
21 was that Mr. McAlhaney had told people that Mr. McElveen Sr.
22 had basically pursued his case against McAlhaney for purposes
23 other than those which were appropriate. And we think there
24 was adequate evidence for the jury to find that that simply
25 was not the case. We don't see any basis for overturning

1 that verdict.

2 I'm not familiar with "fruit of the poisonous tree" in
3 the context of a defamation case, your Honor. But, again,
4 the Plaintiff has attempted to use what he describes as the
5 extremely excessive verdicts against Mr. McElveen Sr. to set
6 aside the imminently reasonable verdicts against McElveen Jr.
7 and Linda McElveen. I don't believe that that is
8 appropriate. I think that the jury exercised it's function
9 to discriminate between the types of conduct that were
10 practiced upon the Plaintiff. And in so doing, they decided
11 that Mr. McElveen Sr. was malicious and wicked and that he
12 deserved to be punished.

13 They evidently, with the exception of the five thousand
14 dollar award against McElveen Jr., did not make the same
15 conclusions about Linda McElveen or McElveen Jr. and I think
16 that's their pervue---that's their prerogative.

17 That concludes my argument in response to Mr. Lee's
18 argument, your Honor.

19 THE COURT: Alright. Anything else?

20 MR. LEE: Not as to that motion, your Honor. I
21 think the real meat of the argument is in the next one and I
22 believe Mr. Mathison's correct in that believe a review of
23 any punitive damage award is mandated by the case law and
24 that's what the second motion is about. It's a motion on
25 behalf of McElveen Sr. and Jr., move for a review of the

1 jury's punitive damages award. I'm sure that you're---

2 THE COURT: Here's---here's how it shakes down.

3 Except for punitive damages all motions are denied. On abuse
4 of process and so forth, the verdicts against Linda McElveen,
5 if the jury found she did all those, are reasonable. The
6 only person we are talking about is McElveen Sr. and punitive
7 damages. Massive punitive damages awarded against him. As
8 for Jr., punitive damages are not---under his testimony he
9 lay in wait for two hours. Somebody else had blocked the car
10 in. It was easy for the jury to find he conspired to smash
11 the boys' nose. So there ya' go. That stands. All we are
12 talking about is punitive damages now.

13 As far as punitive damages go, we all understand 3.2
14 million, 3.2 and a half million can not stand under any
15 scenario. Appellate Courts are policy courts. They are very
16 attuned to the doings of the Supreme Court and punitive
17 damages, in general, are under attack from every corporation
18 in America as well as the defense. Starting with that State
19 Farm case. They've been knocked down and knocked down and
20 knocked down. We started in this case with the Gambel case
21 and those ten factors. Under those ten factors, without
22 running over them, all those were'nt present in the case. In
23 fact, I instructed the jury on all of them but about two of
24 them. I was reading them from the book. I went on punitive
25 damages. If you'd like for me to I can run all over that.

1 Mentally I have. I've got it right here. I'm not saying he
2 did anything. The evidence was there to show he engaged in a
3 long series of efforts. In the light most favorable to him
4 he didn't, of course. In the light most favorable to him.
5 McAlhaney was only brought into it so that McElveen Sr. could
6 get custody of the grand kids and because of that he engaged
7 in all these procedures that ended up with him being
8 incarcerated and locked up and being accused of committing
9 heinous crimes and so forth and so forth and so forth. Which
10 I'm not saying he did it at all. There was evidence there
11 from which the jury could have found that.

12 Second thing is the extent of harm to the Plaintiff.
13 Plaintiff's obviously harmed when he's incarcerated and
14 accused of being a child molester. Locked up. Small town.
15 It's in the paper. Everybody knows and once you are accused
16 of that it just stays with you and you are stigmatized for
17 life, even if you are subsequently exonerated.

18 Defendants' degree of culpability---that's the jury
19 situation. Obviously they found that McElveen Sr. was since
20 they didn't handle McElveen Jr. and they didn't handle Linda
21 McElveen with the punitive punishment that should have been
22 imposed; that's what we are going to talk about.

23 The duration of the conduct; it lasted a good little
24 while. In the light most favorable to him, the Defendant's
25 awareness that was in front of the jury. Existence of

1 similar past conduct; you can go all the way back to where
2 they read things from the past from some affidavit he had
3 accused somebody of being capable of doing anything. So then
4 he accuses him in writing of being capable of doing anything.
5 Jury could find that that conduct went on for over ten years
6 on his part. I'm not saying that he did. Similar past
7 conduct, evidence is there of business dealings and so forth.
8 I'm not saying he's not a good businessman or what have you.

9 Likelihood that award would deter the Defendant and
10 others from engaging in similar conduct; certainly. The
11 press is gonna' publish it. Everybody knows now not to
12 defame anybody and he did. The jury found that he did.

13 Whether the reward is reasonably related to the harm
14 likely to result is far in excess of that. We can see that.
15 The defendant's wealth and ability to pay. He needs to take
16 care of the grand kids. Not to give everything to him, so
17 based on the evidence presented, his net worth approached two
18 million, not even quite two million. 3.25 million he's in
19 bankruptcy tomorrow. So the award was too---while his
20 ability to pay is just a factor, he can't pay it so it has to
21 be reduced. What else y'all have to talk about?

22 MR. LEE: Actually there's two 3.25 million dollar
23 punitive verdicts.

24 THE COURT: Well, that depends on how ya' read it.
25 I told y'all to send declaration form.

1 MR. LEE: Yes, sir. Well, you've gone through the
2 factors, your Honor. I would just ask that the two written
3 motions that I've filed be filed as a Court's Exhibit so that
4 I'm on the record as bringing these motions up---

5 THE COURT: Certainly---

6 MR. LEE: Rather than have to go through each
7 factor. I think suffice it to say, as far as Mr. McElveen is
8 concerned, net worth was testified as close to two million
9 dollars. If you interpret it as a 3.25 or a 6.5 million
10 dollar punitive damage award, he's fifty-seven years old.
11 He's retired. He's taking care of two grand kids. He
12 doesn't have a lot of earning capacity left. And a three
13 hundred and twenty five percent punitive damage award---

14 THE COURT: It's not---I'm not going to argue---

15 MR. LEE: Is outrageous and our position is that---
16 and then when you do the math on the ratio to the actual
17 damages versus the punitive, the number is three thousand two
18 hundred and fifty as to the liable and I think five hundred
19 something as to the slander. And those numbers are so skewed
20 and so far out there that it's our position that you have no
21 choice but to grant a new trial absolute because of the sheer
22 number that is out there---

23 THE COURT: We don't give the jury guidelines on
24 that. If we had given them some guidelines; maybe so. The
25 jury feels like when you accuse someone---and they found

1 unjustifiably so---for ulterior motives for being a child
2 molester and have them incarcerated, you need to sustain the
3 most powerful message delivered that that's bad conduct.
4 Which this jury did.

5 MR. LEE: Your Honor, I would just point out---I
6 know there is no way to know exactly what the jury was doing
7 but I would suggest to you that this is one of those cases
8 where it is very reasonable to suggest the source of the
9 damages that the jury came up with. A thousand dollars for a
10 letter from Cory Fleming. Sixty-one thousand dollars in lost
11 wages, even though his income went to a hundred and seventy
12 five thousand the next year. Which made up for the sixty
13 thousand dollars.

14 THE COURT: That's speculating on the verdict. The
15 verdict can be sustained on other grounds. It's general
16 damage to reputation; period. You don't have to prove with
17 specificity and so forth. Bottom line, actual damages are
18 not going to be changed. Again, they only leveled massive
19 punitive for Mr. McElveen Sr. And that was the theme of
20 their case which the jury bought. I'm not saying they should
21 have but they did.

22 MR. LEE: So, I will say this---

23 THE COURT: Here's the bottom line. You do not get
24 a new trial in front of me. I mean it's been one week.
25 Things have been going on for years. I did everything in my

1 power to assure we did not get a mistrial and that no glaring
2 errors were there. But the Appellate Courts being policy
3 court cannot allow this type verdict to stand. So they're
4 going to set it aside for some reason. And they may even set
5 it aside on a jury charge they would have already backed up
6 on another case. But that's neither here nor there. That's
7 where we are.

8 What we are talking about is cutting the punitive
9 damages *nisi*. And I don't know. Ya'll can argue on and on.
10 You can discuss those cases. You can file some briefs to me.
11 I'm not ruling on that today. I'm gonna give ya'll a chance
12 to work it out because one, he knows he can't stand on appeal
13 if I just affirm everything right now. Two, you do too. And
14 so again a verdict of three million or six million is like a
15 hundred dollars if you are not gonna get a penny. Because
16 people are filing bankruptcy and so forth and dragging it out
17 and what have you. So between y'all seasoned attorneys you
18 should be able to work it out. If you can't work it out
19 y'all prepare me some proposed orders. At this point all of
20 these motions are denied except new trial *nisi* on the
21 punitive damages. I'all can't work it out, you suggest
22 figures in your proposed orders, I'm not telling you to send
23 me an order saying that, you can send me an order granting
24 you everything. I'm not gonna sign it however. It's in your
25 best interest to address what you think would be fair

1 punitive damages. The award stands. You still can appeal.
2 Anything else? I think I've covered it all. I'm here and
3 y'all are there---or if you need another hearing on some
4 facts. I'm here for six months.

5 MR. LEE: Your Honor, our position is that a new
6 trial absolute is---

7 THE COURT: You're not gonna get it---

8 MR. LEE: ---is the final remedy and we stand by
9 that---

10 THE COURT: You are not going to---

11 MR. LEE: Yes, sir. That's our position and it
12 continues to be our position. If it needs to be appealed, it
13 needs to be appealed. I just don't want to delay----I'm
14 going to be totally honest with you, we are not going to
15 submit you a number. I don't think that would be
16 appropriate.

17 THE COURT: Alright, you can submit your order
18 addressing everything you like.

19 MR. LEE: Yes, sir. And I'm not trying to be
20 disagreeable---

21 THE COURT: I'm not being disagreeable. I'm going
22 to tell you how it is.

23 MR. LEE: Yes, sir.

24 THE COURT: How it is is you really need to get
25 with him and settle the case. But that's neither here nor

1 there. That's for y'all to do. What you are going to get if
2 you don't submit me a number is a higher number that gets
3 sustained on appeal you are gonna be sorry you didn't submit
4 a number.

5 MR. LEE: Well, my concern, your Honor, is we are
6 waiving any appeal we might have by submitting any number---

7 THE COURT: I don't think so. I denied your
8 motion---

9 MR. LEE: I'll talk to my client about it.

10 THE COURT: And I'm not forcing you to submit a
11 number. I'm only saying if you don't submit a number,
12 chances are the number I'm going to cut it to or a new trial
13 is going to be more than it would have been if y'all had
14 gotten together and made some reasonable number. And from
15 that point you can take it up. He wants to take it up anyway
16 because he doesn't feel like he did anything wrong. That's
17 neither here nor there. We spent a whole week on it and if
18 you try it again---

19 MR. LEE: I would trust the Court to come up with a
20 reasonable number whether I submit something or not---

21 THE COURT: Alright. That's up to you. What you
22 need to do is get with him and y'all see if you can work it
23 out, if you can't---

24 MR. LEE: Yes, sir.

25 THE COURT: Y' all just take it on up but you are

1 going to be taking it up with a higher number than if you
2 submitted one.

3 MR. LEE: I'm not trying to argue with you, Judge--

4 THE COURT: I'm certainly not trying to argue---

5 MR. LEE: (Mr. Lee talking over the Judge)---
6 getting a higher number based upon our refusal to negotiate
7 which I don't think should have anything to do with the
8 ultimate decision if it's nisi.

9 THE COURT: It's not but I don't know what---you
10 know all those cases that are here before me and everything
11 I'm just gonna arbitrarily give it my best shot on this. I
12 don't want to put him out of business and put his
13 grandchildren in an orphanage or anything like that either,
14 ya' know. On the one hand and the other hand the jury found
15 egregious conduct and awarded punitive damages. I think they
16 are entitled to have it cut to the maximum amount I feel
17 could be sustained on appeal and no more than that. I don't
18 get personally involved in that. That might be too high---

19 MR. LEE: I would just ask that both motions be
20 made a Court's Exhibit and any arguments contained therein be
21 incorporated by reference rather than have to go through
22 every issue---

23 THE COURT: You don't have to go into every issue.

24 MR. MATHISON: Your Honor, I'm not going to take
25 the position that his arguing motion for new trial nisi

1 waives his right to argue for a new trial. I don't think it
2 does. And I'm not going to argue it.

3 THE COURT: I don't think it does either. Let's
4 end it there. And of course, you can appeal. (laughter).
5 Alright, anything else I can help y'all with?

6 MR. MATHISON: For the record, your Honor, the
7 Plaintiff would move for a judgement notwithstanding the
8 verdict against Billy Joe Byrd. Evidence was uncontroverted
9 that he pled guilty to an assault on Mr. McAlhaney. There
10 was evidence in the record that he was complicit with Mr.
11 McElveen Jr. as well as the other six or seven people that
12 were on the scene on December 24th, 2004.

13 THE COURT: Unfortunately, that's denied simply
14 because he said he was not even there. He was not being sued
15 for assault. He's gone.

16 MR. MATHISON: Just protecting the record, your
17 Honor. Thank you very much.

18 THE COURT: Now, does anybody want to submit
19 anything else? How long is it going to take you to prepare
20 an order?

21 MR. MATHISON: Well, since we agree on the
22 principle case and I'm familiar with that case, I would say--

23 THE COURT: I'm not pressuring you.

24 MR. MATHISON: In preparation for this case, your
25 Honor, I have other Judges who are on the warpath trying to

1 get me to do things that I should have done last month. If I
2 could have thirty days I would appreciate it.

3 THE COURT: All I'm saying is I am not going to
4 research all this because I have other things going on, too.
5 And until I get his proposed order, at which point I will
6 read the cases, so on and so forth. There's no need to deal
7 with it until I can deal with it.

8 MR. MATHISON: I'm asking for thirty days.

9 THE COURT: You've got it. I'm not suggesting I
10 will sign his order either. That's why I have the world's
11 famous law clerk to research those issues. Alright. And
12 after he submits his order, you certainly have fifteen days
13 to reply. And after forty-five days from today, I guess,
14 I'll start reading the things. If y'all haven't come to some
15 equitable conclusion, which is highly unlikely, but just
16 letting you know. I don't know of anybody that could live
17 through another trial.

18 MR. MATHISON: Again, just for the record as
19 deferred only asking for a new trial, I'm sure that's denied.

20 THE COURT: Now, as far as the litigants
21 understand, I don't like to even discuss what was there. I
22 have to view the evidence in the light most favorable to the
23 parties. So when I say evidence was there that he accused
24 him of child abuse, I'm not saying he did that. I think you
25 understand. Alright.

MR. MATHISON: Thank you, Judge.

MR. LEE: Thank you, Judge.

(Whereupon hearing ended at 10:18 a.m)

---END OF TRANSCRIPT OF RECORD ---

STATE OF SOUTH CAROLINA	)	IN THE 14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	THE COURT OF GENERAL SESSIONS
	)	2007-CP-07-02373
MATTHEW S. MCALHANEY,	)	
	)	
PLAINTIFF,	)	
	)	
VERSUS	)	
	)	
RICHARD K. MCELVEEN, SR.,	)	
	)	DATE: MARCH 7 , 2013
DEFENDANT.	)	BEAUFORT, SOUTH CAROLINA

HEARING TO RECONSTRUCT TRIAL TRANSCRIPT

B E F O R E:

THE HONORABLE J. ERNEST KINARD

A P P E A R A N C E S:

ROBERT V. MATHISON, JR., ESQUIRE
ATTORNEY FOR THE PLAINTIFF

BLAKE A. HEWITT ESQUIRE
ATTORNEY FOR THE DEFENSE

SCOTT W. LEE, ESQUIRE

PROVIDED FOR: BLAKE A. HEWITT, ESQUIRE

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OFFICIAL COURT REPORTER
SOUTH CAROLINA JUDICIAL DEPARTMENT

1 MR. HEWITT: Good morning, Judge.

2 THE COURT: Good morning. So, what happened?

3 MR. HEWITT: Judge, Blake Hewitt for Mr. McElveen.

4 Don't mean to step on anyone's toes, but what happened is,
5 as you well know, the court reporter's notes were, in
6 several instances, too poor to transcribe, which is not a
7 huge deal, although we can kind of talk about it and see
8 what everybody wants to do. But we might attempt to put on
9 the record today a reconstruction of the directed verdict
10 motions at the close of the plaintiff's case, but then the
11 transcript ends during the fourth day of trial, it looks
12 like right after Mr. McElveen had finished testifying, and
13 so there is no record of the closing motions, no real
14 record of the jury trial and that's where we are.

15 It took us, unfortunately, some time to get the Court
16 of Appeals to send the case back so we could have this
17 hearing. It actually took about a year before we got word
18 from court administration that the transcript was in the
19 state that it's in. So, if that makes sense, that is the
20 five thousand foot view, unfortunately, of what happened.

21 THE COURT: All right. When did we try it? I mean,
22 the case is '05?

23 MR. MATHISON: We tried it January 11th through
24 January 15th of 2010.

25 THE COURT: All right. Of course, the file is pretty

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1 voluminous. It seems like the jury returned a verdict and
2 I reduced it, didn't I?

3 MR. MATHISON: Yes, sir, you did. You reduced the
4 punitive damages award. You denied all the motions by the
5 defendants with the exception of the motion based on what
6 you had charged, which were the Gamble factors,
7 constitutional dimension and then you, ultimately, decided
8 it by relying on Mitchell as well as Gamble.

9 THE COURT: Okay. So, how can I help y'all?

10 MR. HEWITT: Judge, I think it would be very helpful,
11 at least for me, and then I, of course, want to help
12 facilitate whatever would be helpful to Mr. Mathison,
13 because he will need a record, as well, but if we make some
14 effort or have a -- it can be as formal or informal as you
15 like. As I read the cases about this process, the sense I
16 got was that sometimes this is a rather informal procedure,
17 a facilitated discussion, and try to re-create what you may
18 have charged.

19 THE COURT: Well, here's the thing on the charge. Of
20 course, I don't remember, but good luck on that. I'm not
21 saying that I didn't make a mistake, but I have, in
22 twenty-five years, never been reversed on a civil charge.
23 All right? Now, I think maybe Scott gave me one or two
24 that I didn't charge, or I incorporated, and he may have
25 given me one or two, but other than that, there were no

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1 objections to the charge. Tough luck. Nobody liked the
2 outcome, but I mean, the charge, I don't know exactly what
3 I charged, but I can tell you that it was a combination of
4 what the attorneys handed up and strict Judge Anderson,
5 because it was a serious case. I mean, I didn't try to
6 create any novel law at all. I did not charge any unusual
7 proposition of law. But verbatim, I don't know what I
8 charged, and because you haven't, but they have tried cases
9 in front of me, having the benefit of being a speed reader
10 and so forth, I don't actually read them, but I can read
11 them and memorize them short term and do that. If it's a
12 three page thing, I might glance at it, but when I glance
13 at it, I can read it. You know? So, there was nothing
14 charged...

15 MR. HEWITT: I understand, Judge.

16 THE COURT: So, how can I help you with all that?
17 Now, there should be a record of what I didn't charge if I
18 didn't charge something they handed up, but probably it was
19 incorporated. The reason I didn't charge it was because if
20 it was a good proposition of law, it was included in, like
21 Anderson or Ervin's charges, which basically, I prepare
22 Ervin's charges, but that's neither here nor there.

23 MR. HEWITT: It might be helpful if I focus on what
24 I'm interested in a little bit more.

25 THE COURT: All right.

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1 MR. HEWITT: It's my understanding that there was
2 perhaps only one objection to anything charged and that was
3 an objection by Mr. Lee that related to the immunity
4 provision and so that's one area in which I have interest,
5 but the other area in which I have interest in, it's fine
6 if you just say, I would have charged on punitives whatever
7 is in the first edition of Anderson's book, and that's fine
8 and not taking issue there with anything you charged, but
9 it would be helpful sometimes for an Appellate Court to
10 just have the context, not because it was objected to, but
11 because this was what was given the jury. Does that make
12 sense?

13 THE COURT: Not quite.

14 MR. HEWITT: Okay.

15 THE COURT: Now, what I probably did, after defining
16 slander and libel, as far as damages and so forth go, we
17 are talking defamation. I think chances are after defining
18 slander being, you know, oral and all that, libel, written
19 and so forth, I then just zeroed in on what constituted
20 defamation, defamation being the same for libel and
21 slander, which would have deviated some from the Anderson
22 charge book, but the sense of it would have been the same,
23 I think, but I don't recall exactly what I did, but that's
24 what I usually do in these type cases. So, I don't know
25 the content now of any objection Scott made about

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1 privilege, you say, or...

2 MR. LEE: Your Honor, my recollection, obviously is as
3 fuzzy as everybody else's, but I went back and looked at
4 the transcript from the post-trial motions and I believe --
5 and Rob, correct me if you disagree -- I believe that,
6 primarily, my only objection to the charge was something
7 along the lines of, you charged that if there is a
8 qualified or absolute privilege that it does not apply if
9 the story is fabricated, and my objection which you denied,
10 and I believe that was the only objection to the charge,
11 was that I thought it was confusing as to whether or not
12 that related to the report and whether it was in good faith
13 or whether the events being reported actually occurred,
14 because our position, particularly in closing was, even if
15 the jury believes that no abuse occurred, that if the
16 initial report was made in good faith, that did immunity
17 apply, and that was my objection, that I thought the charge
18 was confusing.

19 THE COURT: It could have been, but I don't recall
20 that.

21 MR. LEE: That's the only objection I remember making.

22 THE COURT: I don't recall that, and I would have
23 spent some time on it, but I don't remember what I said,
24 because, you know. I would have clarified that, based on
25 what you had told me and he had told me and I do remember

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1 something about fabrication.

2 MR. LEE: Yes, sir.

3 THE COURT: And immunity wouldn't apply if it was made
4 up, but I don't remember what point or what point or how
5 that was actually said, because I had -- we had discussed
6 that, you know, before I charged whatever I charged on
7 that.

8 MR. LEE: Well, my recollection is that you did not
9 recharge them or clarify that charge. You said, I mean,
10 the law says, I mean, as a whole, the charge is reasonable
11 and understandable and ---

12 THE COURT: I think that's right. I think I would
13 have charged them correct law on that. I could have maybe
14 clarified that, but I elected not to. That's my
15 recollection.

16 MR. LEE: I guess my objection was that it was our
17 position that there was some, essentially a comment, an
18 additional comment aside from the standard charge that was
19 inappropriate and I objected to it and you overruled us and
20 we went on, but that's my only recollection of that
21 objection.

22 THE COURT: Well, I don't recall it, so I can't ---

23 MR. LEE: My understanding is, as Rob was saying
24 early on, I think before we even started we handed up some
25 charges and my understanding throughout the trial was that

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1 you were going to charge the standard Anderson charges and
2 that's what you essentially went on and so that's why I
3 didn't submit charges like credibility of witnesses, burden
4 of proof ---

5 THE COURT: Right. I mean, that ---

6 MR. LEE: --- but that was a long time ago. Yes, sir.
7 That's what I recollect as far as just jury charges go.

8 THE COURT: But I don't charge Anderson verbatim. I
9 mean, I was doing it a long time before he wrote the book,
10 but I charge the sense of what he has written down.

11 MR. LEE: Right.

12 THE COURT: He's a little verbose for me on some of
13 those charges, but the sense of what he charged is, you
14 know, it's solid because that's what the law is.

15 MR. LEE: Yes, sir.

16 THE COURT: And I wouldn't have spent a lot of time on
17 slander, per se and per quod, and all that. I would have
18 just gone over it one time and the jury doesn't know what
19 you are talking about on that, in my experience. The big
20 thing was punitive damages and I obviously didn't hammer
21 them, although the jury did, you know.

22 MR. HEWITT: Judge, if I may, again, I know you said
23 this before, but I just want to make sure. On punitive
24 damages, you think you would have drawn largely from
25 Anderson's book, of the first edition?

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1 THE COURT: I would have done that, basically, and I
2 think that the Campbell case had already come down at that
3 time.

4 MR. HEWITT: I think Mitchell versus Forrest, I think,
5 was pretty brand new then and then Gamble was prior to
6 that, yes, sir.

7 THE COURT: I'm not talking about Gamble. It's
8 Campbell versus State Farm, I think. Wasn't it?

9 MR. MATHISON: Campbell had been decided, Your Honor,
10 but you charged the Gamble factors.

11 THE COURT: I know I charged those factors, the Gamble
12 factors, yeah. That would have been interwoven in it, you
13 know. Those were in -- I generally tell them that these
14 are the factors, all of them don't have to be present, but
15 these are what you can consider and so forth. It's too bad
16 nobody had any insurance and the economy has turned south,
17 too, and he probably doesn't have any money and then once
18 you get a large verdict like that, you can't satisfy your
19 client. He thinks he's planning on retiring off of it,
20 but... I don't know anything else I can help y'all with.

21 MR. HEWITT: Well, as far as jury charges are
22 concerned, Judge, I don't have any particular area, because
23 of course, we only had that one thing that was perhaps
24 objected to and I know that this may be sort of a futile
25 process we're going through, but this is sort of what the

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1 rules are, you know. This is the rule and that's what you
2 do. Obviously, I was not there at trial. I assume closing
3 motions were made. That may not be the case, but this
4 would be the forum for making any sort of record of that.
5 I am going to take a back seat and ask Mr. Lee to again,
6 supply his recollection of what those closing motions may
7 have been and not to get any ruling, you know, here, but
8 just so we can have a record that we can show the Appellate
9 Court that we went through the process of trying to rebuild
10 this, if that makes sense.

11 THE COURT: Okay.

12 MR. LEE: Judge, I guess the easiest way to do this,
13 to refresh my recollection, at least, is to look at post-
14 trial motions that I filed. Obviously, if they weren't
15 preserved at trial, they would be moot and I think that Mr.
16 Mathison had one objection, or I do believe I preserved
17 one. The record, the transcript of the record from January
18 21st, when we had post-trial motions, deals with a renewal
19 of each one of the motions that I had made at trial that
20 were denied. I did file a motion for JNOV, a new trial
21 absolute and a new trial nisi, which you heard and we
22 argued on January 21st. I think that kind of set forth
23 what my post-trial motions were, which incorporated,
24 obviously, motions I had made at trial. Otherwise, I would
25 not have been able to raise them at the post-trial.

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1 THE COURT: And I denied all except the nisi motion, I
2 think.

3 MR. LEE: You did, Judge. My recollection, to the best
4 of my ability at this point, is that I did make a motion
5 for directed verdict at the end of the plaintiff's case,
6 which I think was relatively quickly denied, because
7 clearly there was evidence at that stage to get them past
8 that. I do remember at some point, it may have been the
9 Court doing it susponete, I remember the Great Pumpkin LLC
10 was removed as a party. I don't remember exactly when that
11 was done, but I think that was done at trial.

12 MR. HEWITT: According to the transcript, it was done
13 at the close of his case.

14 MR. LEE: Okay. So, maybe I did win that one. That
15 was the only one, but there was no evidence of that Great
16 Pumpkin, LLC. Judge, I made a pretty standard directed
17 verdict motion and then there were some -- I never make a
18 motion for a mistrial. I did make some objections during
19 the trial, according to my recollection, as to some of the
20 things that Mr. Mathison argued and brought up, such as you
21 instructed him he was not allowed to go after the system, I
22 believe. That was addressed in the post-trial motions, as
23 well. There was a question about the jury charge. I
24 talked about whether or not ---

25 THE COURT: Well, I do recall, now that you mention

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1 it, one factual thing where I told them at some point he
2 made a point about going to a particular magistrate or a
3 judge to get something and I basically said resident
4 judges, you've got to go to them, they don't come to you,
5 jury, and they can ignore the fact that they -- I don't
6 remember exactly, but that was basically it. He couldn't
7 attack the system as such.

8 MR. LEE: Right. And that was the phrase that was
9 used. The other issue that I remember objecting to, again,
10 never moving for a mistrial, because we were so far along,
11 is that, I guess early on I had to stand up and object a
12 couple of times when I felt like I was being accused, along
13 with my client, of doing something untoward and I think you
14 told Mr. Mathison that, "He is trying the case, he can't
15 defend himself when we are trying this case."

16 THE COURT: Right. I don't remember exactly, but
17 something like that came up. Generally, you say they can't
18 make you a witness to the case, you have to get other
19 attorneys or it's delayed or something to that effect.

20 MR. LEE: Right.

21 THE COURT: And that you weren't a party to the
22 lawsuit.

23 MR. LEE: Correct. So, I mean ---

24 THE COURT: But you didn't move for a mistrial on it,
25 anyway, so it doesn't really matter.

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1 MR. LEE: I know and that was, you know, you made
2 every effort to cure anything with the jury and so I never
3 made a mistrial motion. That's my recollection as to any
4 in-trial motions that I may have made at the close of
5 Mr. Mathison's case. I certainly hope, and believe that I
6 renewed those objections at the proper times and preserved
7 them properly for post-trial motions as well as any appeal
8 that may go, but that is my recollection, for the record as
9 to what objections and motions were made during the course
10 of the trial.

11 THE COURT: All right. What else?

12 MR. MATHISON: If it please the Court. With respect
13 to what Scott said, I don't think there is any question he
14 made the motions timely and he renewed them timely and it
15 was all done. I have a recollection of what he described,
16 specifically his being upset about what he perceived as ad
17 hominem remarks about his role in the matter. You
18 cautioned me and in front of the jury. I do recall that.
19 He did not make a motion for a mistrial and ---

20 THE COURT: Right.

21 MR. MATHISON: --- my recollection beyond that is that
22 you denied the motions and that there was not a great deal
23 of debate about it.

24 THE COURT: No.

25 Mr. MATHISON: That's all I can recall, Your Honor.

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1 THE COURT: It's just a factual issue, you know. Too
2 much testimony against Mr. McElveen that if the jury
3 believed, they could return a verdict, so... All right,
4 well, y'all take it to the Court of Appeals and then take
5 it to the Supreme Court.

6 MR. MATHISON: May it please the Court. I don't wish
7 to belabor this, but I think the Court upstairs expects us
8 to create a record. That's what I'm afraid is going on
9 here and, for example, the lady, Ms. Ney, who didn't do
10 what she should as a court reporter, left out all of the
11 depositions that we read into the record on Tuesday.

12 THE COURT: Well, if you read it into the record, you
13 can put it in.

14 MR. MATHISON: My son has gone through and started
15 that process. We've gone through page 359, and basically,
16 using the references which she put in the record, we've
17 reconstituted it. What I want to do, I want to create a
18 record if I can, without putting any words in your mouth.

19 THE COURT: Got it.

20 MR. MATHISON: All right. And accordingly, I've
21 served these and I would like to go ahead and finish this
22 and supplement the record until the last day. There just
23 is no transcript at all on the last day.

24 THE COURT: All right.

25 MR. MATHISON: With respect to the jury charges,

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1 Mr. Hewitt has provided me with a list of things that
2 should have been charged and quite frankly, I think all of
3 them were charged. However, we submitted to you a charge
4 book with our charges and you spurned them, I think with a
5 good deal of condescension, actually, taking the position
6 that you knew about the case and knew what you were going
7 to charge. I can remember that Scott submitted jury
8 charges and the only one that I objected to had something
9 to do with his contention that there was a case that held
10 that abusive process would apply for a plaintiff who had
11 not been acquitted at his trial or previous proceeding and
12 you declined to charge that and I believe that was correct.
13 That would be the rule for malicious prosecution, but not
14 for abusive process. I think the Swicegood case is what
15 speaks to that, but what I would like to do, if you don't
16 object, Your Honor, is to take the list that Blake believes
17 should have been charged, which I believe were charged and
18 basically take them right out of Anderson and use that as a
19 charge instead of saying we don't know what the charges
20 were.

21 THE COURT: Well, it was not verbatim out of Anderson,
22 but it was the sense of them. That's all I can say.

23 MR. MATHISON: All I know is that they weren't mine.
24 Scott knows they weren't his. We agree on that.

25 THE COURT: Well, that's not exactly so, because I

MATTHEW S. MCALHANEY VERSUS RICHARD K. MCELVEEN, SR.

1 read yours and I, you know, might have added some words
2 that you had to some of Anderson's things and vice versa
3 like that, you know, just to try to satisfy everybody so
4 you don't get an objection to the charge, which I didn't
5 get, so... I don't think, since Judge Anderson is no
6 longer on the Court of Appeals, I don't think they want a
7 ripe dissertation on libel and slander. That's not the
8 issue that somebody is going to win or lose on in this
9 case, I don't think.

10 MR. MATHISON: Thank you, Your Honor.

11 MR. HEWITT: Judge, if I may. I appreciate very much
12 the work Mr. Mathison's office has done in putting this
13 sheet together. If I understand correctly, Rob, on the
14 left side, this references pages of the transcript where
15 there is an "unable to transcribe" and then proposes what
16 the -- corrections to that page of the transcript. Is that
17 correct?

18 MR. MATHISON: That is correct.

19 MR. HEWITT: Okay.

20 MR. MATHISON: Actually, it's not correct -- well,
21 some of them are corrections, but most are concluding what
22 was omitted.

23 MR. HEWITT: Okay. If that's the case, this hearing
24 is not to set up some sort of sandbag where we say well,
25 you couldn't build a record so, you know, you lose. I

1 mean, the cases say that's not the rule and so I'm glad to
2 state that for the record. So, I have no problem with
3 making this an exhibit for this hearing that will say for
4 the court reporter work, saying this is the best guess
5 about what was in those ---

6 THE COURT: That's fine.

7 MR. HEWITT: --- missing portions. If you want to
8 finish developing that process and we can submit that
9 later.

10 THE COURT: Well, a whole day is missing?

11 MR. HEWITT: I understand. And, of course ---

12 THE COURT: Y'all can reconstruct what you think was
13 said that day if you want and if you have a problem with
14 it, I'm not here often, but I am here week after next,
15 which might not give y'all enough time, and I'm back in
16 April also one week.

17 MR. HEWITT: Well, of course, and as you well know,
18 Judge, if there's not an objection during anything that
19 happened during that day, who cares what happened that day.

20 THE COURT: Well, then, I think we can stipulate to
21 that, that there was no objection to it.

22 MR. HEWITT: That's right. I'm glad to go through
23 that process if the plaintiff would like to, but that's not
24 what I'm hanging my hat on or intend to hang my hat on.
25 Absent an objection, I mean, I hate to say a day of court

1 is meaningless, but it's not meaningful for the purposes of
2 this appeal.

3 THE COURT: Well, it doesn't matter for appeal if
4 there is no objection that day, then it doesn't really
5 matter. And what is the basis of your appeal that you need
6 reconstructed? That's what I don't...

7 MR. HEWITT: Well ---

8 THE COURT: I mean, I haven't read your appellate
9 brief.

10 MR. HEWITT: Well, I haven't written one.

11 THE COURT: Okay.

12 MR. HEWITT: Because we don't have a record and that's
13 fine. I've done legal research and have ideas about what I
14 will argue.

15 THE COURT: That's fine. If you haven't done it, you
16 haven't done it. That's all. I was just thinking if you
17 had done it, I could look at that and maybe help you out,
18 but I can't help you out if you haven't done it. So...

19 MR. HEWITT: We have, it seems to this point, we have
20 a passable record of the objections that occurred before
21 the transcript stops. It would be nice if we had the
22 motions that were made at the close of the plaintiff's
23 case, but as you well know, really, the only motions that
24 matter are the ones at the end of the case. Those have to
25 be re-renewed and then the post-trial motions.

MATTHEW S. MCALHANEY VERSUS RICHARD K. MCELVEEN, SR.

1 THE COURT: And we actually have an indirect record of
2 that from the other hearing, so, there you go.

3 MR. HEWITT: So, if, just so I'm clear -- just so I
4 make myself clear. Rob, I'm glad if y'all want to continue
5 the process of reconstructing the text of what we believe
6 is in there and make that a court's exhibit as a best
7 recollection, that's fine, but this is not some sort of
8 sandbagging. I'm not ---

9 MR. MATHISON: I'm not submitting it over your
10 objection. I'm submitting it to you so you can look at it
11 and decide whether you will object or not.

12 THE COURT: Rob thinks that the Court of Appeals wants
13 it. Right?

14 MR. MATHISON: I'm afraid they do, Your Honor.

15 THE COURT: So, that's why he's doing it. So, go
16 ahead and do it.

17 MR. MATHISON: Yes, sir. I will.

18 THE COURT: All right. There isn't anything else I
19 can help y'all with, I don't think.

20 (Attorneys confer off the record)

21 MR. HEWITT: Judge, Mr. Lee, I really would defer to
22 Robs preference on this. As I said, I don't know that it
23 would be, I certainly don't need it and I think if we don't
24 argue about the missing day of trial, then the Court of
25 Appeals is not going to care about it. I mean, I'm not

1 asking you to take my word on that, but they are not going
2 to be concerned about things that we don't argue about in
3 the briefing, so there is a question about whether it would
4 be useful for us in this setting to perhaps try to put on
5 the record a recollection of who testified after Mr.
6 McElveen or anything like that. I really would, am fine
7 deferring to Mr. Mathison's preference on that and I want
8 to be respectful of your time and the court staff's time,
9 in that regard.

10 MR. MATHISON: I do want to reconstruct the last day
11 of testimony, because quite frankly, it was the
12 continuation of the cross examination of Mr. McElveen. If
13 you recall, there was a photograph that had been introduced
14 the day before and he was asked questions that day. It was
15 a snowy scene, if I recall correctly, and there was a
16 debate about whether Mr. McElveen was actually here in
17 Beaufort, being interviewed by the Beaufort County
18 Sheriff's office or whether his children or one of the
19 children was at Hope Cottage or whether he instead was
20 frolicking in the snow up in Greenwood, South Carolina.

21 THE COURT: Yeah, there was a big deal about that.

22 MR. MATHISON: In addition, you can tell what Mr.
23 Emmet Decker testified to in rebuttal by looking at what
24 Mr. McElveen said. Everything he said, Mr. Decker came in
25 and contradicted him and Mr. Decker, while he was not

1 deposed, there was an affidavit that he gave in the
2 previous case that was made a part of, not the trial
3 record, but the deposition of Mr. McElveen, which
4 encapsulates his testimony and contradicts what Mr.
5 McElveen said, which is in the record.

6 THE COURT: Well, go ahead and reconstruct it.

7 MR. MATHISON: Thank you, Your Honor.

8 THE COURT: Of course, if y'all disagree with it, then
9 we'll have to have a hearing on it.

10 MR. HEWITT: Won't that be nice.

11 THE COURT: We can do it. But we can't do it until
12 it's reconstructed.

13 MR. MATHISON: But that's the only thing I would
14 reconstruct of that.

15 THE COURT: Yeah, then reconstruct it.

16 MR. MATHISON: Thank you.

17 MR. HEWITT: Judge, that's all for the plaintiff's
18 purposes, excuse me, the defendant's purposes at this
19 hearing, that's all I have. I imagine we'll just have to
20 be, we'll stay in correspondence and when that's done we
21 may have a hearing or if it's not objected to, we may just
22 submit ---

23 THE COURT: Sure.

24 MR. HEWITT: --- to you a request at that time. Thank
25 you.

MATTHEW S. MCALHANEY VERSUS RICHARD K. MCELVEEN, SR.

1 THE COURT: All right. Of course, y'all can still
2 settle the case. You'd probably take two million now,
3 wouldn't you?

4 MR. MATHISON: Thanks to Your Honor's intervention,
5 two million is not something that is in the cards anymore.

6 THE COURT: Yeah, what did I cut it to?

7 MR. MATHISON: You cut the punitive damages, I think,
8 to 400, about \$400,000.00.

9 THE COURT: From three million?

10 MR. MATHISON: No, from six million, Your Honor.

11 THE COURT: All right. I'll see y'all later.

12 MR. HEWITT: Thank you, Judge.

13 MR. MATHISON: Thank you.



500 730

September 29, 2003

Governor Mark Sanford
Post Office Box 12267
Columbia, S.C. 29211

RECEIVED

OCT 2 2003

Referred to: *DM*
Answered: *MS called*

10/8/03

Dear Governor Sanford,

I have a personal matter that has troubled me greatly. I can only hope that when you are through with this note, that I will not have irritated you and that you will see my reasons for it.

I have two grand sons who have for the most part been raised by my wife and me. Their father (my son) has shown little to no interest in these wonderful children, and I would ask that you trust me when I say their mother is a very troubled young woman.

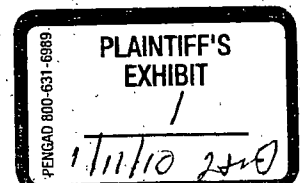
Several months back, the mother started dating a local realtor. She insisted on attempting to put her family back together through this new relationship. Initially I thought maybe this would work, however I have since learned that he has some severe problems including a drug addiction and has been abusive to the children.

With problems surmounting we file an action with the family court. I am somewhat relieved by the number of people who come forward to offer their statements as to their knowledge and concerns for these children. These statements are offered from some folks that I hardly know, friends, relatives and more importantly their teachers. The concerns are real and valid.

My daughter-in-law provides a few statements from co-workers and her employer as to her fitness. I am somewhat surprised by a statement from a Julia Sanford. I guess for the most part that she appears to be the only person at Beaufort Academy that does not support the worries and concerns the teachers have. Either way, she certainly is entitled to her opinion.

We are able to obtain an expedited hearing, and during the course of that hearing I am not shocked to hear opposing counsel state that his client is a good person, free of drugs, and non violent, however I am stunned that he would further state to the judge that he should be aware that she is endorsed by the "Governor's sister-in-law".

19 Marina Village Lane, Suite 103
Beaufort, South Carolina 29902
843-521-1641





Please understand that I am not crying foul. I also realize that you have no control over what folks say.

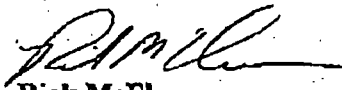
As I stated earlier Julia is certainly entitled to her opinion and this is by no means an attempt to censor her. I merely believe that with her new found position, she should be more cautious of her oral or written statements and opinions. Especially when they are used to carry the weight of the governor's office.

I do not need a response in this matter, and hope you realize that my intentions here are in part due to the respect I have for you as a family man and as Governor.

 I should also point out that an effort was made to communicate with your brother in this matter, however I have received no return call. 

Thank-you for your time in this matter, and Thank-you for your hard work to make South Carolina a better place to live and work.

Sincerely,


Rick McElveen

19 Marina Village Lane, Suite 103
Beaufort, South Carolina 29902
843-521-1641

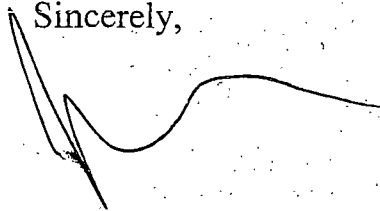
September 15, 2003

To Whom It May Concern:

For two years Molly McElveen's oldest son and my oldest son have been in the same class at Beaufort Academy. I have seen and spoken with Molly at many of the school plays, programs, and at many of the classroom holiday parties. I was amazed she could attend a lot of these functions because like myself she was a single, working mother.

Recently, Molly and her sons have been spending time across the street from my house. Frequently, Ricky, Molly's oldest, and my oldest have been playing together after school. My son has gone across the street to play and Ricky has come over to my house. Molly is always present and the kids are very well supervised. Having been exposed to Molly and how she interacts with her children I feel very comfortable sending my kids to play with Molly's children. I have no doubt that she is a very responsible parent with extremely well adjusted, well cared for children.

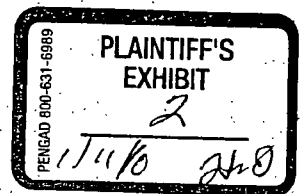
Sincerely,



Julia Sanford

*Given before me this
September 16, 2003*

[Signature]
exp 9/27/07



STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE FAMILY COURT

Case No. 03-DR-07-1245

RICHARD KEITH McELVEEN, SR.,)
Plaintiff,)

vs.)

SUMMONS

RICHARD KEITH McELVEEN, JR.,)
and MOLLY McCULLERS McELVEEN,)
Defendants.)

2003 SEP 11 PM 3:51
FAMILY COURT
BEAUFORT COUNTY
BEAUFORT, S.C.

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the plaintiff or his undersigned attorney at 1214 King Street, Beaufort, South Carolina, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in said Complaint.

Scott W. Lee

Scott W. Lee
Attorneys for Plaintiff
P.O. Box 2124
Beaufort, SC 29901-2124
(843) 986-9030

Beaufort, South Carolina

Sept. 10, 2003



STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
RICHARD KEITH McELVEEN, SR.,)
)
Plaintiff,)
)
vs.)
)
RICHARD KEITH McELVEEN, JR.,)
and MOLLY McCULLERS McELVEEN,)
)
Defendants.)

IN THE FAMILY COURT

Case No. 03-DR-07-16245

COMPLAINT

2003 SEP 11 PM 3:51
FAMILY COURT
BEAUFORT COUNTY
BEAUFORT, S.C.

The plaintiff, complaining of the defendants, alleges as follows:

1. The plaintiff is the father of defendant Richard Keith McElveen, Jr., and is the paternal grandfather of Richard Keith McElveen, III and Jackson Alexander McElveen.
2. The defendants Richard Keith McElveen, Jr. and Molly M. McElveen were previously husband and wife, having been divorced by Order of the Honorable Robert H. Cureton dated December 10, 1997 and filed with the Family Court for Beaufort County, South Carolina, on the same date in Case No. 97-DR-07-007.
3. All parties herein are citizens and residents of Beaufort County, South Carolina, and have been citizens and residents of Beaufort County, South Carolina, for more than one year prior to the commencement of this action.
4. The Court has jurisdiction over the subject matter hereof and the subject matter herein.
5. During the course of defendants' marriage, one (1) child was born, namely Richard Keith McElveen, III, on July 12, 1995.
6. After the defendants' divorce, another child was born, namely Jackson Alexander McElveen born on June 30, 1999.

7. The December 19, 1997 Order included a settlement regarding the custody of Richard Keith McElveen, III, which stated "[t]hat defendant Molly M. McElveen and plaintiff Richard Keith McElveen, Sr., shall have joint custody of Richard Keith McElveen, III, with primary care, custody and control to Molly M. McElveen and reasonable and liberal visitation to Richard Keith McElveen, Sr..."

8. Defendant Richard Keith McElveen, Jr., did not pursue custody of Richard Keith McElveen, III.

9. The plaintiff and defendant Molly M. McElveen, pursuant to said Order, have continued to share joint custody of Richard Keith McElveen, III.

FOR A FIRST CAUSE OF ACTION
(Modification of Child Custody as to Richard Keith McElveen, III)

10. The allegations of Paragraphs 1 through 9 are realleged as fully as if repeated herein.

11. The plaintiff is informed and believes that a substantial change in circumstances has taken place since the December 10, 1997 Order, and that the best interests of Richard Keith McElveen, III, require that the primary care, control and custody of said child be awarded to Richard Keith McElveen, Sr.

12. Since the December 10, 1997 Order, plaintiff has been the primary caretaker of Richard Keith McElveen, III, and is informed and believes that it would be disruptive and upsetting to Richard Keith McElveen, III, for defendant Molly M. McElveen to be awarded custody. The plaintiff is further informed and believes that defendant Molly M. McElveen is unfit to be the primary legal and physical custodian of Richard Keith McElveen, III, for the following reasons.

- a.. She has repeated episodes of violent behavior toward others, including Richard Keith McElveen, III;
- b. She uses alcohol to excess and uses marijuana;
- c. She has been diagnosed with mental illnesses, including bi-polar disorder, but has refused, and continues to refuse, to take prescribed medications;

- d. She has repeatedly exposed the minor children to dangerous situations, including but not limited to:
 - 1. Leaving them in an unattended vehicle while shopping;
 - 2. Leaving them unattended at home while carrying a baby monitor to a neighbor's house to listen for them while she was away from the house;
 - 3. By failing to adequately restrain them in her vehicle while driving; and
 - 4. By allowing them to be supervised by her boyfriend.
- e. She has been observed shoplifting on multiple occasions, and on one occasion hid the items in her baby stroller;
- f. She has inadvertently allowed her children to observe her having sexual intercourse with her current boyfriend; and
- g. She has consistently failed to support, attend and encourage her children's school and extracurricular activities.

13. The allegations contained in Paragraph 12 are supported by the statements attached hereto.

14. Plaintiff is informed and believes that the best interests of the minor children will be served by plaintiff having the full and complete care, custody and control awarded to plaintiff; and plaintiff is informed and believes that defendant Molly M. McElveen should have reasonable visitation privileges, and that defendant Molly M. McElveen should be required to give reasonable advance notice to plaintiff of an intention to exercise visitation; and, accordingly, plaintiff is informed and believes that this Court, *pendente lite* and on a permanent basis, should award the full and complete care, custody and control of the minor children to plaintiff.

FOR A SECOND CAUSE OF ACTION
(Custody of Jackson Alexander McElveen)

15. The allegations of Paragraphs 1 through 14 are realleged as fully as if repeated herein.

16. Plaintiff is informed and believes that the defendant Molly M. McElveen is unfit to be the primary legal and physical custodian of Jackson McElveen, for the reasons set forth in Paragraph 12 above.

17. Plaintiff is informed and believes that the best interests of the minor children will be served by plaintiff having the full and complete care, custody and control awarded to plaintiff; and plaintiff is informed and believes that defendant Molly M. McElveen should have reasonable visitation privileges, and that defendant Molly M. McElveen should be required to give reasonable advance notice to plaintiff of an intention to exercise visitation; and, accordingly, plaintiff is informed and believes that this Court, *pendente lite* and on a permanent basis, should award the full and complete care, custody and control of the minor children to plaintiff.

FOR A THIRD CAUSE OF ACTION
(Discovery)

18. The allegations of Paragraphs 1 through 17 are realleged as fully as if repeated herein.

19. Plaintiff is informed and believes that this Court should issue an Order to authorize pre-trial discovery, including depositions and interrogatories, to shorten the time required for trial by enabling the parties to thereby narrow the issues and the proof hereof.

FOR A FOURTH CAUSE OF ACTION
(Appointment of Guardian ad Litem)

20. The allegations of Paragraphs 1 through 19 are realleged as fully as if repeated herein.

21. Since child custody is a contested issue in this case, plaintiff is informed and believes that this Court should appoint a Guardian ad Litem to represent the interests of the minor children. The plaintiff is further informed and believes that the parties should share equally in the payment of the Guardian ad Litem's fees in this matter.

FOR A FIFTH CAUSE OF ACTION
(Attorneys fees and costs)

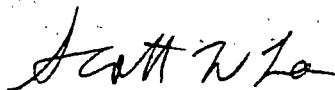
22. The allegations of Paragraphs 1 through 21 are realleged as fully as if repeated herein.

23. The plaintiff has been forced to bring this action as a result of defendant Molly M. McElveen's actions. Therefore, upon information and belief, plaintiff is entitled to an Order of this Court

requiring Molly M. McElveen to contribute towards all or a portion of the plaintiff's attorneys fees and costs incurred as a result of this action.

Wherefore, plaintiff prays that this Court inquire into the matters herein above alleged and issue its Decree granting to the plaintiff relief both *pendente lite* and permanently as follows:

- A. That the plaintiff be awarded the complete care, custody and control of Richard Keith McElveen, III and Jackson McElveen, with defendants granted reasonable visitation rights, after notice, both *pendente lite* and permanently; and
- B. Allowing discovery pursuant to the South Carolina Rules of Civil procedure and requiring the defendants to pay all or a portion of any discovery and expert costs and expenses necessary to assist the Court in this case, both *pendente lite* and on a permanent basis; and
- C. Appointing a Guardian ad Litem to represent the interests of the minor children; and
- D. Ordering the defendants to contribute to all or a portion of the plaintiff's attorneys fees and costs incurred as a result of this action; and
- E. For such other and further relief as this Court may deem just and proper.



Scott W. Lee
P.O. Box 2124
Beaufort, SC 29901
843-986-9030
ATTORNEY FOR PLAINTIFF

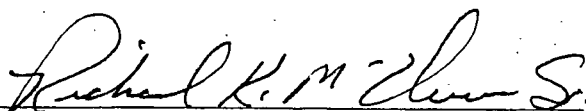
Beaufort, South Carolina

September 10, 2003

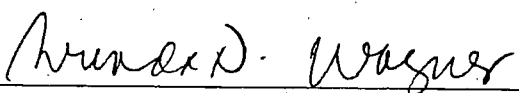
STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

VERIFICATION

PERSONALLY appeared before me the undersigned who being duly sworn, states that he is qualified to execute this Verification; that he has read the foregoing COM. and that all of the allegations contained therein are true to the best of his knowledge, except for things alleged as being upon information and belief, and as to those, he verily believes them to be true.


RICHARD KEITH McELVEEN, SR.

SWORN to before me this 11 day of September, 2003.


Notary Public for South Carolina

My commission expires: 4/29/2012

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
RICHARD KEITH MCELVEEN, SR.
Plaintiff,

vs.

RICHARD KEITH MCELVEEN, JR.
and MOLLY McCULLERS McELVEEN

IN THE FAMILY COURT
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 03-DR-07-124

FAMILY COURT
BEAUFORT COUNTY
S.C.

2003 OCT 15 AM 11:24

Order Pendente Lite
(including appointment of G.A.)

Date of Hearing: September 22nd, 2003
Trial Judge: Gerald C. Smoak, Jr.
Plaintiff's Attorney: Scott W. Lee ✓
Defendant MOLLY McCULLERS McELVEEN's Attorney: Marvin H. Dukes, III ✓
Defendant RICHARD KEITH MCELVEEN, JR.'s Attorney: Pro-Se
Court Reporter: Timothy Nicholas

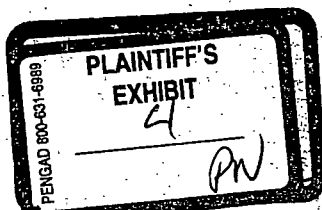
THIS MATTER CAME BEFORE ME on September 22nd, 2003 pursuant to a temporary emergency motion heretofore filed and originally scheduled for September 15th, 2003, but continued as a result of a consent recusal by the Honorable Jane D. Fender.

Present were the Plaintiff RICHARD KEITH MCELVEEN, SR. (hereinafter "Grandfather") and his attorney Scott W. Lee. Also present was Defendant MOLLY McCULLERS McELVEEN (hereinafter "Mother") with her attorney Marvin H. Dukes, III. Defendant RICHARD KEITH MCELVEEN, JR. (hereinafter "Father") appeared pro-se.

This is a grandparent custody action. At the temporary hearing, the Court received affidavits and exhibits and heard argument from counsel. The Court took the issues under advisement and held a conference call with the attorneys on Monday September 29th, 2003 at 2:30 pm.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 1) That this Court has jurisdiction over all persons and matters herein.
- 2) That the Father and Mother are the natural parents of Richard Keith McElveen, III date of birth 7/12/95 ("Richard III") and Jackson Alexander McElveen, date of birth 6/30/99 ("Jackson").
- 3) That the Mother and Father were married on April 15th, 1995 and divorced on December



10th, 1997 by decree in Case 97-DR-07-007.

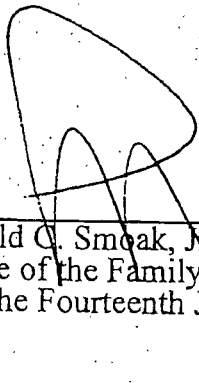
- 4) That Richard III was born to the Mother and Father during their marriage and Jackson was born to the Mother and Father during a reconciliation after their divorce.
- 5) That the Mother and Father no longer live together.
- 6) That the Grandfather is the natural paternal grandfather of both children.
- 7) That in the same proceedings as the divorce hereinabove referenced (97-DR-07-007) the Grandfather and Mother entered into an agreement in which Grandfather and Mother were granted joint custody of Richard, III with primary care, custody and control to Mother. Father was granted no rights of visitation.
- 8) That insofar as no Order exists dealing with the custody of Jackson, he is *defacto* in the custody of the Mother pursuant to §§ 20-7-953(B).
- 9) That the best interest of the children will be served by not changing the status quo at this time. Accordingly, the Plaintiff's motion is denied. To-wit: The care and control of Richard III shall continue to be governed by the Order and the care and control of Jackson shall continue to be governed by §§ 20-7-953(B).
- 10) That both parties consent to the appointment of a guardian ad litem who is approved by the court.
- 11) That Diane P. Dewitt, Esquire, a member of the Beaufort County Bar is experienced and qualified to be Guardian pursuant to §§ 20-7-1547.
- 12) That pursuant to §§ 20-7-1553., this Court finds that each of the three parties shall pay a retainer fee to the Guardian in the amount of \$500.00, on or before the 15th day following the execution of this Order. That the Guardian is authorized to charge \$180.00 per hour for her services, and costs in this case. Pursuant to statute, this Court sets an initial authorized fee of \$3,000.00 which shall be modifiable pursuant to statute.
- 13) That the best interest of the children will be served by certain mutual restraining Orders as set forth hereinbelow:

THEREFORE, IT IS ORDERED:

- 1) That the Grandfather's motions regarding temporary custody are denied.
- 2) That Diane P. Dewitt is appointed GAL and shall be empowered, if she believes it to be necessary, to request drug tests, of whatever type she deems necessary, from the parties and upon said request, the requested party shall comply within 24 hours.

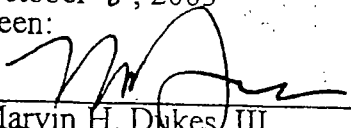
- 3) That the parties shall compensate the Guardian as set forth hereinabove.
- 4) That the Grandfather, Mother and Father are collectively and individually restrained from:
 - a) Consuming any alcoholic beverage or illicit drug in the presence of the children.
 - b) Allowing third parties to consume any alcoholic beverage or illicit drug in the presence of the children.
 - c) Allowing a paramour to remain overnight (between 11 pm and 6am) in the presence of the minor children.
 - d) Discussing this case, or allowing others to discuss this case with, or in the presence of the minor children.
 - e) Making disparaging remarks about any other party or witness in the presence of the minor children, or allowing others to do so.
- 5) That the Court specifically reserves the right to allocate and/or award all costs, attorney's fees and/or guardian's costs or fees in this case.
- 6) That discovery is granted.

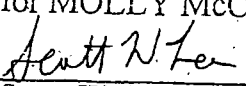
AND IT IS SO ORDERED:



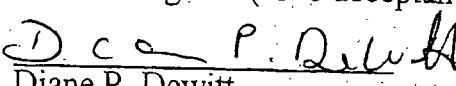
Gerald C. Smoak, Jr.
Judge of the Family Court
For the Fourteenth Judicial Circuit

Beaufort, SC
October 8, 2003
Seen:

 10/2/03
Marvin H. Dukes, III
for MOLLY McCULLERS McELVEEN

 10/3/03
Scott W. Lee
for RICHARD KEITH McELVEEN, SR.

Seen and agreed (as to acceptance of Guardian appointment only):


Diane P. Dewitt
GAL

1 830

Brian Baird of the Beaufort County Sheriff's Office and Dale McCullers, father of Defendant Molly McCullers McElveen.

At the hearing on the merits of this Motion, Plaintiff submitted an affidavit from the Guardian ad Litem of her investigation regarding the children's safety and welfare. Plaintiff also introduced a surveillance videotape and affidavit from private investigator Jack E. Geren, Jr. purportedly showing Defendant Molly McCullers McElveen's violations of a prior temporary order of this Court.

The Guardian ad Litem reported as to the findings of her investigation to date regarding the safety and welfare of the children. Additionally, she called Detective Brian Baird as a witness to discuss the findings and status of his investigation of the criminal charges against Molly McCullers McElveen's boyfriend for Criminal Sexual Conduct with a Minor First Degree and Assault and Battery of a High and Aggravated Nature. The alleged victim in these crimes is the Defendants' four-year-old son Jackson.

Defendant Molly McCullers McElveen, through her attorney, submitted an affidavit along with an affidavit from Dale McCullers. The Court later called Mr. McCullers as a witness.

The attorneys for each of the parties and the Guardian ad Litem were permitted closing arguments, and the Court took this matter under advisement. The parties were each permitted to later submit additional affidavits for the Court's consideration, and the Court held a conference call on Wednesday, March 4, 2004 at 12:00 pm.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

1. That this Court has jurisdiction over all persons and matters herein.
 2. That in prior proceedings in this Court (97-DR-07-007) Plaintiff and Defendant Molly McCullers McElveen entered into an agreement in which they were granted joint custody of Richard Keith McElveen III with primary care, custody and control to Molly McCullers McElveen. Richard Keith McElveen, Jr. did not seek any rights of visitation at that time.
- 

3. That Defendant Molly McCullers McElveen was awarded defacto custody of Jackson Alexander McElveen pursuant to this Court's Order Pendente Lite recorded October 15, 2003.
4. That Plaintiff's previous Emergency Motion for temporary custody of the children was denied on September 29, 2003.
5. That the Beaufort County Sheriff's Office is continuing its investigation of alleged abuse of the children, including forensic interviews of the children by Hope Cottage.
6. That the best interests of the children will be served by awarding temporary custody of the children to the Plaintiff, and accordingly, Plaintiff's motion is granted.
7. That Defendant Molly McCullers McElveen shall be granted supervised visitation with the children every other weekend from 6:00 pm on Friday until 6:00 pm on Sunday, beginning Friday, March 12, 2004, and such visitation must be supervised at all times by Dale McCullers and/or Nell McCullers. The pick up and delivery of the children shall be at the McDonald's on Lady's Island.
8. That Defendant Richard Keith McElveen, Jr. shall be entitled to unsupervised visitation with the children, to be exercised during the periods that the children are in the care, custody and control of the Plaintiff.
9. That the Defendants shall pay child support directly to Plaintiff in the amount provided by the South Carolina Child Support Guidelines, beginning ~~March 23~~ ^{April 1st}, 2004 as follows:
 - a) Molly McCullers McElveen- \$389.89 per month
 - b) Richard Keith McElveen, Jr.- \$522.11 per month
10. That Dale McCullers should be made a party to this action, specifically a Third Party Defendant.
11. That the parties to this action are prohibited from discussing any and all aspects of this case with the children, except to the extent that it is necessary for, or recommended by, the therapeutic counselors or law enforcement personnel.
12. That all parties are restrained from allowing the children any direct or indirect conduct with Matthew S. McAlhaney.

MS
SS
OPD

OPD

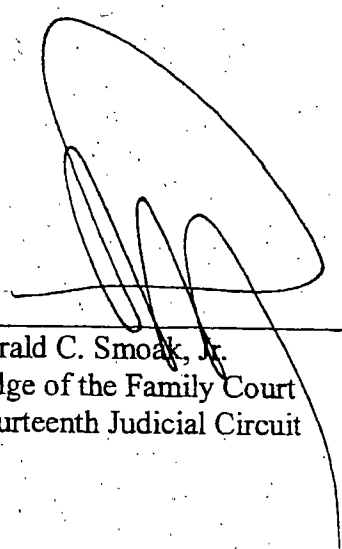
13. That Molly McCullers McElveen is permitted to file a Motion to modify this Order upon the completion of any Sheriff's Office investigation into any alleged culpability by Molly McCullers McElveen in this matter.

THEREFORE, IT IS ORDERED:

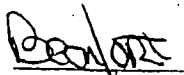
1. That the Plaintiff's Motion regarding temporary custody is granted.
 2. That Defendant Molly McCullers McElveen shall be granted supervised visitation with the children as set forth above.
 3. That Defendant Richard Keith McElveen, Jr. shall be granted visitation with the children as set forth above.
 4. That the Defendants shall pay child support directly to Plaintiff in an amount set forth by the South Carolina Child Support Guidelines, beginning March 23, 2004.
 5. That Dale McCullers is made a party to this action.
 6. That the parties to this action are prohibited from discussing any and all aspects of this case with the children, except to the extent that it is necessary for, or recommended by, the therapeutic counselors or law enforcement investigators.
 7. That all parties are restrained from allowing the children any direct or indirect conduct with Matthew S. McAlhaney.
 8. That Molly McCullers McElveen is permitted to file a Motion to modify this Order upon the completion of any Sheriff's Office investigation into any alleged culpability by Molly McCullers McElveen in this matter.
 9. That the parties are collectively and individually restrained from:
 - a) Consuming any alcoholic beverage or illicit drug in the presence of the children;
 - b) Allowing third parties to consume any alcoholic beverage or illicit drug in the presence of the children;
 - c) Allowing a paramour to remain overnight (between 11 pm and 6 am) in the presence of the minor children;
 - d) Discussing this case or the ongoing criminal investigation, or allowing others to discuss same with, or in the presence of the minor children; and
 - e) Making disparaging remarks about any other party or witness in the presence of the minor children, or allowing others to do so.
- 

10. That the Court specifically reserves the right to allocate and/or award all costs, attorney's fees and/or guardian's costs or fees in this case.

AND IT IS SO ORDERED.



Gerald C. Smoak, Jr.
Judge of the Family Court
Fourteenth Judicial Circuit

 , South Carolina

March  , 2004.

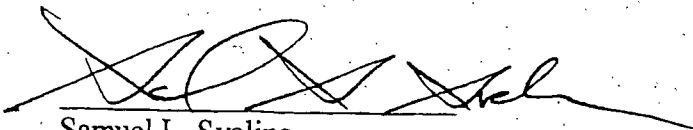
SEEN:



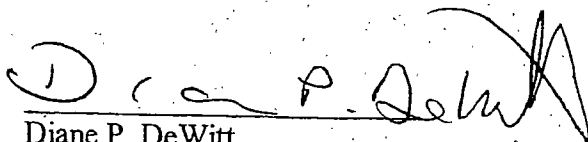
Scott W. Lee
Attorney for Richard Keith McElveen, Sr.



Marvin H. Dukes, III
Attorney for Molly McCullers McElveen



Samuel L. Svalina
Attorney for Richard Keith McElveen, Jr.



Diane P. DeWitt
Guardian ad Litem

STATE OF SOUTH CAROLINA) IN THE FAMILY COURT OF THE
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2003-DR-07-1245

RICHARD KEITH McELVEEN,
SR,

Plaintiff,

vs.

CUSTODY ORDER

RICHARD KEITH McELVEEN,
JR. and MOLLY McCULLERS
McELVEEN,

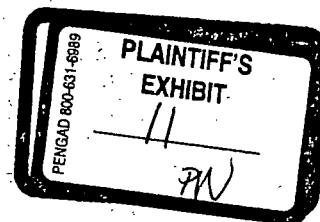
Defendants

and

DALE McCULLERS and NELL
McCULLERS,

Third Party Defendants)

05 JAN 12 AM 11:48
FAMILY COURT
BEAUFORT COUNTY
BEAUFORT, S.C.



Hearing Date:	November 29, 2004
Presiding Judge:	Timothy Cain
Plaintiff's Attorney:	Scott Lee
Def. R. McElveen's Attorney:	Samuel S. Svalina
Def. M. McElveen's Attorney:	Marvin Dukes, III
Def. McCullers Attorney:	Pro Se
Guardian ad Litem:	Diane P. DeWitt
Court Reporter:	Debbie Dubose

This matter was scheduled pursuant to the Plaintiff's request for a merits hearing and a Pre-Trial Order issued by the Honorable Gerald C. Smoak, Jr., as well as a Motion for Emergency Hearing for Modification of the last order in this action. This is a custody action brought by the paternal grandfather of two minor children against the mother and father who are divorced from each other. The maternal grandparents, Dale McCullers and Nell McCullers were added as third

party defendants. At the commencement of the hearing the court was informed that the parties had reached the following agreement and desired the court to approve this agreement as the final order in this action. Present for the hearing were the Plaintiff, his attorney, the Defendant Molly McCullers McElveen and her attorney, the Defendant Richard Keith McElveen, Jr. was not present but was represented by counsel with authority to enter into the agreement; and Dale and Nell McCullers were present and representing themselves. The agreement of the parties is as follows:

AGREEMENT

1. The Plaintiff, Richard Keith McElveen, Sr., paternal grandfather, shall have custody of the two minor children, Richard Keith McElveen, III born on July 12, 1995 and Jackson McElveen, born on June 30, 1999.
2. The Defendant/Father, Richard Keith McElveen, Jr., shall have visitation rights during the paternity grandfather's custodial time with the children. The father shall have at a minimum one weekend a month, one week in the summer and a portion of each alternating holiday that the children are with the grandfather, provided the father abide by the conditions set forth in this order.
3. The Defendants, Dale McCullers and Nell McCullers, maternal grandparents, shall be entitled to visitation rights with the minor children as set forth herein. The mother of the children, Molly McCullers McElveen may visit with the children while they are in her parents' presence and under the supervision of at least one parent at all times. A single violation of this supervisory requirement may result in the suspension of visitation rights to the

mother and maternal grandparents. The maternal grandparents shall notify Plaintiff on or before the Sunday before a scheduled visit, if they will NOT be exercising the next scheduled visitation, or in case of illness or emergency, at the earliest possible time. Visitation shall be as follows:

a) With the exception of the month of the children's spring break from school, during the months of September through May (the school year) the maternal grandparents shall have every other weekend from Friday at 5:00 p.m. until Sunday at 5:00 p.m., unless they chose instead to exercise one long weekend during any month that has a three or four day weekend because of a Friday or Monday school holiday. Plaintiff shall provide the McCullers with a copy of the school calendar at the beginning of each school year. This provision may be exercised at the option of the McCullers upon advance notice to Plaintiff.

b) The maternal grandparents shall have visitation rights on alternating holidays as follows:

Labor Day: In 2005 and all other years, the maternal grandparents shall have this holiday from Friday at 5:00 p.m. until Labor Day Monday at 5:00 p.m.

Thanksgiving. In 2005, maternal grandparents shall have this holiday from 5:00 p.m. the day school is out for the holiday until the Sunday after Thanksgiving at 5:00 p.m. In 2006 and all other even-numbered years paternal grandfather shall have this holiday. Maternal grandparents shall have this holiday in odd-numbered years.

Christmas/New Year's. In 2004, the maternal grandparents shall have this holiday from 5:00 p.m. the day school is out before Christmas until

December 26 at 5:00 p.m. In 2004, paternal grandfather shall have the children from 5:00 p.m. on December 26 until 5:00 p.m. the day before school resumes after the Christmas/New Year's holiday. In 2005 and all other odd-numbered years, paternal grandfather shall have the first part of the holiday until December 26 at 5:00 p.m. Maternal grandparents shall have the second half of the holiday from December 26 at 5:00 p.m. until the day before school resumes after New Years at 5:00 p.m. and in all odd-numbered years. Maternal grandparents shall have the first part of the holiday in all even-numbered years and paternal grandfather shall have the second part.

Spring School Break. In 2005, and every year thereafter the maternal grandparents shall have the spring break from school. This visitation shall commence at 5:00 p.m. on the day school is out for the spring break and shall end at 5:00 p.m. the night before school resumes at the conclusion of the spring break. If the Easter weekend is part of the children's spring break, then it shall belong to the maternal grandparents. In the event the Easter weekend is separate from the spring break, then the parties shall rotate it separately. The grandparents will not otherwise alternate weekends during the month of the spring break from school.

Memorial Day weekend. In 2005 and every year thereafter the maternal grandparents shall have the Memorial Day weekend from 5:00 p.m. on Friday until Memorial Day Monday at 5:00 p.m.

July 4th. In 2005 and all other odd-numbered years, the maternal grandparents shall have the July 4th holiday which is defined as July 2 at 5:00

p.m. until July 5 at 5:00 p.m. In 2006 and all even-numbered years, paternal grandfather shall have the July 4th holiday.

c) Summer. The maternal grandparents shall have two separate summer visitation periods of ten days each that shall begin on a Friday at 5:00 p.m. and continue through the week until the following Sunday at 5:00 p.m. The maternal grandparents shall also be entitled to an additional four day visitation period in August of each prior to the commencement of the school year. The August visitation shall commence at 5:00 p.m. and end at 5:00 p.m.

The parties agree to attempt to schedule the summer visitation so it coincides with the alternating holidays to eliminate unnecessary travel. The maternal grandparents will consider the children's school and ball schedules in selecting the weeks of summer visitation and shall notify the paternal grandfather in writing by May 15 of each year as to the dates they desire summer visitation. Should the maternal grandparents fail to provide written notice by May 15, then the paternal grandfather may chose the weeks of summer visitation. The plans may be arranged with Linda McElveen if she is available.

4. Modification. The grandparents may change the dates and times of the weekend or holiday visitation if they both agree. However, when they do not agree, the schedule in this order must be followed.

5. Telephone visitation. Both parents and both sets of grandparents may telephone the children while in the care of another party, at reasonable times and in a reasonable manner, but not more than three completed calls a week and prior to the children's bed times. The children shall return a party's

missed telephone call within 24 hours of receipt of a message. The parties may communication with the children by e-mail.

6. Illness of Child(ren). In the event a child is injured or sick and receives emergency room treatment or is hospitalized, all parties shall be notified at the earliest possible time.

7. Addresses and Phone Numbers. The parties shall keep each other informed of their addresses and telephone numbers, both home and work, and shall provide a location and telephone number where the children may be reached should they be away on vacation with a party. At the present time, the paternal grandfather resides at 33 Lucy Creek Dr., Beaufort, SC 29907, telephone number (843) 525-6318, Cell (843) 812-4786; Maternal grandparents reside at 83 Thornhill Dr., Brunswick, GA 31525, telephone numbers: (912) 264-2991; Father may be reached at 33 Lucy Creek Dr., Beaufort, SC 29907, cell phone: (843) 263-7038; and Mother may be reached at 1924 Old Jessup Highway, Brunswick, GA, Telephone: W-(912) 638-1300, Cell. (912) 617-2117.

8. Conditions. The maternal grandparents have the right to limit the Mother's contact with the children or to set additional visitation rules as may be deemed appropriate or necessary to protect the children's interests. Mother retains the right to petition the court to enforce this order should she object to additional restrictions.

9. Transportation. Provided the Mother pays \$2,000.00 on or before December 3, 2004 at 5:00 p.m. and thereafter is not more than two weeks in arrears in her child support payments, the paternal grandfather and the maternal

grandparents shall meet at the Airport Exit of I-95 in Savannah, Georgia to exchange the children for visitation purposes. After payment of the arrearages the mother's child support obligation is to commence on Friday, December 17, 2004 as set forth below.

10. Activities of children/Information: Both parents and both sets of grandparents have the right to attend the children's school, athletic, religious and social activities, as well as parent-teacher conferences and to know of these events in advance. Both parents shall have access to the educational and medical information on the children. The paternal grandfather shall mail a copy of the children's report cards to both parents upon his receipt.

11. Restraining Orders. The parties have agreed to the following restraining orders governing their conduct:

a. No party shall have a romantic partner stay overnight while the children are present.

b. The children shall not be exposed to domestic violence.

c. No party shall expose the children to any illicit substance usage or possession or to the excessive consumption of alcohol.

d. No party shall permit any intoxicated person to drive or supervise the children.

e. No party shall use or permit the use of corporal punishment on the children.

f. The parties shall encourage the children to love and respect the parents and all grandparents. No one shall make negative or derogatory

comments about any party in the children's presence or permit others to do so.

The parties shall not discuss this litigation with the children.

g. The parties shall talk to each other in a civil manner, whether in person, or by telephone, and neither shall threaten, abuse or harm the other.

h. The children shall have no contact, directly or indirectly, with Matt McAlhaney, in person, or by telephone.

12. The paternal grandparents shall send sufficient clothing with the children for visitation purposes. The maternal grandparents shall return the children's clothing at the end of the visitation period, in particular shoes, coats and favorite toys.

13. The Father, Richard McElveen, Jr., shall pay child support to the Plaintiff directly, in the amount of \$531.90 a month. This amount may be paid bi-monthly, half due on the first day of the month and half due on the fifteenth day of the month, in the amount of \$265.95 with the first payment being due on or before December 15, 2004. In the event the father is ever more than five days late with a payment, the Plaintiff may file an affidavit requesting that future payments be paid through the court, plus 5% court cost.

14. The Mother, Molly McCullers McElveen, shall pay child support in the amount of \$453.10 per month, through the Beaufort County Family Court. The child support may be paid one-half on the first day of each month and one-half on the fifteen day of each month in the amount of \$226.55, plus the 5% court cost of \$11.33 (total bi-monthly \$237.88). The first bi-monthly payment shall be due on December 15, 2004, payable by money order or cash to the

Beaufort Family Court, P. O. Drawer 1124, Beaufort, SC 29901. The balance of the child support arrearages reflected in the Clerk of Court's records shall be forgiven upon payment of \$2,000 directly to Plaintiff on or before December 3, 2004. The parties stipulate that this amount has now been paid. Plaintiff agreed to forgive the remaining arrearage balance after the hearing.

15. The Plaintiff shall be entitled to claim the tax dependency exemptions for both minor children for the year 2004 and subsequent years.

16. The Plaintiff shall pay the children's medical and dental bills that are not covered by insurance.

17. The guardian ad litem has agreed to reduce the balance owed for her services to Six Thousand (\$6,000.00). The Plaintiff shall pay \$2,000.00. The Defendant Richard McElveen, Jr. shall pay \$2,000 and the Defendant Molly McCullers McElveen shall pay \$2,000.00. Payment in full shall be made on or before December 31, 2004 unless a different payment plan has been accepted by the guardian.

18. The Plaintiff shall pay any balance owed to psychologist David Berndt.

19. Each party shall pay his or her own attorneys fees.

On the basis of the pleadings, testimony and other evidence of record, I make the following

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Plaintiff and Defendant Richard Keith McElveen, Jr. are residents of Beaufort County, South Carolina. The Defendant Molly McCullers

McElveen was a resident of Beaufort County, South Carolina when the litigation began but recently moved to Brunswick, Georgia where her parents Defendants Nell and Dale McCullers also reside. The children have resided in Beaufort County, South Carolina for more than a year prior to the commencement of this litigation.

2. This Court has jurisdiction of the parties and subject matter of this litigation.

3. The Defendants Richard Keith McElveen, Jr. and Molly McCullers McElveen are divorced from each other. They had one minor child during the marriage who is Richard McElveen, III, born on July 12, 1995. During a post divorce period of cohabitation their second child, Jackson McElveen, was born on June 30, 1999. The parents do not reside together at this time and did not establish a common law marriage during their cohabitation.

4. The mother of the children is unable to care for them at the present time and the father has not objected to custody being awarded to Plaintiff provided he retain visitation rights as set forth in this agreement.

5. The guardian ad litem believes this agreement protects the children's interests and that approval of the agreement is in their best interests.

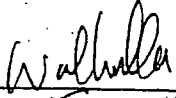
6. The parties understand the agreement they have entered and believe that approval is in the best interests of the children under the present circumstances. The parties believe the agreement is fair. No party was under the influence of any substance or undue stress that would affect his or her judgment on the date of this hearing or at the time the agreement was

negotiated. No promises were made outside of the stated agreement and no threats or coercion were used to negotiate the agreement. The represented parties have separate counsel with whom each is satisfied. The maternal grandparents have voluntarily chosen to represent themselves and appear to have the intelligence to understand, negotiate, and enter into the agreement on their own behalf. The parties are satisfied with the services of the guardian ad litem. The parties understand the court's contempt powers in the event the agreement is violated. The parties understand that by entering an agreement each is waiving his or her right to a trial of the issues by the court. I find that the agreement of the parties was intelligently and voluntarily entered. It appears to be fair and approval is in the children's best interests.

THEREFORE, IT IS ORDERED that the agreement of the parties as set forth herein is approved and adopted as the order of this court.

THE PARTIES ARE FOREWARNED THAT A VIOLATION OF A COURT ORDER MAY BE CONTEMPT OF COURT THAT HAS A MAXIMUM PENALTIES OF ONE YEAR IN JAIL, A \$1,500 FINE AND 500 HOURS OF PUBLIC SERVICE WORK.

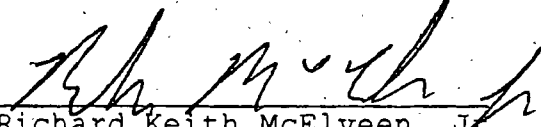
AND IT IS SO ORDERED.


_____, South Carolina
December 17, 2004
1/5/05

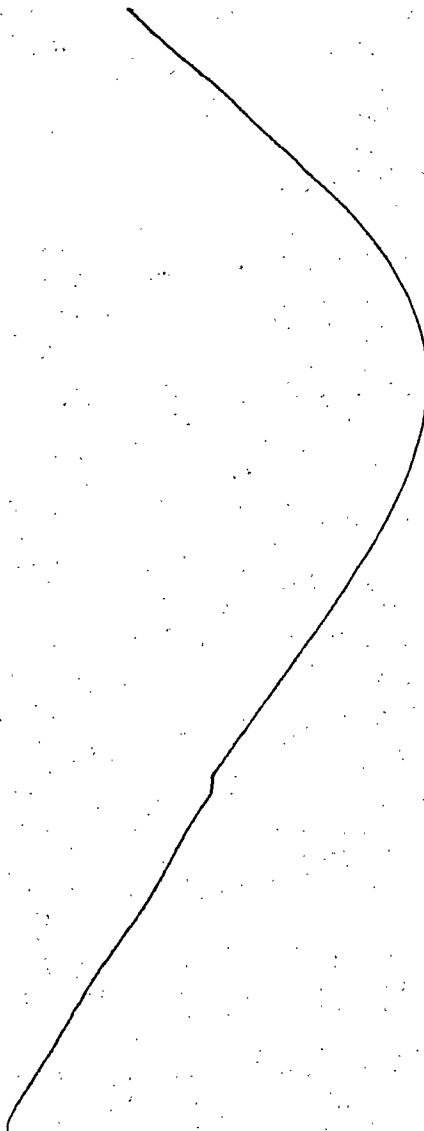


Timothy M. Cain
Presiding Judge

I HAVE READ AND APPROVE THIS
ORDER AND VOLUNTARILY
ENTERED INTO THE AGREEMENT STATED HEREIN.


Richard Keith McElveen, Jr.
Defendant

12
C



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2007-CP-07-2373

RECEIVED

SEP 04 2014

SC Court of Appeals

Matthew S. McAlhaney, ... Respondent,

v.

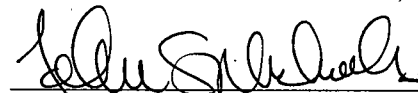
Richard K. McElveen a/k/a Richard
K. McElveen, Sr., Individually and
d/b/a Battery Creek Marina, The Great
Pumpkin, LLC, Linda McElveen, Richard
K. McElveen, Jr., and Billy Joe Byrd, ... Defendants,

of whom Richard K. McElveen, Sr., is the Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

September 3, 2014



Blake A. Hewitt

John S. Nichols

BLUESTEIN NICHOLS

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Attorneys for Appellant

RECEIVED

SEP 04 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2007-CP-07-2373

Matthew S. McAlhaney, ... Respondent,

v.

Richard K. McElveen a/k/a Richard
K. McElveen, Sr., Individually and
d/b/a Battery Creek Marina, The Great
Pumpkin, LLC, Linda McElveen, Richard
K. McElveen, Jr., and Billy Joe Byrd, ... Defendants,

of whom Richard K. McElveen, Sr., is the Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel
for the Respondent with a copy of the *Record on Appeal* by mailing copies of the same by
United States Mail with first class postage prepaid to the following address:

Robert V. Mathison, Jr., Esquire
MATHISON & MATHISON
Post Office Box 5271
Hilton Head Island, South Carolina 29938

September 4, 2014
Columbia, South Carolina



Erin Bridges