

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2018-001849
Civil Case No. 2016-CP-40-05857

Joshua Steven Stone,

Respondent.

v.

George Hunter McMaster,

Appellant.

RECORD ON APPEAL

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S.C. Bar No. 1786
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Attorney for Appellant

Other Counsel of Record:
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JUL 18 2019

SC Court of Appeals

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

JUDGMENT IN A CIVIL CASE
IN THE COURT OF COMMON PLEAS
CASE NO. 2016-CP-40-05857

JOSHUA STEVEN STONE

GEORGE HUNTER MCMASTER

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: D. REECE WILLIAMS, III # 6120

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow)

Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the ___ day of September, 2018, and a copy mailed first class or placed in the appropriate attorney's box on this ___ day of September, 2018, to attorneys of record or to parties (when appearing pro se) as follows:

D. Reece Williams, III, Esq. Callison Tighe & Robinson, LLC 1812 Lincoln St., Ste. 200 (29201) PO Box 1390 Columbia SC 29202-1390 T: 803-404-6962	Brian Dumas, Esq. Brian Dumas, Attorney LLC 718 Clemson Rd. Columbia SC 29229 T: 803-699-4996
--	---

ATTORNEY(S) FOR THE PLAINTIFF

ATTORNEYS FOR THE DEFENDANTS

CLERK OF COURT

Court Reporter: _____

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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

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

ELECTRONICALLY FILED - 2018 Oct 05 9:26 AM - RICHLAND - COMMON PLEAS - CASE#2016CP4005857



Richland Common Pleas

Case Caption: Joshua Steven Stone vs George Hunter McMaster
Case Number: 2016CP4005857
Type: Order/Form 4

So Ordered

s/ Clifton B. Newman, 2127

Electronically signed on 2018-10-05 09:18:44 page 4 of 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Joshua Steven Stone,
Plaintiff,

v.

George Hunter McMaster,
Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2016-CP-40-

SUMMONS
(Jury Trial Demanded)

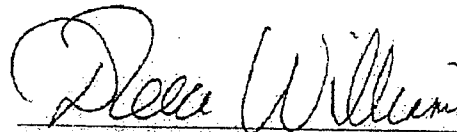
0585
2016 SEP 29 PM 2:16
JEANNETTE M. JOHNSON
RICHLAND COUNTY

TO: THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, Callison Tighe & Robinson, LLC, 1812 Lincoln Street, Suite 200, Post Office Box 1390, Columbia, South Carolina 29202-1390, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted.

CALLISON TIGHE & ROBINSON, LLC



D. Reece Williams, III, Esq. (06120)
1810 Lincoln Street, Suite 200
PO Box 1390
Columbia SC 29202-1390
Telephone: 803-404-6900
Facsimile: 803-404-6902
E-mail: ReeceWilliams@callisontighe.com

Counsel for Plaintiff

Columbia, South Carolina
September 29, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Joshua Steven Stone,)
)
Plaintiff,)

Case No. 2016-CP-40-

v.)

COMPLAINT
(Jury Trial Demanded)

George Hunter McMaster,)
)
Defendant.)

2016 SEP 29 PM 2:16
RICHLAND COUNTY
FILED
JEANETTE M. MCBRIDE
C.C.P. & G.S.

The Plaintiff alleges that:

PARTIES AND JURISDICTION

1. Plaintiff, Joshua Steven Stone ("Plaintiff"), is a resident of the State of South Carolina and is subject to the jurisdiction of this court.
2. Defendant, George Hunter McMaster ("Defendant"), is a citizen and resident of the County of Richland, State of South Carolina.
3. This court has jurisdiction of the parties and venue is proper in the County of Richland, where all of the acts or omissions giving rise to the causes of action occurred.

FACTUAL ALLEGATIONS

4. At all times relevant hereto Plaintiff was an employee of The Palmetto Club and Defendant was a member and patron of The Palmetto Club.
5. The Palmetto Club is a membership-based social and dining club, located at 1231 Sumter Street, Columbia, South Carolina 29201. As a result of the described incident, Defendant's membership to The Palmetto club was revoked, and Defendant was banned from The Palmetto Club premises for life.

6. On May 13, 2014, Defendant entered The Palmetto Club at approximately 1:30 p.m. Plaintiff was tending the bar at The Palmetto Club Tap Room. Defendant and Plaintiff were alone when Defendant entered the bar area. Plaintiff served Defendant two or three Coors Light beers.
7. Defendant began telling Plaintiff how to improve his personal appearance. Defendant commented that Plaintiff's pants were low because Plaintiff lacked a belt. Defendant then offered Plaintiff his suspenders and assisted Plaintiff in putting them on, being very "touchy."
8. Defendant complimented Plaintiff on his teeth and told Plaintiff he had a "pretty smile." On several occasions, Defendant winked at Plaintiff while he worked.
9. Between approximately 5:30 and 6:00 p.m., Defendant followed Plaintiff to the Tap Room wait station when Plaintiff left the bar to retrieve silverware for a group of customers who joined the bar.
10. At the wait station Defendant commanded Plaintiff to lower his pants. Plaintiff adjusted his pants slightly. Defendant said, "No, lower," and again Plaintiff adjusted his pants slightly. Defendant then exclaimed, "No, goddammit, lower!"
11. Defendant proceeded to pull Plaintiff's pants down to his ankles. Defendant grabbed Plaintiff's shirttail and began tucking it into Plaintiff's boxers. As he did so, Defendant's hands brushed Plaintiff's buttocks. Defendant then began reaching up Plaintiff's boxers to pull Plaintiff's shirt down further. Defendant's hands touched Plaintiff's genitals. When Defendant finished, Defendant told Plaintiff to pull up and zip his pants. Defendant also asked Plaintiff for another Coors Light.

12. After the incident, Plaintiff stepped away from the bar for a short break. When he returned, Defendant had left The Palmetto Club in a taxi. Defendant did not pay his tab, and his beer was mostly full.
13. When Plaintiff's shift ended at approximately 9:00 p.m., Plaintiff immediately called his parents. Plaintiff then reported the incident to the police.
14. At the time of the incident, Plaintiff was twenty-two (22) years of age and a senior at the University of South Carolina. Defendant was sixty-four (64) years of age and an active member of the South Carolina Bar. The South Carolina Supreme Court has since placed Defendant's law license on interim suspension in response to the incident herein alleged.
15. Plaintiff had not met, served, or interacted with Defendant prior to May 13, 2014.
16. The contact was neither consensual nor invited and caused damage to Plaintiff.
17. As a result of the incident, Plaintiff was traumatized, violated, shocked, scared, embarrassed, ashamed, helpless, confused, vulnerable, and has lost his sense of manhood. Plaintiff has experienced a reduced appetite and trouble sleeping at night due to the incident replaying constantly in his head.
18. Plaintiff feels especially ashamed and embarrassed by the fact that two managers and a trainee at The Palmetto Club saw him being violated.
19. Plaintiff was forced to seek counseling (individual psychotherapy) to help him manage the pain, stress, and confusion he now experiences daily. Plaintiff also has been prescribed Wellbutrin for severe anxiety and depression resulting from the incident.
20. The incident detrimentally impacted Plaintiff's relationships, performance in school, and ability to work. Plaintiff's roommates and close friends described a significant change in Plaintiff's temperament, including irritability, self-hating, and self-doubting. The incident

caused Plaintiff undue stress during his final semesters at the University of South Carolina. Plaintiff missed shifts at work for counseling sessions and other related appointments. Additionally, Plaintiff was discouraged from taking certain members' tables at The Palmetto Club due to their potential knowledge of the incident.

21. On May 19, 2016, Defendant pleaded guilty to assault and battery, third degree.

FOR A FIRST CAUSE OF ACTION
(Sexual Assault)

22. Plaintiff repeats and realleges the foregoing paragraphs as if restated verbatim.
23. On May 13, 2014, Defendant, in directing personal and suggestive remarks toward Plaintiff, subjected Plaintiff to reasonable apprehension and fear of bodily harm, causing him damages, and is therefore liable to Plaintiff for said assault.
24. Defendant used his position as a Club member and patron at Plaintiff's place of employment to coerce Plaintiff into circumstances in which Plaintiff was subjected to said assault.
25. Defendant intentionally, maliciously or recklessly assaulted Plaintiff and caused him damages.
26. As a direct result and consequence of the assault, Plaintiff has experienced the following damages and injuries:
- a. Pain and suffering;
 - b. Emotional distress;
 - c. Mental anguish;
 - d. Loss of enjoyment of life; and
 - e. Medical bills and costs.
27. Because Defendant acted willfully, wantonly, or in reckless disregard of Plaintiff's rights, as alleged above, Plaintiff is entitled to actual and punitive damages from Defendant.

FOR A SECOND CAUSE OF ACTION
(Sexual Battery)

28. Plaintiff repeats and realleges the foregoing paragraphs as if restated verbatim.
29. On May 13, 2014, Defendant, in touching, grabbing, feeling, and accosting Plaintiff, inflicted a degree of forcible contact upon the person of Plaintiff, causing him damages, and is therefore liable to Plaintiff for said battery.
30. Defendant used his position as a Club member and patron at Plaintiff's place of employment to coerce Plaintiff into circumstances in which Plaintiff was subjected to said battery.
31. On May 13, 2014, Defendant intentionally battered Plaintiff, touching him forcibly and offensively about various parts of his body, including his genitals and buttocks. This touching was done intentionally, maliciously, with the intent to obtain sexual gratification, and caused Plaintiff damages.
32. As a direct result and consequence of the battery, Plaintiff has experienced the following damages and injuries:
- a. Pain and suffering;
 - b. Emotional distress;
 - c. Mental anguish;
 - d. Loss of enjoyment of life; and
 - e. Medical bills and costs.
33. Because Defendant acted willfully, wantonly, or in reckless disregard of Plaintiff's rights, as alleged above, Plaintiff is entitled to actual and punitive damages from Defendant.

FOR A THIRD CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

34. Plaintiff repeats and realleges the foregoing paragraphs as if restated verbatim.

35. On May 13, 2014, Defendant intentionally or recklessly inflicted severe emotional distress upon Plaintiff or was certain or substantially certain that such distress would result from his conduct.
36. Defendant's conduct toward Plaintiff was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in civilized society.
37. The actions of Defendant caused Plaintiff severe emotional distress, and the emotional distress Plaintiff suffers as a result and continues to suffer is so severe that no reasonable person can or should be expected to endure it.
38. Defendant used his position as a Club member and patron at Plaintiff's place of employment to place Plaintiff in a position which subjected Plaintiff to Defendant's outrageous conduct.
39. As a direct result and consequence of said outrageous conduct of Defendant, Plaintiff has experienced and suffered severe emotional distress, mental anguish, pain and suffering, impairment to his mind and medical bills and costs.

WHEREFORE, Plaintiff prays for judgment against Defendant for actual and punitive damages in amounts determined by the jury and for the costs of this action.

Respectfully submitted,

CALLISON TIGHE & ROBINSON, LLC



D. Reece Williams, III, Esq. (06120)

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PO Box 1390

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Telephone: 803-404-6900

Facsimile: 803-404-6902

E-mail: ReeceWilliams@callisontighe.com

Counsel for Plaintiff

Columbia, South Carolina
September 29, 2016

1/11/17 TR

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
)	
Joshua Steven Stone,	)	Civil Action No. 2016-CP-40-05857
)	
	)	ANSWER
)	
Plaintiff,)	
)	
vs.)	
)	
George Hunter McMaster,)	
)	
)	
Defendant.)	

TO THE PLAINTIFF AND HIS ATTORNEY, D. REESE WILLIAMS, III:

Defendant, reserving his rights to all objections and defenses, including those raised by me, simultaneously file motion(s), responds subject to those motion(s), to the allegations as raised in the pleadings filed by Plaintiff, and in furtherance of his claims and or defenses would show as follows:

RICHLAND COUNTY
 FILED
 2017 JAN -6 AM 11:32
 JEANNETTE W. COOPER
 C.C.P. & G.

FOR A FIRST DEFENSE

1. The Defendant denies each and every allegation of the Plaintiff's pleading not specifically responded to, demanding strict proof thereof.

FOR A SECOND DEFENSE

- 2. The Defendant repeats the above allegations as fully as if repeated herein.
- 3. As to ¶ 1, Defendant has no knowledge, therefore denying the same and demanding strict proof thereof.
- 4. As to ¶ 2, admitted;
- 5. As to ¶ 3, subject to Defendant's jurisdictional claim as contained within his motion filed simultaneously, admitted;
- 6. As to ¶ 4, admitted;

7. As to ¶ 5, as to the first sentence admitted, denied as to phrasing of the second sentence, but Defendant admits he is barred from the premises of The Palmetto Club for life;

8. As to ¶ 6-12, denied as stated. Defendant would admit that he did commit and plead guilty to violation of S.C. Code Ann. § 16-3-600 (E).

9. As to ¶ 13, Defendant has no knowledge, thereby denying the same and demanding strict proof thereof;

10. As to ¶ 14, as to the first sentence admitted, as to the second sentence, Defendant cannot respond as stated in his simultaneous motion, reserving his right to more fully respond after a ruling by the Court, as appropriate;

11. As to ¶ 15-16, admitted, but for the allegation of damage to Plaintiff, which is denied;

12. As to ¶ 17-20, denied;

13. As to ¶ 21, admitted;

14. As to ¶ 22, no response necessary based on prior responses;

15. As to ¶ 23-27, denied;

16. As to ¶ 28, no response necessary based on prior responses;

17. As to ¶ 29-33, denied;

18. As to ¶ 34, no response necessary based on prior responses;

19. As to ¶ 35-39, denied.

FOR A THIRD DEFENSE

20. Defendant repeats the above allegations as fully as if repeated herein.

21. Defendant pleads the defense of no damages associated with the claims in question even if liability is established;

FOR A FOURTH DEFENSE

22. Defendant repeats the above allegations as fully as if repeated herein.

23. Defendant pleads the defense of the exclusivity of Workers Compensation for the claims as made in the Complaint;

FOR A FIFTH DEFENSE

24. Defendant repeats the above allegations as fully as if repeated herein.

25. Defendant pleads the failure of Plaintiff to state a cause of action.

FOR A SIXTH DEFENSE

26. Defendant repeats the above allegations as fully as if repeated herein

27. Defendant alleges no intent to commit actual harm to Plaintiff, thereby no liability exists and even if so punitive damages are inappropriate and should be stricken.

Wherefore, having fully responded to the allegations as made by the Plaintiff, Defendant prays that the instant action be dismissed and that he be awarded his costs and expenses for this defense, and such other and further relief as this Court deems just and proper;

RESPECTFULLY SUBMITTED,

By: _____

Brian Dumas, SC Bar 1786, Fed ID 638
BRIAN DUMAS, ATTORNEY LLC
718 Clemson Road
Columbia, SC 29229
(803)699-4996 / FAX (803)699-4995
brian@briandumasattorney.com
Attorney for the Defendant

Columbia, South Carolina.
January 4, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
)	
Joshua Steven Stone,	)	Civil Action No. 2016-CP-40-05857
)	
Plaintiff,)	
)	
vs.	)	DEFENDANT'S MOTION FOR
	)	JUDGMENT NOTWITHSTANDING
George Hunter McMaster,	)	THE VERDICT, MOTION FOR NEW
	)	TRIAL ABSOLUTE AND MOTION
	)	FOR NEW TRIAL NISI REMITTITUR
Defendant.)	
)	

Defendant George Hunter McMaster respectfully moves the court for Judgment Notwithstanding the Verdict, New Trial Absolute, or, in the alternative, New Trial *Nisi Remittitur* on Plaintiff's causes of action. Plaintiff further reserves the right to submit a more complete memorandum of law in support of his post-trial motions upon a hearing being set for the same before the trial judge.

FACTS

Plaintiff brought this action alleging personal injuries arising out of an incident in Columbia, South Carolina on or about May 13, 2014 claiming by the pleadings that Defendant committed a sexual assault and battery on him and that those same acts constituted the intention infliction of extreme emotion distress.

At trial, over Defendant's objection, the Plaintiff was allowed to read the pleadings to the jury. Defendant also moved for the exclusion of Defendant's guilty plea to assault and battery third and any reference to the same in any testimony, based on *Zurcher v. Bilton*, 379 S.C. 132, 666 S.E. 2d 224 (2008). The Court overruled Defendant's objections. As part of the Plaintiff's case, the Court allowed the reading of Defendant's deposition into evidence, over Defendant's objections,

but removed the transcript of that guilty plea from submission to the jury although the court allowed testimony from the deposition as to the plea and related criminal prosecution. The Court also overruled Defendant's specific objections as to hearsay concerning the guilty plea, ruling that *Zurcher, supra*, did not apply. The Defendant did not appear nor testify.

At trial Plaintiff testified to the incident, his waiting about two (2) hours after the incident attempting to determine what had happened and smoking a cigarette, then his call to his mother, then his call to the police, and his reactions thereafter. Plaintiff's expert testified that Plaintiff suffered from PTSD due to the incident and recommended treatment of once a week counseling for a six (6) month period. She also testified that some of his effects were permanent. The only other damages testimony was from the Plaintiff as to sleeplessness and anxiety, and from his mother as to his seeming to react differently in some situations. A defense witness, *inter alia*, countered the claims of a change in behavior.

The Court originally intended to instruct the jury on sexual assault and sexual battery, however, after Defendant's objection to the same as not being causes of action under South Carolina law the Court instructed on assault, battery and intentional infliction of emotional distress. After deliberation the jury sent a question to the court asking about Plaintiff's attorneys fees and costs. The court instructed the jury that it could not answer the question. The jury returned a verdict for Plaintiff in the amount of \$50,000 actual damages and \$50,000 punitive damages.

ARGUMENT

I. Motion for Judgment Notwithstanding the Verdict.

When considering a motion for judgment notwithstanding the verdict, the trial judge cannot disturb the actual findings of a jury unless a review of the record discloses no evidence which reasonably supports them. *Horry County v. Laychur*, 315 S.C., 364, 367, 434 S.E.2d 259, 261

(1993). The judge must view the evidence in the light most favorable to the nonmoving party. *Id.* at 367, 434 S.E. 2d at 261. If more than one reasonable inference exists, the jury verdict should stand. *Id.* at 367, 434 S.E. 2d at 261. Finally, an appellate court will only reverse the trial court's grant of or denial of a motion for judgment notwithstanding the verdict "when there is no evidence to support the ruling or when the ruling is governed by an error of law." *Watson v. Ford Motor Co.*, 389 S.C. 434, 455, 699 S.E. 2d 169, 180 (2010).

The evidence as to the causes of action put forth by Plaintiff in Plaintiff's witness's testimony was that essentially, Defendant had given the Plaintiff a pair of suspenders as his pants were drooping while at work, the pants were still drooping because the suspenders were not adjusted correctly, that Defendant then followed Plaintiff into an area of the restaurant, claimed to be helping Plaintiff adjust the suspenders, then jerked down the pants and while adjusting the suspenders, touched or brushed against Plaintiff's private parts. Plaintiff also testified that one of his supervisors walked in and witnessed the incident but walked away. The only other evidence as to the incident itself was the highly prejudicial introduction into evidence of the guilty plea to Assault and Battery Third Degree, a Magistrate Court offense, which was admitted over Defendant's objection.

Therefore, viewing the evidence in the light most favorable to the Plaintiff, there is no evidence in the record from which a reasonable juror could determine that there was an assault, battery or intentional infliction of emotional distress, but for the introduction of the deposition testimony of Defendant concerning the guilty plea to a misdemeanor, and related testimony from Plaintiff as to the same and further no evidence supporting the damages directly related to assault, battery or intentional infliction of emotional distress. Defendant's motion for judgment notwithstanding the verdict should be granted because the record is simply void of any factual

support as to all of the elements of any of the three (3) causes of action alleged, therefore this matter is an issue of law for the judge and not an issue of fact for the jury. Defendant further alleges that the only method by which the jury could have found for the Plaintiff would have been based upon the introduction into evidence, over Defendant's objection, of extensive testimony as to the guilty plea and the related matters concerning the same. Defendant would further submit that the Plaintiff repeatedly made references to "influence" or "family" so as to be suggestive of some improper influence on the part of the Defendant, but introduced no evidence of any influence being made upon any party nor witness to this action.

Based on the aforementioned reasons, the Defendant requests that the court grant its motion for judgment notwithstanding the verdict, set aside the verdict for Plaintiff, and grant judgment in favor of the Defendant.

II. Motion for New Trial Absolute

Under Rule 59 of the South Carolina Rules of Civil Procedure, grant or denial of new-trial motions rests within the discretion of the circuit court. *Brinkley v. S.C. Dep't of Corr.*, 386 S.C. 182, 185, S.E.2d 54, 56 (Ct. App. 2009). "The thirteenth juror doctrine is a vehicle by which the trial court may grant a new trial absolute when he finds that the evidence does not justify the verdict." *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E. 265, 267 (1990). The seminal case describing the thirteenth juror doctrine is *Worrell v. S.C. Power Co.*, 1986 S.C. 306, 195 S.E.2d 638 (1938), which provides:

Nor does it follow that because under the law the trial judge is compelled to submit the issues to the jury, he cannot grant a new trial absolute. As has often been said, the trial judge is the thirteenth juror, possessing the veto power to the Nth degree, and, it must be presumed, recognizes and appreciates his responsibility, and exercises the discretion vested in him with fairness and impartiality.

Worrell, 186 S.C. at 313-14, 195 S.E.2d at 641.

The jury's verdict was not only excessive, but the record is replete with evidence the jury should not have heard or considered in its verdict. This is coupled with the fact that the jury obviously ignored the charges as was presented by the Court.

A. Assault, battery and intentional infliction of extreme emotional distress

The court instructed the jury on assault based on Plaintiff's allegations that Plaintiff committed an assault. The elements of assault are (1) conduct of the defendant which places the plaintiff (2) in reasonable fear of bodily harm. There was no testimony as to these elements.

Words alone do not make the defendant liable for assault unless, together with other acts or circumstances, they put the plaintiff in reasonable apprehension of imminent harmful or offensive contact with his person. The plaintiff must reasonably believe that an offensive or harmful contact is about to occur. He must have a reasonable apprehension. There must be just and reasonable ground for the fear. A vain or idle threat is not sufficient. The conduct must be of such nature and made under such circumstances as to affect the mind of a person of ordinary reason and firmness, so as to influence his conduct; or it must appear that the person against whom the threat is made was peculiarly susceptible to fear, and that the person making the threat knew and took advantage of the fact that he could not stand as much as an ordinary person.

An assault may occur without a battery. This happens when the defendant acts as if he is about to commit an offensive act and he appears to have the present capacity to do the act. Assault differs from battery in that assault does not involve a touching of the victim. *See In re McGee*, 278 S.C. 506, 299 S.E.2d 334 (1983); *Herring v. Lawrence Warehouse Co.*, 222 S.C. 226, 72 S.E.2d 453 (1952)(there is a well-recognized distinction between criminal assault and civil action for assault and battery; in civil actions, intent, while pertinent and relevant, is not essential element); *City of Gaffney v. Putnam*, 197 S.C. 237, 15 S.E.2d 130 (1941); *Brooker v. Silverthorne*, 111 S.C.

553, 99 S.E. 350 (1919); *Mellen v. Lane*, 377 S.C. 261, 659 S.E.2d 236 (Ct. App. 2008); *Jones by Robinson v. Winn-Dixie Greenville, Inc.*, 318 S.C. 171, 456 S.E.2d 429 (Ct. App. 1995); *Gathers v. Harris Teeter Supermarket, Inc.*, 282 S.C. 220, 317 S.E.2d 748 (Ct. App. 1984); 6 Am. Jur. 2d *Assault and Battery* §§ 1, 97 (1999); 6A C.J.S. *Assault and Battery* §§ 2, 4 (1975); Michael G. Sullivan, *Elements of Civil Causes of Action* 15-19 (2000). See also *State v. Sutton*, 340 S.C. 393, 532 S.E.2d 283 (2000)(assault is attempted battery or unlawful attempt or offer to commit violent injury upon another person, coupled with present ability to complete attempt or offer by a battery); *State v. Mims*, 286 S.C. 553, 335 S.E.2d 237 (1985); *State v. LaCoste*, 347 S.C. 153, 553 S.E.2d 464 (Ct. App. 2001).

There never was any testimony as to any fear of bodily injury, thus the evidence submitted was insufficient to the jury to make a finding of assault. Further, due to the admission over objection of both the reading of the complaint, and the evidence of the guilty plea to criminal assault and battery, Defendant would submit that the jury confused the standards and elements between the criminal matter and the civil matter and disregarded the Court's actual instructions given prior to deliberations.

As to the battery claim, a battery is the actual infliction of any unlawful, unauthorized violence on the person of another, irrespective of its degree. It is unnecessary that the contact be by a blow, as any forcible contact is sufficient. Physical injury is not an element of a battery. While there must be a touching, any forcible contact will suffice regardless of its degree.

Generally speaking, a battery is the unlawful touching or striking of another by the aggressor himself or by any substance put in motion by him, done with the intention of bringing about a harmful or offensive contact which is not legally consented to by the other, and not otherwise privileged. It is sometimes defined as any injury done to the person of another in a rude,

insolent, or revengeful way. A battery may occur without an assault. In other words, the plaintiff who is struck from behind without being aware of the attacker, has an action for battery. See *Herring v. Lawrence Warehouse Co.*, 222 S.C. 226, 72 S.E.2d 453 (1952); *Smith v. Smith*, 194 S.C. 247, 9 S.E.2d 584 (1940); *Mellen v. Lane*, 377 S.C. 261, 659 S.E.2d 236 (Ct. App. 2008); *Jones by Robinson v. Winn-Dixie Greenville, Inc.*, 318 S.C. 171, 456 S.E.2d 429 (Ct. App. 1995); *Gathers v. Harris Teeter Supermarket, Inc.*, 282 S.C. 220, 317 S.E.2d 748 (Ct. App. 1984); 6 Am. Jur. 2d *Assault and Battery* § 98 (1999) (slightest touching of another, or of anything attached to his person, if done in a rude, insolent, or angry manner, may be actionable as assault and battery).

In this case, there was no evidence put forth by Plaintiff as to clearly set forth a claim for battery when the Plaintiff himself has admitting to “being flirty”, he accepted a set of suspenders from Defendant, the Plaintiff did not adjust the suspenders properly, and the Defendant’s actions were such that the Plaintiff himself took almost two (2) hours, according to his testimony, to determine what he then, two (2) hours later, claimed happened, and to decide what to do, only after a call relating the event to his mother and never once stating any reaction of offensiveness at the time of the alleged battery. Further, once again, the admission of the guilty plea as to the criminal assault and battery allowed the jury to simply substitute that plea for their own independent judgment and reasoning.

The intentional infliction of extreme emotional distress, also known as the tort of outrage, is defined as one who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm. See *Ford v. Hutson*, 276 S.C. 157, 276 S.E.2d 776 (1981); Restatement (Second) of Torts § 46 (1965).

There never was any bodily injury from the actions of the Defendant by the testimony of Plaintiff or his witnesses, other than that of the plea. Additionally, the jury asked how the Plaintiff was to pay his attorneys fees and costs. That alone makes it clear the jury went beyond the scope of the jury instructions. If the jury found the Plaintiff was guilty of the causes of action that went to the jury, the most the jury should have awarded would have been actual damages intended to make the Defendant whole again or to compensate for losses. The Defendant was not entitled to a windfall. As to an appropriate damages award, the most the jury could have possibly gleaned from the testimony was 6 months of weekly counseling, with a per session amount of \$150.00 per session for a total of \$3600 as to total cost of counseling, the Plaintiff only attending 4 sessions again associated with the plea in the criminal matter. The evidence was that other than those 4 sessions, the Plaintiff has attended no counseling. The actual verdict damages as it stands provides a tremendous windfall for Plaintiff as he will receive an actual damages judgment for almost 14 times the actual cost of therapy, when Plaintiff has admitted in his testimony to no adverse effects on his social life, educational advancement, and employment advances.

B. The jury heard and considered testimony and evidence would should have been excluded.

By virtue of the Court's rulings as to the reading of the pleadings, and the admission of the deposition testimony as to the plea, and other testimony as to the plea, Plaintiff and Plaintiff's counsel presented evidence on these issues to the jury. The jury heard and improperly considered this evidence in its deliberation, as is evident in the actual and punitive damages award. Further, over Defendant's objections, Plaintiff several times interjected family relations of the Defendant into evidence, with not one piece of evidence of any sort, trying to suggest by such interjection that an improper influence had been made on Defendant's behalf in this matter. The jury obviously believed that some sort of "influence" or "protection" of Defendant had taken place and awarded

the Plaintiff far in excess of any rational relationship to the damages actually suffered. This is even more clear by the jury disregarding the far more traumatic family history of Plaintiff in terms of assessing causation to the damage being claimed by Plaintiff. The jury likely believed that it was, as Plaintiff's counsel suggested throughout this case, sending a message to "those in power".

C. The evidence in the record fails to support such an exorbitant and punitive award.

Finally, the record simply does not support a verdict of \$50,000 actual and \$50,000 punitive damages. Plaintiff's expert witness only testified as to damages of \$3,600 at best. Plaintiff testified as to sleeplessness and anxiety but introduced no evidence of medical costs incurred or to be incurred other than those from the expert. Actual damages are awarded to a litigant in compensation for his actual loss or injury. Actual damages are such as will compensate the party for injuries suffered or losses sustained. They are such damages as will simply make good or replace the loss caused by the wrong or injury. Actual damages are damages in satisfaction of, or in recompense for, loss or injury sustained. The goal is to restore the injured party, as nearly as possible through the payment of money, to the same position he was in before the wrongful injury occurred. The basic measure of actual damages is the amount needed to compensate the plaintiff for the losses proximately caused by the defendant's wrong so that the plaintiff will be in the same position he would have been in if there had been no wrongful injury. Actual damages include compensation for all injuries which are naturally the proximate result of the alleged wrongful conduct of the defendant. The existence, causation, or amount of damages cannot be left to conjecture, guesswork or speculation. See *Clark v. Cantrell*, 339 S.C. 369, 529 S.E.2d 528 (2000); *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991); *Barnwell v. Barber-Colman Co.*, 301 S.C. 534, 393 S.E.2d 162 (1989); *Whisenant v. James Island Corp.*, 277 S.C. 10, 281 S.E.2d 794 (1981)(in order for damages to be recoverable, evidence should enable

jury to determine amount thereof with reasonable certainty and cannot be left to conjecture, guess, and speculation); *Piggy Park Enters., Inc. v. Schofield*, 251 S.C. 385, 162 S.E.2d 705 (1968); *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 134 S.E.2d 206 (1964); *Hutchison v. Town of Summerville*, 66 S.C. 442, 45 S.E. 8 (1903)(actual damages are when the wrongful act has caused loss or injury which can be assessed in money; universal and cardinal principle being that the person injured shall receive compensation commensurate with his loss or injury and no more); *Mellen v. Lane*, 377 S.C. 261, 659 S.E.2d 236 (Ct. App. 2008); *Proctor v. Dep't Health & Environmental Control*, 368 S.C. 279, 628 S.E.2d 496 (Ct. App. 2006); *Austin v. Specialty Transp. Services, Inc.*, 358 S.C. 298, 594 S.E.2d 867 (Ct. App. 2004); *Carrigg v. Blue*, 283 S.C. 494, 323 S.E.2d 787 (Ct. App. 1984); 22 Am. Jur. 2d *Damages* §§ 24, 25 (2003); *Black's Law Dictionary* 390 (6th ed. 1990).

The excessive and speculative and punitive nature of the verdict awarded is plain on its face when a jury awards almost 14 times the cost of treatment recommended by the expert witness, and the Plaintiff has put forth no evidence of incurring any medical costs or damages. The testimony presented by the Plaintiff on the issue of damages is clearly inconsistent with the damages awarded by the jury. To permit this verdict to stand would be tantamount to requiring no standards for an award of actual damages.

As to punitive damages, the same were allowed over the objection of Defendant, based on Plaintiff's claim that Defendant had violated a statute. Once again, the evidence and testimony as to the guilty plea to a violation of a statute served to undermine any semblance of a fair trial to the Defendant, in a case where under *Zurcher, supra*, the same should not have been allowed into evidence, and played upon and to the sympathy for the Plaintiff, and with extreme prejudice to the Defendant.

For these reasons and in the interest of justice, Plaintiff requests that the Court utilize the thirteenth juror doctrine to order a new trial absolute.

III. Motion for New Trial *Nisi Remittitur*

“A motion for new trial *nisi remittitur* asks the trial court in its discretion to reduce the verdict because it is ‘merely excessive,’ although not motivated by considerations such as passion, caprice or prejudice.” *Hunter v. Staples*, 335 S.C. 93, 105, 515 S.E. 2d 261, 268 (St. App. 1999). If the amount of the verdict is so grossly excessive as to shock the conscience of the court and to result from caprice, passion, prejudice, partiality, corruption, or some other improper motive, the trial judge should grant a new trial absolute.” *Rush v. Blanchard*, 310 S.C. 301, 457 S.E.2d 603 (1994). The party moving for a new trial *nisi* must demonstrate compelling reasons to justify invading the jury’s province by granting a new trial. *Pelican Bldg. Ctrs. V. Dutton*, 311 S.C. 56, 61, 427 S.E.2d 673, 676 (1993). In considering a motion for new trial *nisi remittitur*, the trial judge should consider the adequacy of the verdict in light of the evidence presented. *Proctor v. Dep’t of Health & Envtl. Control*, 368 S.C. 279, 320, 628 S.E.2d 496, 518 (Ct. App. 2006).

In the present case, the jury returned a verdict for the Defendant in an amount of more 14 times the alleged damages suffered by the Plaintiff in addition to adding an identical punitive damages award. As stated above, the jury ignored the court’s instructions on the causes of action and considered testimony and evidence which should have been excluded and should have been disregarded. Even if the court finds that an award of \$50,000 is not so excessive that it “shocks the conscience” standard required for a new trial *nisi remittitur*, the evidence in the record is simply inadequate to support such an award. Plaintiff moves the court to use its discretion and grant a new trial *nisi remittitur* for the grounds set forth herein.

CONCLUSION

For the reasons set forth herein and based on the applicable principles of law, Defendant respectfully requests the court grant its Motion for Judgment Not Withstanding the Verdict, set aside the jury verdict, and render judgment for the Defendant. In the alternative, Plaintiff requests that his Motion for New Trial Absolute based on the Thirteenth Juror Doctrine or for New Trial Nisi Remittitur be granted for the compelling reasons shown herein and within and subsequent memorandum appropriately submitted to the Court prior to or at the hearing set in this matter.

RESPECTFULLY SUBMITTED,

By: s/Brian Dumas
Brian Dumas SC Bar 1786, Fed ID 638
BRIAN DUMAS, ATTORNEY LLC
718 Clemson Road
Columbia, SC 29229
(803)699-4996 / FAX (803)699-4995
brian@briandumasattorney.com
Attorney for the Defendant

Columbia, South Carolina.
September 6, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
)	
Joshua Steven Stone,)	
	)	Case No. 2016-CP-40-05857
Plaintiff,)	
	)	PLAINTIFF'S RESPONSE TO
v.	)	DEFENDANT'S MOTION FOR
	)	JUDGMENT NOTWITHSTANDING
George Hunter McMaster,	)	THE VERDICT, MOTION FOR A
	)	NEW TRIAL ABSOLUTE AND
Defendant.	)	MOTION FOR NEW TRIAL
	)	NISI REMITTITUR

Trial in this action resulted in a jury verdict in favor of the Plaintiff.

The Plaintiff's evidence showed that the Plaintiff was physically assaulted by the Defendant. The jury decided the evidence in favor of the Plaintiff. The Defendant moved for judgment notwithstanding the verdict.

STANDARD OF REVIEW

Our Court of Appeals has set forth the standard of review on a motion for judgment notwithstanding the verdict in *Burns v. Universal Health Services, Inc.*, 361 S.C. 221, 603 S.E.2d 605 (Ct. App. 2004) (internal citations omitted):

In ruling on a motion for JNOV, the trial judge cannot disturb the factual findings of a jury unless a review of the record discloses no evidence which reasonably supports them. In making this determination, the judge must view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the nonmoving party. The trial court must deny the motion when the evidence yields more than one inference or its inferences are in doubt.

In deciding a motion for JNOV, the trial judge is concerned with the existence of evidence, not its weight. When considering a JNOV motion, neither an appellate court, nor the trial court has authority to decide credibility issues or to resolve conflicts in the testimony or the evidence.

A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict. If more than one inference can be drawn from the evidence, the grant of a JNOV is improper and the case must be left to the jury's

determination. The verdict will be upheld if there is any evidence to sustain the factual findings implicit in the jury's verdict. The appellate court will reverse the trial court's ruling on a JNOV motion only when there is no evidence to support the ruling or where the ruling is controlled by an error of law.

“The trial court must deny a motion for a directed verdict or JNOV if the evidence yields more than one reasonable inference or its inference is in doubt. RFT Mgmt. Co. v. Tinsley & Adams, L.L.P., 399 S.C. 322, 331–32, 732 S.E.2d 166, 171 (2012). Moreover, a JNOV motion may be granted only if no reasonable juror could have reached the challenged verdict. Id. This Court will reverse the trial judge's ruling only when there is no evidence to support the ruling or it is controlled by an error of law. Carolina Chloride, Inc. v. Richland County, 394 S.C. 154, 163, 714 S.E.2d 869, 873 (2011), Town of Hollywood v. Floyd, 2013 WL 2066246 (2013). Putting it most succinctly, the Supreme Court held, “The jury’s verdict must be upheld unless no evidence reasonably supports the jury’s findings.” Id.

ARGUMENT

The Defendant contends that the Plaintiff should not have been allowed to read the pleadings. Rule 43(g) SCRPC, specifically states, “Counsel for any party may read his pleadings to the jury....”

The Defendant argues that his guilty plea to assault and battery should have been excluded, citing *Zurcher v. Bilton*, 379, S.C. 132, 666 S.E.2d 224 (2008). However, *Zurcher* specifically held that because of his guilty plea, “Zurcher was estopped from denying liability for the assault in the subsequent civil action.” The Plaintiff also relied upon *Samuel v. Morrzon*, 282 S.C. 616, 320 S.E.2d 482 (1984) which held that, “... a judgment on a plea of guilty may be received in evidence as an admission....”

The Defendant contends that the Plaintiff should not have been allowed to publish the Defendant’s deposition. However, Rule 32(a)(2), SCRPC, provides that the deposition of a party

may be used by an adverse party for any purpose. S.C.R.Evid., Rule 801(d)(2) states that a statement by a party constitutes an admission, and is not hearsay.

On the issue of damages, the testimony of Dr. Savitz was uncontradicted, finding that the Plaintiff suffers from Post-Traumatic Stress Disorder, a permanent condition.

It was reasonable for the jury to find that the lifetime damages for this alone was \$50,000.00. Punitive damages were assessed at \$50,000.00, well within the permitted ratio.

The Defendant argues again the facts presented to the jury. The Defendant presented no evidence refuting the Plaintiff's case. The uncontradicted evidence showed that the Defendant pulled the Plaintiff's pants down, reached underneath him from behind and grasped his genitals. The Defendant repeatedly argued the quality of this act, whether or not it was an accident and the degree to which the Plaintiff was or should have been affected by it. However, never during the trial did the Defendant present any evidence to rebut Plaintiff's case on liability or damages.

CONCLUSION

The Defendant's motion should be denied.

Respectfully submitted.

CALLISON TIGHE & ROBINSON, LLC

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Counsel for Plaintiff

Columbia, South Carolina
September 12, 2018

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In the Court of Common Pleas
State of South Carolina
County of Richland

JOSHUA STEVEN STONE,)
)
PLAINTIFF,)
) Case No.:
versus) 2016-CP-40-05857
)
GEORGE HUNTER MCMASTER,)
)
DEFENDANT.)
)

The Deposition of George Hunter McMaster

Callison Tighe & Robinson, LLC
1810 Lincoln Street, Suite 200
Columbia, South Carolina 29202
November 14, 2017
1 p.m. - 1:25 p.m.

On behalf of the attorney for the Plaintiff, the deposition of the above-named witness was taken before me, Judith H. Hayes, Certified Court Reporter and Notary Public in and for the State of South Carolina, pursuant to notice and/or agreement in the above-entitled cause pending in the above-named court.

1 **Appearing for the Plaintiff:**

2 Callison, Tighe & Robinson
3 1812 Lincoln Street
4 Columbia, South Carolina 29201

5
6
7 By: D. Reece Williams, III, Esq.

8
9 **Appearing for the Defendant:**

10 Brian Dumas, Attorney, LLC.
11 718 Clemson Road
12 Columbia, South Carolina 29229

13
14
15 By: Brian Dumas, Esq.

16
17 Also Present: Joshua Stone
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I N D E X

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Examination:

By Mr. Williams..... Page 4
By Mr. Dumas..... Page 10

P L A I N T I F F ' S E X H I B I T S

Exhibit No.: Page:
Exhibit No. 1 (Transcript of Record)..... 14

1 This deposition is taken pursuant to the
2 South Carolina rules of civil procedure; that all
3 objections, except as to the form of the question, are
4 reserved until time of trial.

5 It is further stipulated among counsel and
6 the witness that the witness will waive reading
7 and signing of the deposition.

8

9 THEREUPON,

10

11

George Hunter McMaster,

12 being first duly sworn to tell the truth, the whole truth,
13 and nothing but the truth, as hereinafter certified,
14 testified as follows:

15

16

Examination

17

BY MR. WILLIAMS:

18

Q. Would you state your name, sir?

19

A. George H. McMaster.

20

Q. Mr. McMaster, I am required, by rule, at the
21 beginning of each deposition to instruct you, the witness,
22 to ask me, the deposing counsel, rather than your own
23 lawyer for clarifications, definitions or explanations of
24 any words, questions or documents presented during the
25 course of the deposition. Do you understand that, sir?

- 1 A. I do.
- 2 Q. You are George McMaster. Tell me your address,
3 sir.
- 4 A. 1570 Senate Street.
- 5 Q. Is that an apartment?
- 6 A. That is an apartment, yes.
- 7 Q. Is that Senate Plaza?
- 8 A. Yes.
- 9 Q. Do you live alone?
- 10 A. I do.
- 11 Q. How long have you lived there?
- 12 A. I don't know. Some months now. I am not sure
13 how long I've been living there.
- 14 Q. Before you moved there, where did you live?
- 15 A. I was in Florida for a year.
- 16 Q. In Florida?
- 17 A. Yes.
- 18 Q. Can you tell me where that was?
- 19 A. I can't remember the exact city. I want to say
20 it was near Fort Lauderdale, but that may not be right.
- 21 Q. Had you changed your residence there?
- 22 A. No. I was at a treatment center, Lukens.
- 23 Q. What was the name of the center?
- 24 A. Lukens Institute.
- 25 Q. Can you spell that for me?

1 A. Sure. I can do that. L-u-k-e-n-s.

2 Q. And you were there as a patient?

3 A. Yes.

4 Q. What was the condition for which you were being
5 treated?

6 A. Depression and alcoholism.

7 Q. Are you under treatment now for either?

8 A. Not at this present time.

9 Q. Did you ever receive any treatment here in
10 Columbia for those conditions?

11 A. No.

12 Q. Did you have a primary physician at Lukens?

13 A. No. I did not.

14 Q. Just general treatment?

15 A. Yes.

16 Q. Are you married?

17 A. No.

18 Q. Have you ever been married?

19 A. No.

20 Q. Tell me about your family, sir. You have a
21 mother, daddy, father?

22 A. Well, my parents are dead as you know, Reece. I
23 have five brothers. John, Henry, George, Will, Frank and
24 Joe.

25 Q. Do they all live here in Columbia?

1 A. They do.

2 Q. I know some of them are lawyers.

3 A. Yes.

4 Q. Tell me who are the lawyers.

5 A. I don't know. I know I am. And I know Frank is
6 and Henry is. That's about it. I don't know how many are
7 lawyers.

8 Q. Joe, is he a lawyer?

9 A. He may be. Yeah, I think he is. I think he did
10 practice law at one time.

11 Q. In the course of your law practice you were
12 associated with some, if not all of them, weren't you?

13 A. Well, at one time or another over the years. I
14 mean the firm went through many ideations, and at one point
15 or another I was associated with all of them.

16 Q. At this point can you remember any outstanding
17 employees with whom you continue to have a relationship,
18 friendship or otherwise?

19 A. No.

20 Q. Do you have any special relationships with any
21 judges?

22 A. No.

23 Q. You don't have any friends who are judges?

24 A. No.

25 Q. Is there anybody among the employees of your

1 various law practices that you intend to call as a witness
2 in this case?

3 A. I doubt it. I have no idea.

4 Q. At this time you don't have anybody in mind?

5 A. No.

6 Q. Have you conferred with anybody about testifying
7 on your behalf in this case?

8 A. No.

9 Q. How about otherwise? Any other people you plan
10 to call as a witness?

11 A. I have conferred with no one. It's kind of up to
12 Brian who he wants to call.

13 Q. Are you presently employed?

14 A. No.

15 Q. Do you consider yourself retired?

16 A. Yes. Very much so.

17 Q. Do you plan to practice law again?

18 A. No.

19 Q. You're not going to go back to that?

20 A. No.

21 Q. Tell me who are your close friends at this time,
22 sir?

23 A. My family are my close friends. That's about it.

24 Q. Brothers?

25 A. Brothers.

1 Q. You don't have any sisters, right?

2 A. No. I don't have any sisters. I have some
3 nieces and nephews.

4 Q. They all live here in Columbia?

5 A. Some do. At least one nephew. That's a grand
6 nephew that lives in Columbia.

7 Q. As you know, this lawsuit arises out of events
8 that occurred on May 13, 2014 at the Palmetto Club.

9 A. Yes. Is that 2014?

10 Q. 2014. That's my recollection of the date.

11 A. I just didn't remember.

12 Q. Do you have memory of that event, sir?

13 A. Somewhat.

14 Q. When you pled guilty on May 19, 2016, do you
15 remember that, being in court?

16 A. Yes.

17 Q. And you had Johnny Gasser was your lawyer?

18 A. That's correct.

19 Q. And you made a statement on the record at that
20 time about the events of 2014, do you remember that?

21 A. No.

22 Q. You don't?

23 A. No.

24 Q. You don't recall there being a statement made
25 about the facts in the case?

1 A. No. I do not.

2 Q. That you were asked about that?

3 A. No.

4 Q. Do you recall that there were certain facts that
5 were recited by the Solicitor. And the court asked, "You
6 heard from the Solicitor. Do you agree with the facts as
7 she stated them to me?"

8 A. Could I have that transcript?

9 Q. Sure. Just a minute. (Reading.) "And if you
10 have a disagreement, please tell me that disagreement on
11 the record." You don't remember that?

12 A. No.

13 Q. Tell me this. Do you remember that you did not
14 state that you had a disagreement at that time?

15 A. I presume I did not.

16 Q. You presume you did not?

17 A. Yes.

18 (Plaintiff's Exhibit No. 1 was
19 marked for identification.)

20 Q. What I have handed you, sir, is a certified copy
21 of the official record of the transcript of record of that
22 proceeding certified by the official court reporter. I
23 just want you to tell me, sir, whether or not you disagree
24 with anything that is in the official record of that
25 proceeding.

1 A. Let me see.

2 Q. Sir?

3 A. I have to read it, Reece. (Reading.) What was
4 your question?

5 Q. Let me ask you first of all: Do you agree this
6 is a true and accurate transcription of the proceeding that
7 occurred?

8 A. I must presume it is.

9 Q. You didn't find any typos or errors?

10 A. No. I did not.

11 Q. Otherwise, you did not disagree with anything
12 that was stated at that time according to this record?

13 A. Well, I didn't. I don't think I had anything to
14 say at all.

15 Q. But you were there?

16 A. I was there.

17 Q. You were standing right there.

18 A. I was.

19 Q. And this was recited---

20 A. And I pled guilty.

21 Q. I appreciate that sir, but you didn't take
22 exception to anything that was said at that time?

23 A. No. I did not.

24 Q. Sir, you have read the complaint in this action,
25 I am sure?

1 A. No.

2 Q. You have not?

3 A. No.

4 Q. Have you been informed about the basis for the
5 claim against you?

6 A. No. I just know I have been sued.

7 Q. You don't know what for?

8 A. Money, I guess.

9 Q. I mean as far as the basis for the claim is
10 concerned, the events that occurred on May 13, 2014?

11 A. I presume that is the basis, but I don't know
12 what I am being sued for. I haven't seen the complaint.

13 Q. So if you don't know the basis for the claim, the
14 allegation in the complaint, I will be interested to know
15 what your defense is. If you don't know what the claim is,
16 you don't really know what your defense is, right?

17 A. I don't know anything about the case. I have not
18 received any documents, nor reviewed any documents about
19 the case.

20 Q. I presume you have had an opportunity to talk
21 with Mr. Dumas, your lawyer?

22 A. Certainly, I have.

23 Q. I don't want to know anything about the details,
24 so even though you talked with him you don't know what the
25 case is about?

1 A. I know I am being sued.

2 Q: Yes, sir. I understand. But you don't know the
3 factual basis?

4 A. I don't know the allegations or the factual
5 status or anything like that.

6 Q. Well, I don't suppose I have any more questions.
7 I will turn it over to your lawyer if he has any cross.

8 MR. WILLIAMS: Do you want to take a break?

9 MR. DUMAS: May we take a brief moment?

10 MR. WILLIAMS: Normally you don't confer with the
11 deponent.

12 MR. DUMAS: May I have permission to speak with
13 my client?

14 MR. WILLIAMS: I think so. It might be
15 worthwhile.

16 (Short break.)

17 (Back on the record.)

18 MR. DUMAS: Rather than cross-examination, would
19 you reask the last question you were asking the witness?

20 BY MR. WILLIAMS:

21 Q. Mr. McMaster, I had asked you what you propose to
22 present factually as a defense to this claim that's been
23 made against you.

24 A. As a defense?

25 Q. Yes, sir.

1 Q. Have you had any treatment or surgeries or
2 medical attention due to cancer?

3 A. Oh, yes.

4 Q. Just very briefly what have those been?

5 A. Well, of course I had prostate surgery several
6 years ago. Probably about three years ago, four years ago
7 now. At least that much. I don't remember. And now I am
8 going into some additional treatment, follow-up treatment
9 for possibly recurrence of another type of cancer.

10 MR. WILLIAMS: I have nothing further. Thank you
11 very much.

12 (At 1:25 p.m. the deposition was
13 concluded.)
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18)
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OPENING STATEMENT BY THE PLAINTIFF

1 THE COURT: Yes, sir.

2 MR. WILLIAMS: Ladies and gentlemen, as I
3 introduced myself earlier, my name is Reese Williams.
4 I'm a lawyer here in Columbia. And I'm representing
5 Josh Stone seated there next to me in the blue jacket.
6 Also in the courtroom is his mother. She's right
7 behind him. And that's his girlfriend and his daddy
8 sitting next to her. At counsel table with me is a
9 young lawyer who just finished law school, (inaudible),
10 and she's waiting for the results from the Bar exam if
11 she passed. She's not sure yet. One other witness
12 that we'll call is a clinical psychologist, Jennifer
13 Savitz, who will be coming in later this afternoon.

14 When this happened Josh Stone was a student at the
15 University. He was in the hospitality department to
16 learn about the restaurant business. And he was
17 working at the Palmetto Club as a waiter, which will
18 come out in the evidence that you will hear. I want to
19 read to you from our request to the Court and --

20 MR. DUMAS: May we approach, Your Honor? I
21 apologize, but may we approach a moment?

22 THE COURT: Yes, sir.

23 Mr. Williams.

24 MR. WILLIAMS: Yes, sir.

25 (Off-the-record discussion held.)

OPENING STATEMENT BY THE PLAINTIFF

1 THE COURT: Yes, sir, you may proceed.

2 MR. WILLIAMS: I can continue?

3 THE COURT: Yes, sir.

4 MR. WILLIAMS: Thank you, Your Honor.

5 I hope everybody can hear me, I've got a pretty
6 good dose of hay fever. Can you hear me in the back?

7 THE COURT: Is that mike working?

8 MR. WILLIAMS: Thank you, Judge.

9 Is that better?

10 THE COURT: Yes.

11 MR. WILLIAMS: Josh Stone is a resident of the
12 State of South Carolina subject to the jurisdiction of
13 this Court. George Hunter McMaster is a citizen of
14 Richland County, South Carolina. The Court has
15 jurisdiction over this matter. At all times relevant
16 herein the plaintiff, Josh Stone, was an employee of
17 the Palmetto Club and the defendant was a member and
18 patron of the Palmetto Club.

19 The Palmetto Club is a membership based social and
20 dining club located at 1231 Sumter Street, Columbia.
21 As a result of this incident, the defendant, Mr.
22 McMaster's membership in the Palmetto Club was revoked
23 and he was banned from the Palmetto Club premises for
24 life.

25 On May 13, 2014, the Defendant McMaster entered

OPENING STATEMENT BY THE PLAINTIFF

1 the Palmetto Club at approximately 1:30 p.m. Stone was
2 tending bar at the Palmetto Club tap room. The
3 defendant and plaintiff were alone when the defendant
4 entered the bar area. The plaintiff served the
5 defendant two or three Coors Light beers.

6 I'm going to start using the names instead of
7 plaintiff and defendant because that makes it seem --
8 McMaster began telling Stone how to improve his
9 personal appearance. McMaster commented that Stone's
10 pants were low because Stone lacked a belt. McMaster
11 then offered plaintiff -- offered Stone his suspenders
12 and assisted Stone in putting them on, being very
13 touchy.

14 McMaster complimented Stone on his teeth and told
15 Stone he had a pretty smile. On several occasions
16 McMaster winked at Stone while he worked. Between
17 approximately 5:30 and 6:00 p.m., McMaster followed
18 Stone to the tap room wait station. When Stone left
19 the bar to receive -- to retrieve silverware for a
20 group of customers who joined the bar. At the wait
21 station McMaster commanded Stone to lower his pants.
22 Stone adjusted his pants slightly. McMaster said, No,
23 lower. And again Stone adjusted his pants slightly.
24 McMaster then explained, quote, No, Goddamnit, lower,
25 end quote.

OPENING STATEMENT BY THE PLAINTIFF

1 McMaster proceeded to pull Stone's pants down to
2 his ankles. McMaster grabbed plaintiff Stone's
3 shirttail and began tucking it into Stone's boxers. As
4 he did so McMaster's hands brushed Stone's buttocks.
5 McMaster then began reaching up Stone's boxers to pull
6 Stone's shirt down farther. McMaster's hands touched
7 Stone's genitals. When McMaster finished McMaster told
8 Stone to pull up and zip his pants. McMaster also
9 asked Stone for another Coors Light.

10 After the incident Stone stepped away from the bar
11 for a short break. When he returned McMaster was no
12 longer present. McMaster did not pay his tab and his
13 beer was mostly full. When Stone's shift ended at
14 approximately 9:00 p.m. Stone immediately called his
15 parents. Stone then reported the incident to the
16 police.

17 At the time of the incident Stone was 22 years of
18 age and a senior at the University of South Carolina.
19 McMaster was 64 years of age and an active member of
20 the South Carolina Bar. The South Carolina Supreme
21 Court has since placed McMaster's law license on
22 interim suspension in response to this incident.

23 MR. DUMAS: Your Honor, may we approach?

24 THE COURT: That's all right. I overrule the
25 objection.

OPENING STATEMENT BY THE PLAINTIFF

1 You may proceed.

2 MR. WILLIAMS: Thank you, Your Honor.

3 Stone had not met, served, or interacted with
4 McMaster prior to May 13, 2014. The contact was
5 neither consensual nor invited and caused damage to
6 Stone. As a result of the incident Stone was
7 traumatized, violated, shocked, scared, embarrassed,
8 ashamed, helpless, confused, vulnerable, and has lost
9 his sense of manhood. Stone has experienced a reduced
10 appetite and trouble sleeping at night due to the
11 incident replayed constantly in his head.

12 Stone feels especially ashamed and embarrassed by
13 the fact that two managers and a trainee at the
14 Palmetto Club saw him being violated. Stone was forced
15 to seek counseling, individual psychotherapy, to help
16 him manage the pain, stress, and confusion he now
17 experiences daily.

18 Stone has also been prescribed Wellbutrin for
19 severe anxiety and depression resulting from the
20 incident. The incident detrimentally impacted Stone's
21 relationships, performance at school, and ability to
22 work. Stone's roommates and close friends describe a
23 significant change in Stone's temperament, including
24 irritability, self-hating, and self-doubting.

25 The claim that we are making in this case, I won't

OPENING STATEMENT BY THE PLAINTIFF

1 read these in detail, because it's just the same facts
2 over again, are for sexual battery. Second is for
3 intentional infliction of emotional distress. And for
4 sexual assault. Those three, instead of I said one.

5 So we are asking that, among other things, that
6 the jury consider that the -- that the conduct of
7 McMaster towards Stone was so extreme and outrageous as
8 to exceed all possible bounds of decency and must be
9 regarded as atrocious and otherwise intolerable in a
10 civilized society. Accordingly, we are asking you to
11 consider these facts as the evidence might show --
12 these are allegations and we will present evidence to
13 support these. We are asking you to return a verdict
14 which is in your opinion on the charges of these
15 allegations.

16 THE COURT: By the defense.

17 OPENING STATEMENT BY THE DEFENSE

18 MR. DUMAS: Thank you, Your Honor.

19 Ladies and gentlemen, thank you very much. And
20 just before I say anything else, I want to thank you
21 for your jury service. One of the things that we
22 really value the most in our world over here is the
23 fact that any citizen has the right to bring their
24 claim or their defense, be heard and be judged by a
25 jury of 12 citizens in the community. And we couldn't

OPENING STATEMENT BY THE DEFENSE

1 you given any information concerning such and such to
2 see -- and if you didn't have that, would that have
3 made a difference in terms of your diagnosis or your
4 conclusions? I can't imagine any other way to
5 cross-examine an expert.

6 THE COURT: All right. Anything further on this
7 issue?

8 MR. WILLIAMS: Thank you. Nothing further, Your
9 Honor.

10 THE COURT: I deny the motion in limine. The
11 plaintiff alleges that he suffered some injury as a
12 result of the conduct of the defendant and that those
13 injuries resulted in psychological treatment. The
14 Court cannot place stringent limits on the
15 cross-examination as to the cause of injury, not in the
16 form of a motion in limine. We have to probe into the
17 testimony to determine what's admissible and what's
18 not.

19 MR. DUMAS: If I may, Your Honor. A part of what
20 I had also put or what has also been filed which I
21 would like to go ahead and deal with in this Court so
22 that we know is opposing counsel filed a designation of
23 deposition excerpts which has made it clear that what
24 the plaintiff is going to attempt to do here is to
25 attempt to introduce a guilty plea to a misdemeanor

OPENING STATEMENT BY THE DEFENSE

1 offense by way of establishing liability.

2 I would submit, Your Honor, that that's absolutely
3 improper. That is why they put in the motion to try
4 and designate deposition excerpts. I have an
5 additional copy if the Court would like one and for the
6 clerk. And the bottom line, Your Honor, if I may.
7 According to the rule, Rule 32, prior to the taking of
8 the testimony is when I am to present this.

9 Specifically, Your Honor, I would go primarily to
10 the leading case on this point in which you cannot --
11 if I object, you cannot introduce a guilty plea on a
12 magistrate court offense as a way of trying to
13 establish liability in this case. Specifically the
14 case of Zurcher V Bilton from the South Carolina
15 Supreme Court specifically tells us that that guilty
16 plea is inadmissible hearsay and if it's objected to it
17 cannot be admitted into evidence.

18 So, one way or another what is going to happen, I
19 foresee, is that the plaintiff is going try to
20 introduce that plea and it is absolutely improper under
21 both 410, South Carolina Rules of Evidence, and under
22 609 of the South Carolina Rules of Evidence. There's
23 no collateral estoppel effect that comes in that
24 overcomes the inadmissible hearsay problem that is
25 specifically noted when you go to footnote three of

OPENING STATEMENT BY THE DEFENSE

1 Zurcher V Bilton, which was -- I have handed the case
2 up.

3 In that case, Zurcher V Bilton had to do with an
4 Alford plea, but it is talking about -- it says that
5 you have the same rules are going to apply in an Alford
6 plea as opposed to just a standard guilty plea. But it
7 makes it very clear that it is absolutely inadmissible
8 hearsay, there is no way that the statement comes in.
9 And there's no exception because they can't try to use
10 it for impeachment because it violates the impeachment
11 rule under 609. So, I would like to make it clear at
12 this point that in the introduction of testimony that
13 we have nothing and no testimony whatsoever about any
14 guilty plea.

15 THE COURT: All right. Mr. Williams.

16 MR. WILLIAMS: May it please the Court.. I believe
17 they are talking about two different things. I have
18 handed the Court a copy of the leading case, which is
19 Samuel versus Musan (phonetic). In that case the Court
20 held that by a plea of -- let me find it, I'm sorry.

21 (Pause.)

22 Looking at Page 620 on the copy. Well settled on
23 a criminal conviction is a not a binding adjudication
24 in a subsequent civil action based on the same set of
25 facts. Guilty plea may be received into evidence as an

OPENING STATEMENT BY THE DEFENSE

1 admission. I don't believe that there's any law to the
2 contrary to that. And there are -- the case cited is
3 by Judge Sanders in the Court of Appeals in 1984. And
4 I don't think that there's any to the contrary.

5 In the course of discovery, of course,
6 Mr. McMaster did in fact plead guilty to the offense
7 was --

8 MR. DUMAS: Assault and battery three, Your Honor.
9 I specifically noted, which is specifically referenced
10 in the Supreme Court case that I handed up, as of 2008,
11 which specifically says if I raise a hearsay objection
12 is it inadmissible.

13 MR. WILLIAMS: So, Judge, based on this case and
14 the testimony of Mr. McMaster in his deposition, in
15 which he acknowledged that he plead guilty and he also
16 agreed with the allocution that was made at that time
17 about the facts in this case which I would certainly
18 choose to use in cross-examining him. And I take the
19 position that the guilty plea is, in fact, admissible.

20 THE COURT: Mr. Dumas.

21 MR. DUMAS: Yes, Your Honor.

22 THE COURT: The Zurcher V Bilton, the Court in its
23 conclusion says, We affirm the trial court's decision
24 holding that a party who has pleaded guilty under
25 Alford in a previous criminal proceeding is

OPENING STATEMENT BY THE DEFENSE

1 collaterally estopped from litigating the issue in a
2 subsequent civil action based on the same facts under
3 the plea.

4 MR. DUMAS: Yes, Your Honor. However, if you look
5 at footnote three, specifically, in the Zurcher V
6 Bilton case, there was no hearsay objection that had
7 been interposed to the Court. I'm interposing that now
8 to the trial court. I'm saying that it's inadmissible
9 hearsay. So, if you look at footnote three right
10 underneath the conclusion, the Court didn't deal with
11 that. It flatly says under footnote three,
12 specifically, it is inadmissible hearsay and the
13 Supreme Court is, therefore, not dealing with it. They
14 don't have to answer that question.

15 So, I'm raising it, you know, like in the trial
16 with -- where they tried to raise it when they didn't
17 raise it at the trial in common pleas that was then
18 appealed, which resulted in this decision. Because
19 it's clearly called inadmissible hearsay under that
20 footnote, Your Honor. I think that it speaks directly
21 to the point. It is not a felony, it is a misdemeanor
22 punishable by a small fine, 30 days.

23 It also goes into settlement negotiations. What
24 he's trying to get in, Your Honor, is that he's trying
25 to get in through the deposition the fact of settlement

OPENING STATEMENT BY THE DEFENSE

1 negotiations by way of an excerpt from the hearing
2 where my client plead guilty. He can't do it. He has
3 to try his own case here, because I'm raising the
4 hearsay objection. And I don't want him putting a
5 negotiated plea that was entered on a misdemeanor
6 charge before the Court. I just want him to prove his
7 case.

8 THE COURT: How about that, Mr. Williams?

9 MR. WILLIAMS: Do you want to hear from me, Your
10 Honor?

11 THE COURT: I want to hear your response to the
12 footnote three of this. It says, because Zurcher
13 neither objected at trial nor appealed the issue on the
14 grounds of hearsay, this Court need not address the
15 matter. We also note Zurcher could have pleaded no
16 contest altogether avoided this appeal by admitting all
17 of the misdemeanor charges. See Section 17.2340, are
18 inadmissible in any civil proceedings except for
19 impeachment purposes. And the sentence before that
20 says, Only guilty pleas to crimes punishable by death
21 or imprisonment in excess of one year are admissible
22 under the hearsay exception found in 803-22. And
23 803-22, let's see what it says.

24 (Pause.)

25 THE COURT: 803-22. Here is the exceptions.

OPENING STATEMENT BY THE DEFENSE

1 Availability of material evidence of the final judgment
2 to include -- I am sorry, evidence of the final
3 judgment entered after the trial or a plea of guilty,
4 judging a person guilty of a crime punishable by death
5 or imprisonment in excess of one year. Proving any
6 fact essential to sustain the judgment in a criminal
7 prosecution for purposes other than impeachment.

8 So, in order for it to be a hearsay exception, it
9 must be for a crime punishable by life imprisonment or
10 over one year.

11 MR. WILLIAMS: Judge, I don't understand the point
12 of being hearsay. This is evidence that will come in
13 through Mr. McMaster himself. In his deposition he
14 acknowledged that he plead guilty, so there's no
15 question about that.

16 THE COURT: So that nails down one part of it.
17 And Mr. Dumas says, well, the other part that makes it
18 inadmissible is something about an objection at his
19 deposition. I missed that part of it. Let me hear...
20 that part.

21 MR. WILLIAMS: Objection in the deposition?

22 THE COURT: What did you say?

23 MR. DUMAS: Well, Your Honor, at the deposition,
24 all objections other than to form of the questions are
25 waived. And we don't waive any single objection by,

OPENING STATEMENT BY THE DEFENSE

1 you know, because we want our depositions to go
2 forward. There's all kinds of hearsay.

3 THE COURT: I understand your point. What is the
4 form of this particular question asked at the
5 deposition concerning -- what was the question that was
6 asked that you are trying to get into evidence in this
7 case?

8 MR. WILLIAMS: All right, sir.

9 THE COURT: This is an objection to an excerpt
10 that I haven't been provided.

11 MR. DUMAS: I handed up my objection, Your Honor.

12 THE COURT: The objection was not to -- your
13 objection to something that was asked at a deposition.

14 MR. DUMAS: Yes, Your Honor.

15 *(Whereupon, Court's Exhibit No(s). 1 marked for*
16 *identification.)*

17 THE COURT: I need to see the transcript.

18 MR. DUMAS: Okay. He had attached -- he's trying
19 to introduce the entire deposition. And he attached
20 it.

21 THE COURT: Well, I need to know what specific
22 thing that you are objecting to, what question and
23 answer, if you didn't -- if you reserved the objection
24 to the time of the trial.

25 MR. WILLIAMS: Judge, I refer you to page nine,

OPENING STATEMENT BY THE DEFENSE

1 beginning at line -- excuse me -- fourteen. If you can
2 read it, and there's no objection.

3 MR. DUMAS: Excuse me, Your Honor. But at the
4 very top of page four of the deposition. The
5 deposition is taken pursuant to South Carolina --

6 THE COURT: You said that, I understand that. Now
7 we are talking about the specific objection to this
8 particular issue. And he is referring me to Page 9.

9 He says, "You know, this lawsuit arises out of
10 events that occurred at the Palmetto Club?

11 Yes. That is my recollection of the date.

12 I just -- do you have memory of that event?

13 Yes, sir, somewhat.

14 When you plead guilty on May 19th, 2016 do you
15 remember that, being in court?

16 Yes.

17 You had John Gasser as your lawyer?

18 That's correct.

19 And you made a statement on the record at that
20 time about the events; do you remember that?

21 No.

22 You do not?

23 No.

24 You don't recall there being a statement made
25 about the facts in the case?

OPENING STATEMENT BY THE DEFENSE

1 No, I do not."

2 Where there's an objection to a deposition being
3 offered, then there should be line and pages of
4 designation as to what is being objected to.

5 Mr. Williams wants to publish the entire deposition.
6 Under normal circumstances, he can do so, particularly
7 because Mr. McMaster is not here, the deposition can be
8 published at trial. If you are objecting to a specific
9 portion of the deposition, then you have to be specific
10 as to what -- in designating whatever it is you are
11 objecting to.

12 MR. DUMAS: And, Your Honor, I'm specifically
13 desig -- I specifically designated in terms of -- just
14 going to this one particular issue. I earlier had two
15 other objections, but moving specifically I objected to
16 Page nine, line 14 through Page 11, line 23 on the
17 grounds of including but not limited to hearsay, more
18 prejudicial than probative, attempting to equate a
19 criminal charge to a civil cause of action, improper
20 for civil trial purposes, improper under 410 and 610.

21 MR. WILLIAMS: Judge, I was addressing the hearsay
22 issue that the Court asked about. I specifically asked
23 Mr. McMaster if he had read the transcript, and asked
24 him -- he says he did and then he says, I plead guilty.
25 That is not hearsay.

OPENING STATEMENT BY THE DEFENSE

1 THE COURT: Read what transcript?

2 MR. WILLIAMS: Transcript of the guilty plea. And
3 then he acknowledges here that he plead guilty, and
4 that is not hearsay. He's saying himself what he did.
5 That is pretty specific. I don't know how that can be
6 kept out as hearsay.

7 THE COURT: All right.

8 MR. WILLIAMS: I asked him if he took exception to
9 anything that was in the transcript. And he said, "No,
10 I did not. I plead guilty."

11 If Mr. McMaster himself acknowledged that he plead
12 guilty, it's not hearsay. And he has also acknowledged
13 that he read the transcript at the time of his
14 deposition. He said that he read it and he
15 acknowledged that it was correct, that he had no
16 objections to it. So, I don't know how much more
17 definite it can be.

18 THE COURT: So, the guilty plea is not admissible
19 as an exception to the hearsay rule. But if you ask
20 the person whether he plead guilty and he says, Yes,
21 then it's not hearsay.

22 MR. WILLIAMS: Not hearsay.

23 The question was: Did you disagree with anything
24 that was stated at the time, according to this record
25 that I gave him and he read.

OPENING STATEMENT BY THE DEFENSE

1 He says, "I don't think that I have anything to
2 say at all. But you were there and I was there. You
3 were standing right there. I was. This was recited."

4 And he says, "And I plead guilty".

5 And I say, "I appreciate that, but you didn't take
6 exception to anything that was said at that time?"

7 And he says, "No, I did not."

8 THE COURT: So, if McMaster was here and
9 testified, I did not do it, I didn't touch him, then
10 the Zurcher case says that he cannot be collaterally
11 estopped from denying it based on -- based on a
12 guilty -- despite the guilty plea, he can still come in
13 court and deny it. He's not estopped from doing it,
14 collaterally estopped from doing that because it's not
15 a year punishment.

16 But that does not mean that his deposition cannot
17 be used to establish that he did plead guilty.

18 MR. WILLIAMS: Yes, Your Honor.

19 THE COURT: That is your position.

20 MR. WILLIAMS: That is certainly the best that I
21 can do, Judge.

22 THE COURT: I'm just trying to understand it all.
23 You all have been filing motions and studying this
24 issue and threw it all at me this morning and I have
25 had to figure it out within the span of an hour or half

OPENING STATEMENT BY THE DEFENSE

1 an hour, or I'll do it over lunch actually. But I want
2 to be sure that I understand the arguments.

3 MR. WILLIAMS: Certainly. We understand the
4 position that you are in, Judge. I know --

5 THE COURT: We will still get it right though.

6 MR. WILLIAMS: I am sure you will.

7 MR. DUMAS: Your ruling will be right regardless.

8 THE COURT: It'll be right. I just have to
9 understand what you all are fussing about.

10 MR. DUMAS: And, Your Honor, part of this also is
11 what he's trying to get in is -- and this is, again, my
12 objection. What he wants is -- of course, we have
13 already gone over this ad nauseam about the fact that
14 all objections were reserved until the time of trial,
15 which is why you get this placed in your lap at this
16 point.

17 But the reality is that he's trying to get in an
18 exhibit of the plea, which is also the hearsay that
19 Zurcher says can't come in once that hearsay objection
20 is raised. And that is the -- that is what he attached
21 to his motion is the entire plea discussion which he's
22 trying to get in.

23 And if you bar it, Your Honor, he still has his
24 witnesses to prove his case, he just has to prove it
25 that way.

OPENING STATEMENT BY THE DEFENSE

1 THE COURT: Well, I think that he's contending
2 that, well, if you didn't take the deposition he
3 wouldn't be able to come in and talk about it. But he
4 wants to publish the deposition, which is the testimony
5 that he gave under oath and is not hearsay because,
6 see, he's asking the person did I do this, did I do --
7 the person with the information responding to the
8 questions. Well, anyway, we will -- I need to read it
9 through and ponder it over lunch.

10 But what else do you have to say about it?

11 MR. WILLIAMS: That is all.

12 MR. DUMAS: Your Honor, I would say he hasn't
13 established the unavailability of the witness for
14 purposes of the use of the deposition because he has
15 not shown that he's put out a subpoena. He has not
16 shown that he has attempted to procure his testimony
17 into evidence. I believe that under the rule
18 specifically, and I cited my objections within the
19 brief, that specifically you have got to comply with
20 SCRCP 32A (1) through (3) in order to put in the entire
21 deposition or a portion of it. And he has not
22 complied, nor has he shown any circumstances that would
23 establish that to that level under Rule 32.

24 THE COURT: 32A.

25 MR. DUMAS: One through three, Your Honor, sub --

OPENING STATEMENT BY THE DEFENSE

1 the parens, little (1) through (3).

2 THE COURT: Any response to that, Mr. Williams?

3 MR. WILLIAMS: If I understand correctly, counsel
4 is saying that it's because the defendant is not
5 present in the courtroom I can't introduce his
6 deposition?

7 THE COURT: Yes. Unless you prove under (3)a
8 that he's dead, over 100 miles away, unable to attend
9 because of age, infirmity, et cetera, or you are unable
10 to procure his attendance.

11 MR. WILLIAMS: Judge, I don't really have any
12 response to that. I couldn't imagine that the
13 defendant would take his advantage of his own absence
14 in order to avoid having the deposition --

15 THE COURT: Yes, I'm thinking that (3)a only
16 applies to someone who is not a party. A(1) says, The
17 deposition to be used by any party. (2), deposition of
18 any party or anyone who is an officer. And then (3), a
19 witness is unavailable, et cetera.

20 What do you say about that, Mr. Dumas?

21 MR. DUMAS: Well, Your Honor, specifically, 32A(3)
22 applies. Says, Whether or not a party -- so, the fact
23 that he's not here requires opposing counsel to prove
24 that he's dead, that he's more than 100 miles away,
25 that age or infirmity, or the party offering may be

OPENING STATEMENT BY THE DEFENSE

1 unable to procure his attendance by subpoena.

2 THE COURT: He's offering number (2).

3 MR. DUMAS: Well, Your Honor --

4 THE COURT: The deposition of a party --

5 MR. DUMAS: But he may -- I don't understand.

6 THE COURT: -- like an adverse party for any
7 purpose.

8 MR. DUMAS: And I understand, Your Honor.

9 However, permitted by the -- however, you have got (2)
10 in conflict with (3), because (2) specifically --
11 because (3) specifically says, deposition whether or
12 not a party for any purpose. But (2) applies -- if we
13 apply it, Your Honor, it still -- even if we apply it
14 it is still going to fall in my hearsay objection and
15 the other objections that I raised on the fourth to
16 those portions.

17 THE COURT: We will take a break for lunch. I
18 think (2) allows it to be admitted. I am going to
19 study it and I'll rule after lunch. So, we will be in
20 recess until 2:00.

21 MR. WILLIAMS: Judge, can we have a little more
22 time?

23 THE COURT: Yeah, well, maybe 2:15.

24 MR. WILLIAMS: Thank you, Judge.

25 MR. DUMAS: Thank you, Your Honor.

OPENING STATEMENT BY THE DEFENSE

1 THE COURT: Okay.

2 (Lunch recess.)

3 THE COURT: All right. With regard to the issues
4 that were brought -- raised earlier, I deny the
5 Defense's motion and overrule the objection of the
6 defense to the use of a deposition at trial and
7 overrule the objection alleging that the defense
8 testimony inadmissible as hearsay in that the defendant
9 has the right to come and deny liability based on the
10 fact that the guilty plea to the assault charge carries
11 less than the one-year sentence.

12 And the Zurcher case says that he's not estopped
13 to come in and deny that liability. Also, the most
14 recent case that came about in Clarendon County
15 involving a former, I believe a former clerk of court,
16 Collier V Brown, the father of the now circuit judge
17 failed in that case and the court examined whether
18 someone who has plead guilty in a criminal case can --
19 whether that person is estopped from denying the
20 liability in the civil case. And clearly, he is not
21 estopped from denying liability. But all of that does
22 not make the guilty plea hearsay, particularly in light
23 of the deposition testimony.

24 Additionally, with regard to Rule 32, a defendant
25 cannot, or a party cannot absent themselves from trial

OPENING STATEMENT BY THE DEFENSE

1 and then claim that the deposition cannot be used based
2 on Rule 30A(3). The plaintiff can use the deposition
3 based on Rule 30A(2). So, I overrule the Defendant's
4 objection to the use of deposition pursuant to Rule 32.

5 MR. DUMAS: Just one other question, Your Honor.
6 Does that also apply to the specific exemptions to the
7 exhibit that was attached?

8 THE COURT: The exhibit, that is the transcript,
9 or what is it?

10 MR. DUMAS: No. Yes, the exhibit is the
11 transcript from that hearing.

12 THE COURT: Yes, I think that the rule says that
13 the -- all or part of a deposition may be used, so
14 whereas there may be some individual basis to object to
15 a specific question, none of the questions based on his
16 guilty plea that you all reviewed with me is
17 objectionable. If there's something else that you want
18 me to point out for me to consider, you can do that.

19 MR. DUMAS: Your Honor, there were other portions
20 which I objected to and it made reference to -- it was
21 a series of questions that specifically went to, in
22 that deposition, that went to references. And this was
23 by counsel. It was not specifically -- and I had
24 specified it, however. There was a portion. Bear with
25 me just one moment, Your Honor.

OPENING STATEMENT BY THE DEFENSE

1 (Pause.)

2 MR. DUMAS: That would come up -- bear with me
3 just one moment, Your Honor. I apologize. I want to
4 make sure.

5 (Pause.)

6 MR. DUMAS: No, I apologize Your Honor, that was
7 from another deposition.

8 THE COURT: All right. Okay. Let's bring in the
9 jury.

10 MR. WILLIAMS: Your Honor, I have one -- I wanted
11 to have something marked for identification.

12 MR. DUMAS: Your Honor, I believe that both
13 sides -- I would like to have sequestration.

14 MR. WILLIAMS: I see no reason for that, Judge,
15 beyond the basis for that -- this isn't a criminal
16 case.

17 THE COURT: All right. What is the reason?

18 MR. DUMAS: Well, Your Honor, because I do not
19 wish -- I would like to keep the testimony of each
20 witness pure, in that they should not been listening
21 to -- obviously the party is exempted from that, but I
22 don't think that the other witnesses should be able to
23 hear what their own side has to say and then be, shall
24 I say, under the temptation to taylor their testimony.
25 I ask and I believe that's my right to request that.

OPENING STATEMENT BY THE DEFENSE

1 Q Not before that, but that day.

2 A That day was my first encounter with him, yes.

3 Q So you had not met him before?

4 A No.

5 Q Did you know who he was?

6 A I didn't know what his background was, but I had
7 heard his name around the -- the private club.

8 Q And tell the jury what occurred initially when he
9 came to your bar.

10 A Initially, when he came to my bar, he seemed in a
11 very good mood. He was smiling, happy. He had just won a
12 case, I guess he was a lawyer, and he ordered a Coors Light
13 from me.

14 Q Pull that mike a little closer to you. That's
15 good.

16 So he ordered what?

17 A He ordered a Coors Light.

18 Q He ordered a Coors Light. Did he engage you in
19 conversation?

20 A Yes. He talked about my overall appearance. We
21 were required to wear black pants, a white button up, and
22 black vest and black tie. And he was telling me about
23 different places that I could go to get my shirts starched,
24 get a sports coat, just in general, overall appearance, and
25 where he went to get his done.

OPENING STATEMENT BY THE DEFENSE

1 Q How many beers did he order at that time?

2 A I don't remember. I -- I -- I believe it was
3 four.

4 Q More than one?

5 A Yes.

6 Q You're sure about that?

7 A Yes.

8 Q All right. And tell the jury what else he said
9 about your appearance.

10 A He said that I had a pretty smile. I didn't think
11 anything of it. I get it fairly often. He winked at me
12 several times. Again, I didn't think a whole lot of it. I
13 wink at people, just as a sign of, like, hey. But he was
14 telling me about all -- where he got his watch. He looked
15 at my watch and he talked about watches for a little bit.
16 But nothing significant was said. It was just idle bar
17 chat, just trying to engage the guests.

18 Q Did he say any more about your appearance?

19 A He noticed that I wasn't wearing a belt. Even
20 though I was wearing a vest over it, my pants were slightly
21 sagging. So he offered his suspenders to me. And he helped
22 me put them on. I had never worn a pair of suspenders
23 before, so he helped put them on.

24 At that time, he wasn't inappropriately
25 touching me, but it was still more touching than just the

OPENING STATEMENT BY THE DEFENSE

1 regular clipping three different clips on, and letting it be
2 at that.

3 Q So did you -- did you have a continued encounter
4 with him? What happened next?

5 A He didn't like the way that it looked initially.
6 So I went to the bathroom, the waiting station. It was
7 about halfway from the kitchen to the dining room, a little
8 hallway with two sets of stairs, four each, to go adjust my
9 pants. He followed me back there. I didn't know, but he
10 had followed me back there, and told me to go adjust them
11 lower. So I just adjusted them a little lower, but, No,
12 lower. And I adjusted them lower, and he said, No, Goddamn
13 it, and he throws my pants down to my ankles. And I froze
14 in fear, like shock, I don't know what's going on. I never
15 expected that to happen just from a simple adjust your
16 pants.

17 And one of the managers came around the
18 corner, saw -- saw my face, turned around, and walked away.
19 He proceeded to start tucking my shirt into my boxers with
20 his hand cuffed like this, instead of like that. And he
21 touched my butt and then he reached up under my boxers. I
22 wore the loose boxers, not the tight boxers at the time, and
23 touched my balls and grabbed the shirttail and pulled it --
24 pulled it down.

25 When he was done, he told me to pull my pants

OPENING STATEMENT BY THE DEFENSE

1 up and he walked away. I pulled my pants up, trying to
2 figure out what had just happened. I told one of the other
3 managers that hadn't -- the one that didn't see what
4 happened. He was giggling, and I told him what had
5 happened, asked if I could go outside and smoke a cigarette
6 and figure out -- you know, collect my thoughts. And he
7 said, Yeah. And when I came back, Mr. McMaster was gone,
8 his beer, and all he had was two or three sips left in it,
9 and he hadn't paid his tab.

10 Q Now, be a little more specific, sir, about how he
11 touched your genitals. How would you characterize it?

12 A He specifically grabbed my right testicle when he
13 reached up. He -- he -- he grabbed it.

14 Q You said that -- when you returned to the bar, he
15 was gone?

16 A That's correct.

17 Q And what time did your shift end at, sir?

18 A Nine o'clock.

19 Q And what did you do at that time?

20 A When I realized that the club, or to my
21 perception, the club was not going to take any legal action,
22 or no one -- none of the managers came up to me and asked me
23 what had happened, I mean, they were like, Are you okay? I
24 was like, I can't even answer that, but they were not taking
25 action.

OPENING STATEMENT BY THE DEFENSE

1 Q How would you characterize that break up?

2 A Violent.

3 Q All right. We probably don't know about that.

4 Tell me sir, as a result of this incident,
5 what effect has it had on you, as best you can say?

6 A I still think about this everyday. It's not
7 something you would get over especially as a -- as a male.
8 A male is portrayed as strong. If someone does something to
9 you, you can defend yourself, and I struggle with why I
10 didn't defend myself. Why did I just stand there? Why --
11 why for a lot of -- could I have done this? Should have I
12 done this? I am still torn to this day with that.

13 I have dreams sometimes, from time to time,
14 not every night, but I have dreams. My appetite isn't the
15 same as it used to be. It's tough mentally because I beat
16 myself up on what ifs, what should I have done, what could I
17 have done, and how things could have been different had I
18 reacted differently.

19 Q Did I refer you to a counselor?

20 A You did.

21 Q And did you -- tell us about that. Did you go
22 through some counseling sessions?

23 A I did. I went to, I believe, four counseling
24 sessions. I stopped going because in those sessions, I said
25 the same thing that I told you, told the courtroom today,

OPENING STATEMENT BY THE DEFENSE

1 that each time it didn't get any easier telling it, and it
2 still hadn't gotten any easier explaining it. It's
3 something I'm ashamed of. I don't like telling the story.

4 But at the same time, it -- it needed to be
5 said. And as part of the healing process, I had to talk to
6 my family about that, rather than -- someone who -- someone
7 who knows me. Not someone who is a licensed therapist. I
8 don't want to see a doctor about it, I want to talk to my
9 family, my mother, my sister. So I stopped going to the
10 counseling sessions.

11 Q And then did you also go to see Dr. Savitz?

12 A I did.

13 Q At my request?

14 A Yes.

15 Q And did she reach a diagnosis of your condition?

16 A She did.

17 Q All right, sir. Are you in a relationship at this
18 time?

19 A I'm sorry?

20 Q Do you have a girlfriend at this time?

21 A I do.

22 Q Are you expecting a baby?

23 A I am, in December.

24 Q Where do you live, sir?

25 A I live in Chattanooga, Tennessee now.

CROSS EXAMINATION OF JOSHUA STONE BY MR. DUMAS

1 charge of the bar, right?

2 A Yes.

3 Q So you got a quiet empty room with, what, two or
4 three customers? You don't know who's drinking and who's
5 not?

6 A I do.

7 Q So you knew he had been drinking pretty heavily
8 all that afternoon, right?

9 A Correct.

10 Q So we've got a customer who has been drinking
11 pretty heavily that afternoon, you tell -- told this jury,
12 and correct me if I'm wrong, he was flirting with you,
13 right?

14 A Yes.

15 Q Tells you, You have got a nice smile, right?

16 A Yes.

17 Q He's commenting on your appearance, right?

18 A Yes.

19 Q That didn't raise any red flags to you?

20 A Yeah, it did.

21 Q So, all of a sudden, the man volunteers,
22 because -- and let's just correct this, the Palmetto Club
23 has a strict uniform policy, correct?

24 A Yes.

25 Q And by not having a belt, you're, arguably

CROSS EXAMINATION OF JOSHUA STONE BY MR. DUMAS

1 speaking, in violation of that policy because the pants were
2 drooping, right?

3 A Yes.

4 Q So he didn't just make that up, right?

5 A No.

6 Q So when he offered you a set of suspenders, you
7 perfectly went along with it because your pants were
8 drooping, right?

9 A Yes.

10 Q They were falling down, right?

11 A Yes.

12 Q So what then happens, as I understand it is, he
13 gives them to you, they get adjusted, and it still wasn't
14 right, was it?

15 A No.

16 Q Because the pants were still drooping, right?

17 A Yes.

18 Q So your version is you go to the back, and
19 suddenly out of nowhere, here comes the guy who gave you the
20 suspenders, correct?

21 A Correct.

22 Q It's an open area. It's not behind a closed door,
23 right?

24 A It is hidden away -- away from the public.

25 Q But obviously it's right out there, correct?

CROSS EXAMINATION OF JOSHUA STONE BY MR. DUMAS

1 A No.

2 Q Okay. It was right out there so a manager walked
3 in, right?

4 A From the kitchen, yes.

5 Q So it's not exactly a locked door, right?

6 A No. It's a small hallway.

7 Q And so let me see if I understand this. At that
8 point in time, the man had had 11 beers, right?

9 A No.

10 Q He had not?

11 A He didn't drink the last beer.

12 Q Okay. So he had ten beers in four hours.

13 A The tabs on both of those tickets, he tabbed out
14 at 2:30, with the first seven. So he was there from 11 to
15 2:30, had seven beers, that's three hours at two drinks per
16 hour, and then the last one, he had -- he had four on his
17 tab, but he didn't drink the last one. So there was only
18 three beers in three hours. Look at the tab out time.

19 Q So I guess my question is, where does the first
20 one -- I mean, I'm sitting here looking at it. Where is the
21 tab end time?

22 A Tabs don't really show what time they get started
23 in our systems.

24 Q But we do know that he had seven beers as of 2:27,
25 when the tab got rung out?

CROSS EXAMINATION OF JOSHUA STONE BY MR. DUMAS

1 A Yes.

2 Q Then there's a second tab, that doesn't show a
3 ring in time, and ends at 5:46 with another four beers,
4 correct?

5 A Correct.

6 Q The man had been drinking with no food all
7 afternoon, right?

8 A I don't know. He left for three hours, he could
9 have eaten there.

10 Q Okay. The very first statement that you gave,
11 which is Defense 1, this was the freshest one in your mind
12 at the time, correct?

13 A Correct.

14 Q So Defense 1 was the first statement that you
15 wrote, and it's the freshest. And didn't you exactly
16 describe it as, "He took one hand, reached up through my
17 boxers, and pulled the shirt down, in the process brushing
18 against my nether region several times with his bare hands."

19 That's the way you described it, correct?

20 A That's the way I described it.

21 Q Fresh in your mind, right?

22 A Yes.

23 Q You next, according to the second statement, the
24 second time you talked about it, is you described it as,
25 "His hand brushed my butt several times. He then reached up

CROSS EXAMINATION OF JOSHUA STONE BY MR. DUMAS

1 from under my boxers to pull the shirt down further and
2 touched my nether region."

3 That's the second statement, correct?

4 A Yes.

5 Q The third statement, you described what you meant
6 by your "nether regions," correct?

7 A Yes.

8 Q And that's about a week and a half later, right?

9 A (Nods head.)

10 Q Nowhere in any of those statements given at that
11 point in time did you ever say he grabbed your behind or he
12 grabbed your testicles, did you?

13 A I did not.

14 Q And that was when it was very fresh in your mind.

15 A (Nods head.)

16 Q And, in fact, you were being encouraged, were you
17 not, to give as complete and as detailed an account as
18 possible, correct?

19 A Correct.

20 Q Okay. Now, according to your testimony, you
21 didn't even give any of these because you sat there, the
22 shift ends at about 5:30, you sat there for two hours trying
23 to figure out what had happened -- according to your
24 testimony. And I just want to make sure I understand. Is
25 that correct?

CROSS EXAMINATION OF JOSHUA STONE BY MR. DUMAS

1 A Yes.

2 Q And -- but it was only once you called your mother
3 that you then decided it was time to call the police?

4 A Yes.

5 Q Were you unsure whether you had been groped or
6 not?

7 A No, I knew I had.

8 Q Well -- but it took you two hours and a phone call
9 home to decide whether you were going to make a phone call
10 or not, correct?

11 A Yes.

12 Q And it's just as likely, because according to your
13 testimony, a manager apparently just walked in and saw the
14 whole thing directly, right?

15 A Yes.

16 Q No one said a word to you from them, correct?

17 A Correct.

18 Q That very evening, because you gave the second
19 statement at 9:38, according to the time on the statement,
20 correct?

21 A Yes.

22 Q You got picked up by Rebecca Rue, who you were
23 living with at the time, correct?

24 A She was living with me, yes.

25 Q Y'all were living together, right? And you rode

CROSS EXAMINATION OF JOSHUA STONE BY MR. DUMAS

1 with her to Simpsonville?

2 A Correct, yeah.

3 Q And I presume y'all discussed a lot of matters on
4 that ride to Simpsonville.

5 A We did.

6 Q Okay. And you spent the -- I believe it was, at
7 her mom's birthday was that day or the next day?

8 A I don't recall what the event was.

9 Q Some type of event.

10 A It was an event, yeah.

11 Q Let's move on.

12 You next went to see a therapist at the
13 suggestion of your attorney, correct?

14 A Correct.

15 MR. DUMAS: May it please the Court?

16 THE COURT: Yes, sir.

17 MR. WILLIAMS: My counsel has handed me part of
18 the records of a psychologist. I don't object to this
19 particular part of the record, but I don't understand
20 the issue that I raised earlier. It's not supported by
21 any testimony, it's just a record that he's got.

22 I don't object to it, but I don't waive my
23 objection to anything else I brought up. The doctor is
24 not here to testify about the record, is my point.

25 DR. SAVITZ: I'm here.

CROSS EXAMINATION OF JOSHUA STONE BY MR. DUMAS

1 MR. WILLIAMS: Yes, you are. I didn't see you.

2 BY MR. DUMAS:

3 Q Do you recognize filling out this intake
4 questionnaire when you went to see Dr. Savitz at
5 Mr. Williams's direction? Within the same month after the
6 event took place.

7 A Yes.

8 Q Okay. And is that your handwriting? You filled
9 this out?

10 A Yes.

11 MR. DUMAS: So this would be, I'd move this into
12 evidence as Defense 5.

13 THE COURT: Any objection?

14 MR. WILLIAMS: No objection.

15 THE COURT: It's admitted.

16 *(Whereupon, Defendant's Exhibit No(s). 5 marked*
17 *for identification and received in evidence.)*

18 BY MR. DUMAS:

19 Q Now, it would be fair to say that at this point in
20 time, it's dated May 29th, you've retained private counsel,
21 and the way you describe the event is, "I was touched
22 inappropriately at my workplace," right?

23 A Yes.

24 Q As a result, you had the four sessions, correct?

25 A Correct.

CROSS EXAMINATION OF JOSHUA STONE BY MR. DUMAS

1 Q And you ceased going to any counseling after that,
2 correct?

3 A Professional counseling, yes.

4 Q Okay. Well, I mean, you went to four sessions,
5 you chose of your own free will to stop going, correct?

6 A Correct.

7 Q And you never again went for any type of
8 evaluation until 2018; is that correct?

9 A Correct.

10 Q Now, during that time, Mr. Stone, after this
11 event, it would be fair to say, would it not, that to all
12 outward appearances, you lived a pretty normal life?

13 A Yes.

14 Q In fact, when we at an earlier time, when I was
15 asking you some questions, I showed you a social media
16 download and asked if you recognized it, and you did. It
17 was a download of all your social media as of early 2018,
18 correct?

19 A Yes.

20 Q And it was -- you do agree, don't you, that this
21 is complete. It appears to be an accurate reflection of
22 your social media postings at -- during the time in
23 question, from a few months before this event happened, all
24 the way up until early 2018, correct?

25 A Correct.

CROSS EXAMINATION OF JOSHUA STONE BY MR. DUMAS

1 MR. DUMAS: I would move this into evidence as
2 Defense 6.

3 MR. WILLIAMS: Your Honor, relevancy.

4 MR. DUMAS: It's going directly to damages, Your
5 Honor.

6 THE COURT: I have no clue what it is. It says,
7 "social media postings," but I'll have to look at it to
8 determine, to rule on its objection. It will be marked
9 for identification at this time.

10 MR. DUMAS: Okay. Thank you, Your Honor.

11 *(Whereupon, Defendant's Exhibit No(s). 6 marked*
12 *for identification.)*

13 BY MR. DUMAS:

14 Q Now, when you look through your social media
15 postings for almost a four-year period, it is true, isn't
16 it, that you don't discuss anything, generally, of any kind
17 of a negative feelings, no sleeplessness, no problems with
18 the world, no nothing. Nothing unhappy, right?

19 A No.

20 Q Okay.

21 A I don't use social media very often.

22 Q Okay. But these were your social media postings,
23 correct?

24 A They were.

25 Q You don't talk in there to any friends about

CROSS EXAMINATION OF JOSHUA STONE BY MR. DUMAS

1 commensurating about how you got mistreated as a server,
2 right?

3 A No.

4 Q Nothing even close to complaining about it,
5 correct?

6 A No.

7 Q Not even a hint of a problem in your life,
8 correct?

9 A Correct.

10 MR. DUMAS: Your Honor, I would move this into
11 evidence at this point.

12 THE COURT: Do you intend to read the posts to the
13 jury or something?

14 MR. DUMAS: No, Your Honor. It's just a general
15 posting. It would -- this would be very rather
16 voluminous. The jury is free to look through it to
17 see, because I believe his testimony is very accurate.

18 THE COURT: The jury will get all the exhibits at
19 the end of the trial, but I have to look and read that
20 before I can rule on the objection. I have to see what
21 it is.

22 MR. DUMAS: Your Honor, I could move on to other
23 questions.

24 THE COURT: All right. It's marked for
25 identification at this time.

CROSS EXAMINATION OF JOSHUA STONE BY MR. DUMAS

1 MR. DUMAS: Thank you.

2 BY MR. DUMAS:

3 Q Now, during that point in time you brought this
4 incident up, you didn't drop out of school, you continued
5 your education, correct?

6 A Correct.

7 Q You continued working through several jobs, always
8 advancing in your career in hotel, restaurant, tourism, or
9 was it hospitality?

10 A Hospitality, tourism.

11 Q Okay. So you progressed towards your degree,
12 right?

13 A (Nods head.)

14 Q Is that a "yes"?

15 A Yes.

16 Q I don't mean to give you any grief here, just the
17 record has to reflect a verbal answer. Okay?

18 A I understand.

19 Q You can't give a nod.

20 So you progressed or finished your degree,
21 correct?

22 A Yes.

23 Q You went through several different jobs at several
24 different places, correct?

25 A Correct.

CROSS EXAMINATION OF JOSHUA STONE BY MR. DUMAS

1 Q You remained at the Palmetto Club for a while, and
2 then you chose to leave, correct?

3 A Correct.

4 Q You went to other establishments, all of which
5 served alcohol and all of which were in that food and
6 beverage, hospitality, always advancing to higher levels,
7 correct?

8 A Correct.

9 Q Your career is on track, you're moving up in the
10 world, correct?

11 A Correct.

12 Q You then you decide that you want to move to
13 Chattanooga because you think it -- for whatever reasons,
14 and you're now in that field up there, correct?

15 A Yes.

16 Q Now, also at some point right around the spring of
17 2018, you and Rebecca Rue broke up, correct?

18 A We broke up 2017.

19 Q Okay. 2017. Now, I just kind of want to ask you
20 something, because I think what you talked about was I think
21 you said -- you said -- did I miss it when you said it was
22 violent when you and Ms. Rue broke up? Is that what you
23 just said in this courtroom?

24 A Yes.

25 Q That's not what you said at your deposition on

CROSS EXAMINATION OF JOSHUA STONE BY MR. DUMAS

1 several events in my life, yes.

2 Q And without going into any great details, would it
3 be fair to say that your childhood was marked by a very
4 contentious and nasty divorce between your parents?

5 A Yes.

6 Q And that ended, would it not be fair to say, with
7 when you were quite young, your birth father's parental
8 rights being terminated due to a lot of -- due to a lot of
9 claims against him, and you were then adopted by your
10 stepfather, your mom's new husband, correct?

11 A Yes.

12 Q Pretty traumatic event?

13 A Yes.

14 Q You also, I assume, told the counselor about a
15 2012 event, prior to this incident, where you had actually
16 smashed your elbow into your sister's face. Pretty violent.
17 Pretty violent event, before this thing ever happened,
18 right?

19 A Yes.

20 Q People don't normally do that kind of stuff, do
21 they?

22 A No.

23 Q But you did that to your sister, caused her pretty
24 significant damage, did it?

25 A No, no.

CROSS EXAMINATION OF JOSHUA STONE BY MR. DUMAS

1 Q Slamming your elbow into your sister's face is not
2 what we call normal in the world, is it?

3 A No, but there was no -- very, very little damage.
4 Two bruises, no swelling.

5 Q That didn't estrange you from your family because
6 of that?

7 A No. It brought us closer.

8 Q Mr. Stone, right after this incident, isn't it
9 true that you were already thinking about how much money
10 this incident would be worth to you down the road?

11 A Yes.

12 Q And, in fact, you started discussing how much
13 money you could get in a civil action the very evening this
14 thing happened, didn't you?

15 A No.

16 Q Didn't you start pretty darn quickly?

17 A I don't know. When I started thinking about
18 monetary gains, it wasn't about that.

19 Q Well, it's pretty clear that you went out, claimed
20 to be a victim. You hire private counsel within about a
21 week to ten days of this incident, correct?

22 A Correct.

23 Q Maybe I'm wrong, but you said pretty soon after
24 the event, you started thinking that you were due money on
25 this thing. You were thinking about dollars, weren't you?

CROSS EXAMINATION OF JOSHUA STONE BY MR. DUMAS

1 A Potentially.

2 Q And, in fact, it was pretty clear that even at the
3 time Mr. Williams sent you to the first clinical
4 psychologist on May 29th, you still, nowhere in your three
5 written statements before then ever said you had been groped
6 or grabbed. Every one of your statements before that point
7 in time, and even on that day when you went into the
8 psychologist, all said "brushed," right?

9 A Correct.

10 Q And that is perfectly consistent, isn't it, with
11 someone helping to adjust a set of suspenders and something
12 happens, right?

13 A Yes.

14 Q And what you're telling this jury is that one of
15 your own managers walked up and saw this, and then turned
16 around and walked away. You're saying that your -- a
17 supervisor does this?

18 A Two of them actually.

19 Q I'm sorry?

20 A Two of them.

21 Q Two of them did it. And there's not a one of your
22 employers here as witnesses, are they?

23 A No.

24 Q So the only person who was there, who's testifying
25 today, has potential financial gain, and that's what you're

DIRECT EXAMINATION OF JENNIFER SAVITZ BY MR.
WILLIAMS

1 BY MR. WILLIAMS:

2 Q Dr. Savitz, did you have occasion to examine or
3 treat Joshua Stone?

4 A I had the opportunity to evaluate Mr. Stone.

5 Q And tell us what you mean by "evaluate."

6 A I had administered the MMPI II, which is a
7 personality inventory, and then I gave him a LAN III, which
8 is a mental health evaluation.

9 Q And did you do that at my request, ma'am?

10 A Yes, sir.

11 Q I sent him to see you for an evaluation?

12 A Yes, sir.

13 Q And how many occasions, approximately, did you see
14 him on?

15 A Well, I -- he -- we administered the two tests,
16 and then I spent probably an hour and a half with him going
17 over evaluations and getting data from him to support, you
18 know, what he was -- I actually wanted to see him another
19 time, but because of him living away, it was difficult.

20 Q All right. Did you have enough opportunities to
21 meet with him in order to give a full diagnosis?

22 A Yes, sir.

23 Q And what was your diagnosis, ma'am?

24 A That he had an anxiety disorder and had
25 experienced some post traumatic stress symptoms.

DIRECT EXAMINATION OF JENNIFER SAVITZ BY MR.
WILLIAMS

1 Q Post traumatic stress disorder?

2 A Yes.

3 Q PTSD?

4 A Right.

5 Q And that's -- what is generally the basis for that
6 disorder, post traumatic stress disorder?

7 A It usually is following some kind of an experience
8 that provokes the whole system, nervous system, that reacts
9 to fear, scare, anxiety, and the person is not able to
10 accept this, so their experiences are limited in, like being
11 out at dark, or any situation that may resemble the
12 traumatic situation.

13 Q All right. Did you have an opinion as to the
14 duration that this will have in his life, in Mr. Stone's
15 life?

16 A Well, I think that it possibly will certainly have
17 an influence on it. I think that he could benefit from
18 principally six months of counseling to try to get the PTSD
19 to kind of die down and get him less anxious and more
20 social.

21 Q All right. But otherwise, you -- in your opinion,
22 will he experience a lifetime effect of what happened to
23 him?

24 A I think -- I mean, I think what happened will
25 always be like -- it can always affect a person if you are.

DIRECT EXAMINATION OF JENNIFER SAVITZ BY MR.
WILLIAMS

1 ever in another situation similar or anything that resembles
2 it, that could set off the PTSD symptoms.

3 Q And Doctor, is the general rule, when a person
4 comes to see you, are some people stronger than others?
5 Some people better able to endure stress than others?

6 A Sure. Yes, sir.

7 Q All right. And that's something that each person
8 has that is different from every other person; is that
9 right?

10 A Sure. Yes, sir.

11 MR. WILLIAMS: All right. I have no further
12 questions. Thank you very much, ma'am.

13 CROSS EXAMINATION

14 BY MR. DUMAS:

15 Q Very briefly, Dr. Savitz.

16 One of the things that you look for when
17 evaluating someone, particularly with PTSD, or who comes to
18 you presenting a PTSD, one of the first things you look for
19 is a term condition called "malingering"; isn't that
20 correct?

21 A Yes, sir.

22 Q And malingering, and pardon me, you correct me if
23 I'm right or wrong, and I know you will because you have in
24 the past, but if I'm correct, malingering basically means
25 presenting a certain set of symptoms in a favorable way,

CROSS EXAMINATION OF JENNIFER SAVITZ BY MR. DUMAS

1 because, for example, you might be in litigation?

2 A Yes, sir. That's very true. People could present
3 as malingering, that's why I administered the two evaluation
4 tools, and the MMPI II does show -- have a malingering
5 scale.

6 Q Okay. Isn't it true also that according to the
7 clinical research, one of the primary areas for researching
8 that is the PTSD -- National Center for PTSD, because they
9 focus upon disabled veterans with PTSD; wouldn't that be
10 true?

11 A That's true.

12 Q And isn't it true that they have actually
13 published in 2015 techniques for evaluating and looking to
14 see if someone is malingering or just putting up symptoms
15 for purposes of financial gain or a lawsuit, correct?

16 A Correct.

17 Q And you didn't follow their scales, did you?

18 A No, I didn't.

19 Q And those are published because, isn't it correct,
20 that because PTSD is such a wide ranging diagnosis, it's
21 pretty easily faked; isn't it?

22 A Well, I think that's up to the evaluator to use
23 her skills in being able to evaluate with the evaluation
24 tools, as well as to assess the client in the process.

25 Q And you would have to agree, would you not, that

CROSS EXAMINATION OF JENNIFER SAVITZ BY MR. DUMAS

1 Mr. Stone, you were presented with a background. Did Mr.
2 Stone, and based upon the information, you could only make a
3 diagnosis based upon the facts that you're given, or the
4 information given you by the individual, correct?

5 A Correct.

6 Q And in this case, as I understand it, the only
7 information you were given was the information that came
8 directly from Mr. Stone, correct?

9 A Correct.

10 Q You had no outside sources of information other
11 than the two tests that you gave, correct?

12 A Correct.

13 Q You had no statements from other witnesses or from
14 other sources, correct?

15 A Correct.

16 Q You didn't examine carefully any background
17 documents to verify Mr. Stone's background, or any prior
18 traumas in his life, for example, correct?

19 A I did. I did evaluate that, and my evaluation of
20 him for -- I mean, in our assessment.

21 Q And is one of those things that you examined a
22 very tumultuous divorce between his mother and father that
23 ended up with his birth father terminating his parental
24 rights?

25 A Yes, sir.

CROSS EXAMINATION OF JENNIFER SAVITZ BY MR. DUMAS

1 Q Did you actually look at any of those documents?

2 A No, sir.

3 Q So all you got was Mr. Stone relating generally
4 what had happened, correct?

5 A Yes, sir.

6 Q Did he relate to you a violent, or relate to you,
7 again, prior to the incident of May 14th -- of May 2014, did
8 he relate to you about a time he smashed his elbow into his
9 sister's face?

10 A No, he didn't relay that.

11 Q Would that have been something you would have
12 liked to have known about when you did the evaluation?

13 A Yes, but I think that I did represent that he had
14 a lot of anger.

15 Q But you can't tell how much of that anger, because
16 it's understandable, if someone's got a very, you know,
17 situation in their childhood that ends with one of their
18 birth parents terminating their parental rights, that's got
19 to just color someone's life, doesn't it?

20 A I would think so.

21 Q Okay. And so you can't tell from your one and --
22 from your evaluation and the two tests that you gave, how
23 much of this PTSD that you're diagnosing came from prior
24 stuff and this last incident, can you?

25 A May I speak to that?

CROSS EXAMINATION OF JENNIFER SAVITZ BY MR. DUMAS

1 Q Sure.

2 A The problem in doing an evaluation is if you start
3 gathering information from other people, then, therefore,
4 your opinion is influenced by other people, not your
5 opinion. And I was asked to evaluate him, and that means I
6 was asked to give my opinion.

7 Q Okay. So you basically took his word for it,
8 right?

9 A That's what I do in an evaluation.

10 Q And you, after this, I believe you related to
11 Mr. Stone, I think you said to us that you wanted to see him
12 for another follow-up, get a little more detail, but that
13 didn't happen, right?

14 A No, sir.

15 Q And he has not come back to you or anyone, to your
16 knowledge, for any therapy; correct?

17 A Not to my knowledge.

18 MR. DUMAS: I have nothing further, Your Honor.

19 THE COURT: Any redirect?

20 MR. WILLIAMS: Thank you very much. I have
21 nothing further at this time.

22 THE COURT: Okay.

23 MR. WILLIAMS: May we excuse?

24 MR. DUMAS: Absolutely.

25 THE COURT: Yes.

DIRECT EXAMINATION OF VALERIE STONE BY MR. WILLIAMS

1 of this particular event, when you received a call from your
2 son?

3 A Yes.

4 Q Can you tell us about that, please?

5 A Yes. I received a call, I couldn't tell you
6 exactly what time. It was probably around 9 o'clock. And
7 any time he calls me, I always say, "Hey, what's going on?"

8 And he said, "Mom, I don't know what to do,"
9 and I said, "Why?"

10 He said, "I was molested." I said, "Where
11 are you?"

12 And he said, "I'm at work. I just finished
13 my shift."

14 I said, "Who molested you?" I said, "Was it
15 a co-worker? Was it a patron?" And he said, "It was a
16 member."

17 So I asked him if the club was going to do
18 anything, what had they done, were they going to do
19 anything, and he said as far as he could tell they weren't
20 going to. So I told him to hang up from me and call the
21 police and make a report.

22 Q All right. And tell us what happened next, as far
23 as your contacts with your son were concerned?

24 A After he hung up, he called me back later and told
25 me he made the report, and he said that he was going to go

DIRECT EXAMINATION OF VALERIE STONE BY MR. WILLIAMS

1 on with his plans and go to Greenville, and I told him that
2 it was probably best for him not to take any phone calls
3 from anybody, just to try to calm down over the weekend, and
4 get back with me.

5 So we didn't talk a whole lot over the
6 weekend, just kind of here and there, just to make sure he
7 was okay. And during one of our conversations, we talked
8 and he told me that he was advised or spoken to --

9 MR. DUMAS: I'm going to object to this as
10 hearsay. Impermissible hearsay.

11 BY MR. WILLIAMS:

12 Q You were saying he was advised of what now?

13 A He was advised that --

14 MR. DUMAS: Objection, hearsay.

15 THE COURT: Referring to who being advised?

16 MR. WILLIAMS: She didn't say, Judge. She's not
17 quoting anybody, she just said that he got some advice.
18 Is that right?

19 THE COURT: I sustain the objection.

20 MR. DUMAS: Thank you, Your Honor.

21 BY MR. WILLIAMS:

22 Q So as a result of the conversation that you had
23 with him, what did he do?

24 MR. DUMAS: Objection, Your Honor. How can she
25 know what he did?

DIRECT EXAMINATION OF VALERIE STONE BY MR. WILLIAMS

1 THE WITNESS: I can tell you what I did.

2 BY MR. WILLIAMS:

3 Q Okay. Tell us what you did.

4 A Okay. When I found out who the person was, I was
5 told that he was very --

6 MR. DUMAS: Objection, hearsay.

7 BY MR. WILLIAMS:

8 Q Did you find out who the person was that -- who
9 was it?

10 A Pardon?

11 Q Who was the person?

12 MR. DUMAS: Your Honor, may we approach?

13 THE COURT: Yes, sir -- well, whether or not she
14 can testify as to what she was told depends on who told
15 her. If it's a party, it's one thing. If it is her
16 son, then it's something else.

17 If it was an adverse party, then it's admissible.

18 MR. WILLIAMS: Your Honor, I would go on to ask
19 her, who was the person who was identified?

20 THE WITNESS: I had spoken to somebody at my
21 office.

22 MR. DUMAS: Objection, hearsay. Someone at her
23 office.

24 BY MR. WILLIAMS:

25 Q Do you know who the person was?

DIRECT EXAMINATION OF VALERIE STONE BY MR. WILLIAMS

1 A Yes.

2 Q Who was it?

3 A I spoke with Hugh Lang, Junior.

4 MR. DUMAS: Objection, Your Honor. Hearsay. It
5 doesn't matter who he was. It's hearsay.

6 THE COURT: Well, she can -- she can testify as to
7 who she spoke with, she can't say what the person told
8 her at her job.

9 BY MR. WILLIAMS:

10 Q No, we don't want to know about that, just did it
11 become known to you who the person was who assaulted your
12 son?

13 A Yes.

14 Q And who was that, ma'am?

15 A George McMaster.

16 Q George McMaster. And was there any particular
17 issue about the fact that it was George McMaster?

18 MR. DUMAS: I'm going to object again, Your Honor.
19 He's trying every way he can to get in hearsay
20 evidence, something from a third person, who is not a
21 party, who is not here for me to examine.

22 MR. WILLIAMS: I'm sorry, Judge. I didn't ask her
23 for any information from anybody else.

24 THE COURT: Let me hear the question one more
25 time. Don't answer it until I rule on it.

DIRECT EXAMINATION OF VALERIE STONE BY MR. WILLIAMS

1 BY MR. WILLIAMS:

2 Q Was there any particular significance to you that
3 it was George McMaster?

4 THE COURT: I overrule the objection.

5 MR. WILLIAMS: All right.

6 THE WITNESS: Yes, because I knew that he was the
7 brother of the then Lieutenant Governor, Henry
8 McMaster. I was very concerned for my son even more so
9 after that.

10 BY MR. WILLIAMS:

11 Q All right.

12 A So I did speak with someone and ask them if they
13 could give me any recommendation for an attorney in the
14 Columbia area.

15 Q Well, let's talk about that. You hired me,
16 correct?

17 A That's correct.

18 Q Okay. So that's obvious. So let me turn now to
19 the effect that this had -- of course, you are aware of the
20 fact that Mr. McMaster pled guilty to this offense. You
21 were here, weren't you?

22 A Yes, I was.

23 Q And you participated in that to the extent that
24 you helped your son through that, right?

25 A Yes, I did.

DIRECT EXAMINATION OF VALERIE STONE BY MR. WILLIAMS

1 Q All right. Now, what I'm really interested in
2 hearing about, ma'am, is what you have observed to be the
3 effect that this has had on your son. If you will just tell
4 the jury what you have observed.

5 A Since this has happened, I have seen my son lose
6 trust with people. I have seen him lose his dignity. He
7 has shown a side of being closed off that I hadn't seen
8 before.

9 I have seen him at work, and a patron will
10 reach up to touch his shoulder, like to say thank you, and
11 see him flinch away from them. He used to be very outgoing,
12 he is not now. I have just seen a big change in him.

13 Q I think testimony has been that he left the
14 evening of this event and drove up to Greenville with his
15 then girlfriend, Rebecca Rue? Is that right?

16 A I believe that to be correct.

17 Q And are you familiar with Ms. Rue?

18 A Yes, I am.

19 Q Are you aware of the fact that they broke up?

20 A Yes, I am.

21 Q Can you tell us about that, please?

22 A I was part of an incident that my son came to work
23 to see me, and his face was swollen and bruised.

24 MR. DUMAS: I'm going to object, Your Honor. The
25 only way we're talking about an outside incident, this

CROSS EXAMINATION OF VALERIE STONE BY MR. DUMAS

1 witness, Your Honor.

2 THE COURT: All right. Thank you. You may step
3 down.

4 Your next witness.

5 MR. WILLIAMS: Your Honor, I am just going to
6 publish the deposition of Mr. McMasters. Here is the
7 original. You said that we could present that to the
8 jury.

9 THE COURT: All right. Ladies and gentlemen, a
10 deposition is a sworn statement taken out of the court
11 that can be utilized in court for various purposes
12 during a trial. This is a copy of the deposition of
13 George Hunter McMaster that was taken November 14, 2017
14 here in Columbia.

15 You may proceed.

16 MR. WILLIAMS: May it please the Court.

17 MR. DUMAS: Your Honor, I know the Court has
18 ruled, I don't mean to renew my objection, but you have
19 already ruled.

20 THE COURT: Yes, sir.

21 MR. DUMAS: Thank you.

22 MR. WILLIAMS: Ladies and gentlemen, as the Court
23 just said, this is a typewritten copy of the testimony
24 that Mr. McMaster gave in his deposition, which is a
25 sworn statement. It's made under oath.

CROSS EXAMINATION OF VALERIE STONE BY MR. DUMAS

1 So I, at this time, in the interest of
2 Mr. McMaster, I will read this to you and I hope I
3 don't bore you too much.

4 So to begin, it says, "This deposition is taken
5 pursuant to the South Carolina Rules of Civil
6 Procedure. All objections except to the form of the
7 question are reserved until the time of trial.

8 It is further stipulated on by counsel and the
9 witness that the witness will waive reading and signing
10 of the deposition. George Hunter McMaster, being first
11 duly sworn to tell the truth, the whole truth, and
12 nothing but the truth, is hereinafter certified and
13 testifies as follows."

14 And the questions and answers, that's me reading
15 them.

16 (Mr. Williams reads the
17 deposition.)

18 MR. WILLIAMS: That is the end of the deposition.
19 But the transcript of the plea, I'm going to ask
20 Mr. Dumas to follow along with me in case he wants to
21 add something that I don't include. I'm just going to
22 read selective parts. This is his plea. All right.

23 MR. DUMAS: Your Honor, if I can add just -- I
24 mean, obviously I believe if you are allowing it in
25 evidence, the jury is going the have it back there, and

CROSS EXAMINATION OF VALERIE STONE BY MR. DUMAS

1 they can look at it. It seems to me they can read the
2 whole thing or nothing.

3 MR. WILLIAMS: Sure. That's fine.

4 MR. DUMAS: They will be able to read it back
5 there.

6 THE COURT: Transcripts don't go to the jury.
7 Testimony, the jury hears testimony and receives
8 exhibits. A transcript is not an exhibit.

9 MR. WILLIAMS: Well, if we agree, sir, can we make
10 it an exhibit?

11 THE COURT: Well, if you stipulate it, that's
12 fine.

13 MR. DUMAS: Got it. I would rather we just, if
14 we're going to do that, just prefer that we read it now
15 to the jury. It's not going back, so let's just read
16 it.

17 THE COURT: Transcript does not go to the jury.

18 MR. WILLIAMS: Responding to Judge, do you need
19 any additional time to speak with your lawyer then
20 before the plea hearing?

21 No, ma'am, I do not.

22 And I understand that you're pleading guilty to
23 assault and battery third degree. Is that correct?

24 That is correct.

25 And you do understand that that carries up to a

CROSS EXAMINATION OF VALERIE STONE BY MR. DUMAS

1 possible sentence of 30 days?

2 Yes, ma'am, I do.

3 The Judge says, "Let me read you this negotiated
4 sentence. According to you and your attorney and the
5 Solicitor, you have negotiated a sentence of 30 days
6 suspended to six months probation. During that six
7 months, there will be special conditions of probation.
8 One of those conditions is that you will be banned for
9 a lifetime from the Palmetto Club, from having a
10 membership at the Palmetto Club. You will also be
11 banned from entering the premises of the Palmetto Club
12 during your lifetime.

13 If you were to be on the Palmetto Club's property,
14 you will be subject to be arrested for trespass.

15 Mr. McMaster reimburses Mr. Stone for the
16 treatments that he received. Four sessions at \$150 a
17 piece. You will pay that."

18 I'll just summarize this at this time. There's a
19 recitation of the facts made in open court, very
20 similar to what you heard here today. Pulled his pants
21 down and reached down his shorts and so forth.

22 So he is charged with assault and battery in the
23 second degree.

24 MR. DUMAS: Objection, Your Honor.

25 THE COURT: Yes, sir.

CROSS EXAMINATION OF VALERIE STONE BY MR. DUMAS

1 MR. DUMAS: Now, we're getting into certain
2 negotiation portions, but the actual fact of the plea,
3 as I understand it, has come in. I understand your
4 ruling.

5 MR. WILLIAMS: Judge, I'll go on without it.

6 THE COURT: All right. Sustain the objection.

7 MR. DUMAS: Thank you.

8 MR. WILLIAMS: At the time, the Court says, "I
9 find that there is a substantial factual basis for this
10 plea. I find that Mr. McMaster is pleading guilty
11 freely and voluntarily. He has advice of counsel and
12 is fully satisfied. I'll accept this plea, and I'll
13 accept the terms of his -- I will accept the terms of
14 his negotiated sentence."

15 And there's more there, but I'm sure that
16 Mr. Dumas can add it if he feels like it. That's a
17 good summary of the transcript of the plea, and that is
18 the transcript of the deposition.

19 Do you want to have this marked, Judge? Do you
20 have the original?

21 THE COURT: Yes, sir. It's a court exhibit.

22 MR. WILLIAMS: Yes, sir. Thank you.

23 THE COURT: Any further witnesses by the
24 defendant?

25 MR. WILLIAMS: Nothing further. Thank you.

CROSS EXAMINATION OF VALERIE STONE BY MR. DUMAS

1 for an involuntary dismissal.

2 THE COURT: All right. And those three causes of
3 action are for emotional distress --

4 MR. DUMAS: They claim sexual assault, and then
5 they claim there's sexual battery as a cause of action.

6 THE COURT: Emotional distress, sexual assault.

7 MR. DUMAS: And sexual battery.

8 THE COURT: And sexual battery.

9 So I deny the motion. There's testimony in the
10 record that, if believed by the jury, could result in
11 in a finding in favor of the plaintiff. Is this a suit
12 for the actual damages only?

13 MR. DUMAS: But I would move to strike any claim
14 for punitive action. There's been no measure of it,
15 and I don't see how this jury can possibly award any
16 punitive damages. No evidence has been presented in
17 the Plaintiff's case on which such could be based.

18 THE COURT: Is that it?

19 MR. WILLIAMS: Violation of the statute, Judge.

20 THE COURT: Violation of the statute is negligence
21 per se, which gives rise to punitive damages. I agree
22 with the punishment and I deny the motion to strike
23 punitive damages. The Court will direct a verdict with
24 regard to punitive damages.

25 Well, with regard to jury charges, in order to

. DIRECT EXAMINATION OF REBECCA RUE BY MR. DUMAS

1 THE COURT: Okay. I'll overrule the objection.

2 MR. DUMAS: Thank you. Was he --

3 THE COURT: Are you going to ask it again? I
4 overruled the objection. You can ask it.

5 MR. DUMAS: Okay.

6 BY MR. DUMAS:

7 Q Was he exhibiting anger before the events of May
8 2014?

9 A Yes, sir.

10 Q Would you please describe how that anger
11 manifested itself? Any incidents that you recall between
12 the two of you before the events of May 2014?

13 A In November 2014 we were in an argument over
14 financial matters. I was in between jobs and at the end of
15 that argument he locked himself in the bedroom and was
16 absolutely in hysterics. He was very intoxicated. And
17 well, our roommate Will pushed the door open after he put a
18 desk in front of the door, and allowed me to console him.
19 And he put his hands on the bedroom -- on the bed and
20 proceeded to donkey kick me into the dresser, which resulted
21 in me bleeding in my back.

22 I sat in my Kia Rio that was in the driveway.
23 It was my first car. The roommates car was behind me, I
24 couldn't move --

25 MR. WILLIAMS: Objection.

DIRECT EXAMINATION OF REBECCA RUE BY MR. DUMAS

1 phone with his mother.

2 Q Okay. And did you hear any of his conversation
3 from his side?

4 A I heard him talking to his mother saying that, you
5 know, he didn't know what to do, if he should call the cops
6 and told her that he loved her and got off of the phone.
7 And then he said, Sorry, we are going to have to wait
8 longer, I have to call the cops.

9 Q Okay. Did you wait outside out of ear shot, or
10 what did you do next?

11 A For the most part I only heard bits and pieces of
12 his contact with the Investigator Sumter.

13 Q Okay. And when he came out, what did y'all do?
14 About what time was that?

15 A It was close to 10:00, 10 p.m. when he was
16 finished speaking with Investigator Sumter. And then we got
17 in my vehicle and proceeded to go to Simpsonville, South
18 Carolina.

19 Q I would like you to tell the jury about the
20 substance of your conversation; what did Joshua Stone state
21 to you that night?

22 A I didn't know anything about what had happened
23 until we were on the car ride to Simpsonville, South
24 Carolina. He informed me over the phone before picking him
25 up, nothing. And on that car ride he told me that, you

DIRECT EXAMINATION OF REBECCA RUE BY MR. DUMAS

1 know, McMaster, you know, had given him crap about not
2 having his belt on and offered his father's suspenders to
3 him. And he told me that he went into the bathroom and put
4 those suspenders on. And then when he came out McMaster was
5 smiling and winking at him. And then he said that is when
6 McMaster followed him into the back wait station and the
7 incident happened right there and McMaster was tucking his
8 shirt in and brushed against his butt and his testicles.

9 And he had a revelation. He was like, You
10 know what, there is going to be a lawsuit, there is going to
11 be a lawsuit. I don't think, you know, because you don't
12 know this name, you don't know this name, this is a big
13 name. They would pay not to have this in criminal court,
14 this is going to be money. And when we got home and spoke
15 to my mother about why we were so late getting to her
16 because we were celebrating her birthday, he was having a
17 conversation with my mother about how there was going to be
18 a lawsuit out of this and there's going to be money out of
19 this.

20 Q Y'all then finished the weekend at your mother's?

21 A Yes, sir.

22 Q And you -- did you and Mr. Stone continue living
23 together?

24 A Yes, sir.

25 Q And at some point in time were you contacted by

DIRECT EXAMINATION OF REBECCA RUE BY MR. DUMAS

1 Mr. Stone's private attorney?

2 A Yes, sir.

3 Q Okay. Now, you were not contacted by anyone
4 else -- correct me if I am wrong, were you contacted by
5 anyone else other than Mr. Stone's private attorney?

6 A No, sir.

7 Q And you were then contacted -- were you then
8 contacted by Mr. Stone's attorney?

9 A Yes, sir.

10 Q And did you then give him a written statement?

11 A Yes, sir, I did.

12 Q And is that the written statement that has been
13 marked for identification purposes as Plaintiff's 1?

14 A Yes, sir.

15 Q Wait a minute, let me make sure. Yes.

16 A Yes, sir, that is familiar to me.

17 Q Okay. And was that true when you gave it?

18 A At the time.

19 Q Well, what do you mean "at the time"?

20 A For the next four years, as my relationship grew
21 with Josh, in that statement I stated that he had more
22 anxiety, more anger, more angst, and he was being aggressive
23 to me and his friends and family. And after four more years
24 of enduring it with him I later learned that they was just
25 in his personality. I heard stories come out about his

CROSS EXAMINATION OF REBECCA RUE BY MR. WILLIAMS

1 actual and punitive damages. And that was an issue on
2 appeal. Whether or not I properly submitted punitive
3 damages to the jury. And that was a negligence case.

4 The issue of the punitive damages must be
5 submitted to the jury if more than one reasonable
6 inference can be drawn from the evidence as to whether
7 the defendant's behavior was reckless, willful or
8 wanton. So, I think that that applies to this case.
9 If they affirmed me then, of course, in that instance
10 they knew that there were potholes in the parking lot
11 that they didn't fix, so that could be considered
12 possible evidence of willfulness. But the case law is
13 where more than one reasonable inference can be drawn
14 whether the Defendant's behavior was reckless, willful
15 and wanton.

16 So, willfulness, which ties in being criminally
17 charged with this offense gives rise to it being a jury
18 issue. Thank you.

19 MR. DUMAS: Your Honor, thank you.

20 MR. WILLIAMS: Your Honor, just for the record,
21 I'm not sure that I need to protect it. But I would
22 move for a directed verdict in favor of the plaintiff
23 on the grounds that there's been no evidence presented
24 to the contrary.

25 THE COURT: Mr. Dumas.

CROSS EXAMINATION OF REBECCA RUE BY MR. WILLIAMS

1 MR. DUMAS: I would oppose that, Your Honor. Just
2 as in the punitive damages situation, this is all a
3 jury question and there's been some evidence on which
4 this jury could conclude that this, for example, was
5 accidental, blown out of proportion, or in fact, just
6 manufactured for profit.

7 THE COURT: I think that the last witness
8 corrected that issue, but I believe that it's all a
9 jury issue.

10 MR. DUMAS: Thank you.

11 THE COURT: All right. Let's see. Any matters
12 regarding the jury charge and request for jury charges?

13 MR. DUMAS: Your Honor, I had earlier asked about
14 a potential charge. And I had tried to get some
15 research, you know, in terms of no negative inference
16 by virtue of the defendant's absence. That I believe
17 the Court had said that the Court would be examining
18 that, or just be silent.

19 THE COURT: The cases that we have seen that that
20 would apply are in criminal cases, but not a civil
21 case.

22 MR. DUMAS: As my research also --

23 THE COURT: Yes.

24 MR. DUMAS: -- showed.

25 THE COURT: So, the Court -- I will not issue a

CROSS EXAMINATION OF REBECCA RUE BY MR. WILLIAMS

1 charge. If there's a comment, the comment could be
2 made in argument. There's not a charge one way or the
3 other.

4 MR. DUMAS: Thank you, Your Honor.

5 MR. WILLIAMS: Yes, Your Honor.

6 THE COURT: Okay. We will take a few minutes, let
7 you all gather up those final thoughts as to what you
8 are going to argue to the jury, and we are going to
9 finish up our jury charge. And we will be ready to go
10 soon.

11 MR. WILLIAMS: May it please the Court. I would
12 like to open and close.

13 THE COURT: Yes, sir.

14 MR. WILLIAMS: Thank you.

15 THE COURT: That is still the law.

16 MR. DUMAS: Darn, I was going to try it but I knew
17 that he wouldn't let me get away with it, Your Honor.

18 THE COURT: Yes, all right.

19 MR. DUMAS: What time would you like us back in
20 here?

21 THE COURT: Let's say ten minutes.

22 MR. DUMAS: Thank you.

23 (Whereupon, a brief recess was taken.)

24 THE COURT: So, what I plan to charge to the jury,
25 to go over with you all what I plan to charge the jury.

CROSS EXAMINATION OF REBECCA RUE BY MR. WILLIAMS

1 We had an expert witness, I'll tell them about expert
2 witnesses. Burden of proof, sexual assault and
3 battery, it is pretty much the definition of assault
4 and the definition of battery. And then tell them that
5 the offenses of sexual nature involves unwanted
6 touching of a person's genitals or intimate areas
7 without consent basically. That is sexual offense
8 aspect making regular assault and battery a sexual
9 assault and battery.

10 And then intentional infliction of emotional
11 distress basically in order to be intentional
12 infliction of emotional distress it must be of -- it
13 must inflict severe emotional distress or be of
14 outrageous nature that is something beyond what we all
15 cause each other distress, it has to be beyond what
16 normal people are expected to endure in the realm of
17 being severe.

18 And actual damages, punitive damages. And of
19 course punitive damages must be limited to the
20 punishment and thus may not effect economic bankruptcy
21 to defend. The Defendant's ability to pay should be
22 considered, however it is not an absolute bar.

23 And then we have a verdict form giving them three
24 options, actual damages, blank amount, or actual
25 damages and punitive damages. And of course it must be

CROSS EXAMINATION OF REBECCA RUE BY MR. WILLIAMS

1 by clear and convincing evidence for punitive. Or for
2 the defendant. Those are the options. Any
3 questions/comments?

4 MR. WILLIAMS: Nothing from the plaintiff, Your
5 Honor.

6 MR. DUMAS: Your Honor, I would ask, as I did some
7 research in terms of causes of action, I did not find a
8 differentiation in terms of assault on the civil side
9 and assault versus sexual assault. So, I would ask to
10 be -- you know, however the plaintiff may have called
11 it in his pleadings, I'm not aware that there's a
12 separate civil action for sexual assault versus assault
13 or sexual battery versus battery. I mean, I've never
14 seen any case law to that effect.

15 THE COURT: And neither have I, so the definition
16 will be assault and battery. But I have one sentence
17 that says offenses are of a sexual nature if such
18 offenses involve the unwanted touching of a person's
19 genital or intimate body part. That in effect is a
20 battery, it is unwanted touching.

21 MR. DUMAS: And Your Honor, just -- my objection
22 to adding in that one line is that I've never seen that
23 as a separate cause of action, it's always been at
24 least as far as my knowledge and I'm always -- I'm
25 always, you know, I'm always continuously being

CROSS EXAMINATION OF REBECCA RUE BY MR. WILLIAMS

1 educated, but I've never seen a separate cause of
2 action that is a differentiation. It would be my
3 position that it is either an assault or it's a
4 battery. And that is a cause of action. They can call
5 it whatever they want you know, you know, in terms --
6 in other areas, but in terms of the charge, I don't
7 think that there's a cause of action that makes it
8 separate. And I would object to calling it that.

9 THE COURT: So you don't want any reference to sex
10 in the charge?

11 MR. DUMAS: No, sir, in the charge. All right.

12 THE COURT: So, where I have the plaintiff alleges
13 defendant committed a sexual assault, a sexual battery
14 and intentional infliction of emotional stress. You
15 want it to be the plaintiff alleges that the defendant
16 committed an assault and battery.

17 MR. DUMAS: Yes, Your Honor.

18 THE COURT: And battery and an intentional
19 infliction of emotional distress.

20 MR. DUMAS: Yes, Your Honor. And that also falls
21 right in line that the actual pleading, that the actual
22 pleading was assault and battery, AB 3. There was no
23 sexual connotation to that plea.

24 THE COURT: All right. Mr. Williams, what you
25 think?

CROSS EXAMINATION OF REBECCA RUE BY MR. WILLIAMS

1 MR. WILLIAMS: May it please the Court. The
2 allegations that in our complaint have not been
3 challenged, and we have alleged sexual assault, sexual
4 battery and intentional infliction of emotional
5 distress. It seems to me to be a very low moment,
6 however, I think that the jury is fully apprised of the
7 sexual nature of the assault, however the Court defines
8 it.

9 THE COURT: Certainly, your argument, Mr. Dumas
10 says that he doesn't want the Court to amplify anything
11 by calling it a cause of action that is not recognized
12 in law. Well, a sexual battery can be -- I mean, it is
13 a -- a jury can find is a lewd act of a minor or a
14 criminal sexual conduct. There's not a lot in between.
15 Either sexual battery -- and if we look up how the law
16 defines sex crimes in general, let's see.

17 (Pause.)

18 Criminal sexual conduct is the -- all of the
19 sexual offenses are codified as criminal sexual
20 conduct. That the defendant -- well, it's a sexual
21 battery is sexual intercourse, cunnilingus, fellatio,
22 intercourse or any intrusion however slight of any part
23 of a person's body. You know, that is a jury charge
24 that I gave last week in the rape of the 85 year old
25 lady. And that is what a sexual battery is.

CROSS EXAMINATION OF REBECCA RUE BY MR. WILLIAMS

1 So, Mr. Dumas makes a valid point, for me to call
2 this a sexual battery when sexual battery is criminal
3 sexual conduct by definition, which is not what you are
4 trying to prove, you are not trying to prove that he
5 engaged in fellatio, all of these other things. As to
6 the sexual battery or -- of course it can be attempted
7 sexual battery. And I don't think that you want
8 either.

9 So, those are the degrees of criminal sexual
10 conduct first, second, third degree. All of the
11 sexual -- the definition of what is a sexual battery
12 does not change. So, I'm agreeing with the defense on
13 that. I think that you can argue what you want, but
14 I'll call it assault and battery. It doesn't change
15 your argument, but it changes what I am able to
16 instruct the jury.

17 MR. DUMAS: Thank you, Your Honor.

18 THE COURT: All right.

19 I think that we are ready for that jury.

20 (The jury enters the courtroom.)

21 THE COURT: Thank you. Now, ladies and gentlemen,
22 you have heard all of the evidence -- all the testimony
23 and received all of the evidence. It's now time to
24 hear the attorneys' closing arguments. First is the
25 plaintiff.

CLOSING ARGUMENT BY THE PLAINTIFF

1 it gets out. Now, that's the authority that you have
2 as jurors.

3 All right, the Judge is going to tell you you are
4 the judges of the facts and there's nothing that
5 anybody can do to override that. Nobody is going to
6 tell you later, you shouldn't have done it. Well, they
7 can tell you that but it's not going to have any
8 bearing on it. You're the judges. You make the
9 decisions. You decide, do you want to give Josh Stone
10 a new memory. You want him to be able to say on this
11 date in Columbia, South Carolina, I don't remember much
12 about what happened before that, but I remember that
13 day when that jury returned a verdict in my favor. So,
14 that would be for Josh, a new memory.

15 And then for the public it would be a declaration
16 that, we don't tolerate this kind of thing. We don't
17 care who it is. We don't care if it's the Governor's
18 brother or Joe Blow in the Palmetto Club, that it's
19 just not going to be tolerated.

20 Now, after Mr. Dumas speaks I can address you
21 again in reply. And I promise you it won't be long.
22 And I thank you again.

23 THE COURT: Mr. Dumas.

24 MR. DUMAS: Thank you, Your Honor. May it please
25 the Court.

CLOSING ARGUMENT BY THE DEFENDANE

1 big cash recovery. That is not what that was all
2 about. That was -- the purpose of that was to protect
3 the best interest of my client.

4 So let me -- let me repeat what I just said
5 earlier. The two things that I want to you do, I'm
6 asking to you do on behalf of Josh Stone: Number one I
7 want you to give him a new memory. Of course, give him
8 something to think about other than what happened to
9 him. And the second thing I want you to do is to make
10 a statement. I want you to make a statement that will
11 be heard that we won't put up with this kind of conduct
12 here in Columbia. So, if you do those two things I
13 think that justice will have been done. Thank you.

14 THE COURT: Let's stand and get a stretch in
15 there.

16 (Pause.)

17 JURY CHARGE

18 THE COURT: Madam forelady, Members of the Jury,
19 we have heard the testimony and we have seen the
20 evidence and heard the arguments of the plaintiff and
21 the defendant. I will now explain to you the law that
22 applies to this case. Under the Constitution and laws
23 of South Carolina you are the finders of the facts. I
24 do not have to the right to pass upon the facts or even
25 to express any opinion that I might have as to them.

JURY CHARGE

1 Because this is a matter solely for you, the jury, to
2 determine. As jurors, then it is your duty to the
3 determine the effect, the value, the weight, and the
4 truth of the evidence presented during this trial.

5 Now, as the trial judge it is my responsibility to
6 preside over the trial of the case and to rule upon the
7 admissibility of the evidence offered during the trial.
8 You are to consider only the testimony which has been
9 presented from this witness stand together with any
10 exhibits which have been made a part of the record.

11 Additionally, I have the duty to charge you the
12 law applicable to this case. And as the presiding
13 Judge, I'm the sole Judge of the law of this case. It
14 is your duty as jurors to accept as correct and apply
15 the law as I now state it to you, then deliberate and
16 reach your verdict.

17 Finally, I charge you in this regard that you
18 should not be concerned with what you think the law
19 ought to be, but rather what I charge you that the law
20 is. You are also the judges, the sole judges of the
21 credibility that is the believability of the witnesses
22 who have testified and of the evidence which has been
23 presented during this trial.

24 In evaluating credibility, you may take into
25 consideration many things such as the demeanor or

JURY CHARGE

1 manner of testifying, whether the witness had a reason
2 to be biased or prejudiced, whether the testimony of a
3 witness was contradicted on the one hand or supported
4 or corroborated on the other hand. All -- it becomes
5 your duty as jurors -- it becomes your duty as jurors
6 to analyze and to evaluate the evidence and determine
7 that evidence which convinces you of its truth.

8 Now, Rules of Evidence ordinarily do not permit
9 witnesses to testify to opinions or conclusions. An
10 exception to this rule exists for witnesses we call
11 expert witnesses. Witnesses who by training,
12 education, or experience has become an expert in some
13 art, science, profession or calling may state an
14 opinion as to relevant and material matters in which
15 the witness claims to be an expert. An expert may also
16 state the reasons for the opinion. You should consider
17 any expert opinion received in evidence in this case,
18 and like the other evidence, give it the weight that
19 you think that it deserves. If you decide that the
20 opinion of an expert is not based on sufficient
21 training, education, or experience, or if you conclude
22 that the reasons given in support of the opinion --
23 reasons given in support of the opinion are not sound,
24 or that the opinion is outweighed by other evidence,
25 you may disregard the opinion entirely. The testimony

JURY CHARGE

1 of an expert is to be given no greater weight than that
2 of other witnesses simply because a witness is an
3 expert. Further, you are not required to accept the
4 opinion of an expert even though it is not
5 contradicted.

6 The burden of proof in this case is by a
7 preponderance of the evidence. A preponderance of the
8 evidence simply means the greater weight of the
9 evidence. It is evidence which, as a whole, shows that
10 the fact sought to be true is more likely true than not
11 true. And this can be illustrated by imagining a set
12 of scales. When the case begins the scales are even.
13 After all of the evidence is presented if the scales
14 remain even, or if they tip ever slightly in favor of
15 the defendant, then the plaintiff has failed to meet
16 the burden of proof and would not be entitled to
17 recover in this case.

18 If, on the other hand, the scales tip even
19 slightly in favor of the plaintiff, the plaintiff then
20 will have met the burden of proof and you should return
21 a verdict for the plaintiff for any damages proven by a
22 preponderance of the evidence or the preponderance of
23 the evidence.

24 Preponderance of the evidence is not determined by
25 the number of witnesses, instead must be determined by

JURY CHARGE

1 the greater weight of all of the evidence.

2 Plaintiff Joshua stone alleges that the defendant,
3 George McMaster, committed an assault and battery and
4 intentionally inflicted emotional distress upon him.
5 And assault occurs when a person unlawfully attempts or
6 offers to commit a violent injury upon another person
7 and has the present ability to complete the intended
8 injury.

9 An assault is the intentional creation or a
10 reasonable fear of immediate bodily harm. A battery is
11 the unlawful touching of another person by a person who
12 has committed the assault. An unlawful touching can be
13 caused by part of the Defendant's body or by any object
14 the defendant puts in motion. A battery is the
15 completion of the assault by using or applying force to
16 another person. The touching is not required to cause
17 a physical injury. The least touching is sufficient if
18 it be offensive to the personal dignity of an ordinary
19 person who is not overly sensitive.

20 The plaintiff must prove this claim by the
21 preponderance or by a preponderance of the evidence.
22 The plaintiff further claims that the defendant
23 intentionally inflicted emotional distress on the
24 plaintiff in order to recover for the intentional
25 infliction of emotional distress. The plaintiff must

JURY CHARGE

1 prove by a preponderance or greater weight of the
2 evidence the following: One, the defendant
3 intentionally or recklessly inflicted severe emotional
4 distress and was sure of its force, substantially sure,
5 that severe emotional distress would result from its
6 conduct. This may be shown by evidence that the
7 defendant desired to inflict severe emotional distress
8 on the plaintiff. This may also be shown by evidence
9 that the defendant knew or was substantially certain
10 that the distress -- that the distress would result
11 from his conduct.

12 Finally, the element may be shown by evidence that
13 the Defendant's conduct was a result of his conscious
14 indifference to or reckless disregard of the
15 Plaintiff's rights. Next the plaintiff must prove that
16 the Defendant's conduct was so extreme and outrageous
17 as to exceed all possible bounds of decency and must
18 be regarded as atrocious and utterly intolerable in a
19 civilized community.

20 The law does not allow for damages for each and
21 every occasion which causes someone mental distress.
22 If this were so the courts would be flooded with
23 lawsuits every time someone's feelings were hurt,
24 instead the plaintiff must show extreme and outrageous
25 conduct. Extreme and outrageous conduct is not mere

JURY CHARGE

1 insults, indignities, threats, annoyances, petty
2 impressions or other trivialities. Everyone must
3 necessarily be expected and required to be hardened to
4 a certain amount of rough language and acts that are
5 definitely inconsiderate and unkind. Extreme and
6 outrageous conduct, however, is conduct which would
7 cause an average member from the community to react
8 immediately in outrage.

9 The plaintiff must also prove that the action of
10 the defendant approximately caused the plaintiff
11 emotional distress. Probable cause is something that
12 produces a natural chain of events, which in the end
13 brings about the injury. It is the direct cause of the
14 injury.

15 Emotional distress means mental distress, mental
16 suffering, or mental anguish. It includes all highly
17 unpleasant mental reactions such as fright,
18 nervousness, grief, anxiety, worry, mortification,
19 shock, humiliation, indignity and physical pain.
20 Although severe emotional distress is usually shown by
21 shock, illness or other bodily harm, these symptoms are
22 not an absolute requirement for recovery of damages or
23 intentional infliction of emotional distress.

24 Severe means substantial or lasting as opposed to
25 trivial or brief. In determining the severity of the

JURY CHARGE

1 emotional distress you should consider its intent and
2 duration.

3 If the plaintiff has proven a cause of action,
4 your next step is to determine the amount of money to
5 which the plaintiff is entitled. We call such a
6 monetary award, damages. Damages are divided into two
7 categories, actual damage and punitive damages. Actual
8 damages are properly called compensatory damages,
9 meaning to compensate, to make the damaged party whole.
10 To put the party in the same position he was in prior
11 to the damage received insofar as this is monetarily
12 possible.

13 In other words, actual compensatory damages
14 include compensation for all damages which are actually
15 an approximate result of the alleged wrongful conduct
16 of the defendant. Actual damages are awarded to a
17 plaintiff in compensation for a party's actual loss.
18 Actual damages are such that will compensate the
19 parties for losses sustained. There are such damages
20 as to simply make good or replace the loss caused by
21 the wrong. Actual damages are damages in satisfaction
22 of or in recompense for a loss or damage sustained.
23 The goal is to restore the damaged party as nearly as
24 possible through the payment of money to the same
25 position he was in had the damage not occurred.

JURY CHARGE

1 The plaintiff bears the burden of proving by a
2 preponderance of the evidence the nature and extent of
3 actual damages. The existence, causation, or amount of
4 damages cannot be left to conjecture, guesswork,
5 speculation, or the possibility of a windfall. Your
6 verdict should include an amount to cover any damages
7 that the evidence shows will reasonably -- shows
8 reasonably occurred. Proof of loss with absolute or
9 mathematical certainty is not required. Though damages
10 must be proven to a reasonable degree of certainty and
11 the evidence presented must enable you, the jury, to
12 determine what amount is fair, just, and reasonable.

13 If you award actual damages, you may also consider
14 an award of punitive damages. Punitive damages are
15 intended to punish the defendant for extraordinary and
16 outrageous misconduct and to prevent the defendant and
17 others from committing similar acts in the future.
18 Punitive damages can only be awarded when conduct of
19 the defendant has been something more than merely
20 neglect.

21 The defendant -- the evidence must establish the
22 Defendant's acts were reckless, willful, and wanton.
23 Meaning that there's a conscious failure or a conscious
24 indifference to the rights and safety of the plaintiff
25 in order to consider punitive damages. If you find

JURY CHARGE

1 that the Defendant's conduct was willful, you may award
2 the plaintiff punitive damages. To support an award of
3 punitive damages, the plaintiff must prove by clear and
4 convincing evidence that the conduct complained of
5 included a consciousness of wrongfulness or wrongful at
6 the time of the conduct. Clear and convincing is more
7 than just a preponderance or greater weight of the
8 evidence which requires only a proof that which
9 persuades you that a party's claim is more likely true
10 than not true.

11 On the other hand, clear and convincing proof is
12 not as high a standard as the burden of proof in a
13 criminal case, which is proof beyond a reasonable
14 doubt. Clear and convincing proof leaves no
15 substantial doubt in your mind. It means that the
16 evidence is not ambiguous, doubtful, unequivocal or
17 contradictory. Convincing means persuading by proof or
18 argument causing one to believe in the truth of what is
19 asserted.

20 Clear and convincing proof establishes in your
21 mind, not only that the fact is probable, but that it
22 is highly probable. Before awarding punitive damages,
23 you must consider and weigh three elements which may be
24 pertinent to the facts of this case.

25 One, you must first consider the Plaintiff's --

JURY CHARGE

1 I'm sorry. First you must consider the relationship
2 between any punitive damage award and the harm caused.
3 Any penalty imposed should take into account the
4 representability of the conduct, the harm caused, the
5 Defendant's awareness of the wrong -- of the conduct's
6 wrongfulness, the duration of the conduct, and any
7 concealment. Thus any penalty imposed should bear a
8 relationship to the nature and extent of the conduct
9 and the harm caused, including the compensatory damage
10 award made by you.

11 Secondly, any penalty imposed should take into
12 account, as a mitigating factor, any other penalty that
13 may have been imposed or which may be imposed for the
14 conduct involved, including any criminal or civil
15 penalty or any other punitive damages award arising out
16 of the same conduct. Finally, any award of punitive
17 damages must be limited to punishment and thus may not
18 effect economic bankruptcy. To this end, the
19 Defendant's ability to pay any punitive damage should
20 be considered, however the economic bankruptcy factor
21 is not an absolute bar to an award of punitive damages.

22 Now, while arguments of counsel are a beneficial
23 part of every trial, you should remember that the
24 statements made by counsel are not evidence. In
25 presenting arguments, counsel often refers to the

JURY CHARGE

1 evidence. However you should base your verdict on the
2 evidence as you remember it. Therefore, in comparing
3 conflicts between the recollection of counsel about the
4 evidence and your own recollection, you should rely on
5 your own understanding of the evidence.

6 Madam forelady, and Members of the Jury, I am
7 required to charge you the law as I have done through
8 these instructions I have now given to you to help
9 guide you to a just and lawful verdict. Whether some
10 of these instructions will apply will depend upon what
11 you find to be the facts. The fact that I have
12 instructed you on this case in many subjects must not
13 be taken as an indicator of the opinion of this Court
14 as to what you should find to be the facts or what your
15 verdict should be.

16 Now, you have been chosen and sworn to give the
17 parties in this case a fair and impartial trial. When
18 you have done so, you will have complied with your oath
19 and no one will have the right to criticize your
20 verdict. You must not be influenced by opinions or
21 expressions of opinion. You may have heard outside of
22 the courtroom, but rather you should base your verdict
23 solely on the testimony and of the sworn witnesses who
24 took the stand, the exhibits received into evidence and
25 the law which I have explained. You should not be

JURY CHARGE

1 swayed by caprice, passion, prejudice, or improper
2 sympathy for or against anyone in this case. Remember,
3 you have no friends to reward or enemies to punish.
4 And all parties are entitled to a fair and impartial
5 trial.

6 It is your duty as jurors to consult with one
7 another and to deliberate in an effort to reach an
8 agreement. Each of you must decide this case for
9 yourself, but only after an impartial consideration of
10 all of the evidence with your fellow jurors. In the
11 course of your deliberation, do not hesitate to
12 examine, reexamine your own views and change your
13 opinion if you become convinced that it's erroneous.
14 However, do not surrender your honest conviction as to
15 the weight or effect of the evidence solely because of
16 the opinion of your fellow jurors, or for the mere
17 purpose of returning a verdict.

18 As I stated earlier, you are the judges, judges of
19 the facts. Whatever your verdict must represent the
20 considered judgment of each juror. In other words,
21 your verdict must be unanimous.

22 Now, you may have noticed that I read these
23 instructions. I do so to give you the law as
24 accurately as possible. I'll give you a couple of
25 these instructions to have in the jury room. You may

JURY CHARGE

1 refer to these instructions to assist you in your
2 deliberations. You must consider the instructions as a
3 whole and may not follow some and ignore others.

4 Madam forelady, it'll be your duty to preside over
5 the deliberations of the jury. If during your
6 deliberations you should desire to communicate with the
7 Court, please reduce your message or question then to
8 writing, signed by your foreperson and the foreperson
9 only. Pass the note to the bailiff and they will bring
10 it to my attention. I will then respond as promptly as
11 possible, either in writing or by having you return to
12 the courtroom.

13 I caution you, however, with regard to any message
14 or question that you might send, that you should never
15 state or specify your numerical division at the time.
16 Now, you have heard the evidence and you have heard the
17 law. Whatever your verdict, madam forelady, you will
18 indicate it on this verdict form. And then sign and
19 date it. And the verdict form says, We the jury, by
20 unanimous consent, find one, for plaintiff in the
21 amount of blank actual damages. If that's what you
22 find you will check that box and fill in the actual
23 damages.

24 Or two, for the plaintiff in the amount of blank
25 actual damages and blank punitive damages. If you find

JURY CHARGE

1 by clear and convincing evidence that the plaintiff is
2 also entitled to punitive damages, you will complete
3 number two.

4 Or number three, for the defendant. For the
5 defendant, you check that box. After you have fully
6 completed the verdict form, you sign and date it.

7 Remember that although the foreperson is the only
8 juror who writes the verdict, it is not hers alone.
9 The verdict must be unanimous. Madam forelady, you are
10 not authorized to write the verdict until all of you
11 have agreed on the verdict. Ladies and gentlemen, I'm
12 going to send you to your jury room. We have picked 14
13 of you. I'll send 12 of you to your jury room, but do
14 not again deliberations until you have received a copy
15 of this jury charge, the exhibits and verdict form.
16 Once you receive these things, that will be your signal
17 to begin your deliberations. Once you begin
18 deliberations, you will deliberate until you have
19 reached a verdict.

20 As I stated, we picked 14 and we can only use the
21 first 12. So, if there's anything wrong with the first
22 12 jurors, if there's any reason why you should not
23 proceed to deliberate and want to plug in one of the
24 last two jurors picked, please raise your right-hand.

25 (No response.)

JURY CHARGE

1 THE COURT: Anybody bad stomach ache, bad
2 headache, nervous, undecided. If you cannot continue
3 with deliberations for any reason, please let me see
4 that by a show of hands.

5 (No response.)

6 THE COURT: Everyone is good to go. That means,
7 when they go back the last two selected will remain
8 with us. And when you receive the jury charge, the
9 verdict form, and exhibits, that will be your signal to
10 begin your deliberations. We have got lunch ordered
11 for you, so you don't have to break for lunch, you can
12 keep going and keep going until you have reached a
13 unanimous verdict.

14 Please go to the jury room. If you all will stay
15 in, the last two. Please just have a seat.

16 (The jury exits the courtroom.)

17 THE COURT: Any additions or exceptions to the
18 charge by plaintiff or defendant?

19 MR. DUMAS: Nothing from the defendant, Your
20 Honor.

21 MR. WILLIAMS: That was a very nice charge, Your
22 Honor.

23 THE COURT: Very good. All right. So, if y'all
24 will just kind of check to -- with the exhibits there,
25 get the final copy of it.

JURY CHARGE

1 (The alternate jurors are released from duty.)

2 (Jury deliberations begin.)

3 * * *

4 THE BAILIFF: The jury has reached a verdict.

5 (The jury enters the courtroom.)

6 THE COURT: Okay. If you would, pass it up. And
7 you may be seated. Mr. Clerk, if you will publish that
8 for us.

9 THE CLERK: Yes, Your Honor.

10 State of South Carolina, County of Richland, Court
11 of Common Pleas. Case 2016CP-40-05857. Joshua Steven
12 Stone plaintiff versus George Hunter McMaster,
13 defendant. The verdict is, We, the jury, find
14 unanimously for the plaintiff in the amount of \$50,000,
15 actual damages and \$50,000 punitive damages. Signed by
16 the foreman, Mary Adams, on this 28th day of August,
17 2018.

18 Madam forelady, is this your verdict and the
19 verdict of the entire jury?

20 THE FOREPERSON: Yes, it is.

21 THE CLERK: Thank you, ma'am.

22 THE COURT: Any individual polling requested?

23 MR. WILLIAMS: No, sir.

24 MR. DUMAS: None from the defense, Your Honor.

25 THE COURT: All right. Thank you. The verdict is

JURY CHARGE

1 a unanimous verdict. Any post-trial motions?

2 MR. DUMAS: I would like my ten days, Your Honor.

3 MR. WILLIAMS: None for the plaintiff, sir.

4 THE COURT: Any objection to the defense having
5 ten days to consider and file anything?

6 MR. WILLIAMS: No objection, Your Honor.

7 THE COURT: All right. You will be granted that.
8 Thank you.

9 MR. DUMAS: Thank you.

10 THE COURT: All right. All right. Ladies and
11 gentlemen, thank you very much for your work. The
12 parties have been dealing with this issue for a period
13 of time, which resulted in this lawsuit. And they
14 could not resolve it themselves. They wanted you to
15 listen to the evidence and the law and decide the case,
16 and you have done that. So, you have fulfilled your
17 responsibility. You didn't volunteer for it, you were
18 drafted, but you responded to the call.

19 So, I want to thank you on behalf of the plaintiff
20 and the defendant in his absence. We are going to --
21 so, you are now through with this case. We are picking
22 another jury tomorrow on another case and the jurors
23 are calling in after 6:00 p.m. today to find out. What
24 time are they coming in tomorrow, Jim?

25 THE CLERK: 9:30, Your Honor.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Court of Common Pleas

Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2018-001849
Civil Case No.: 2016-CP-40-05857

RECEIVED
JUL 18 2019
SC Court of Appeals

Joshua Steven Stone.....Respondent,

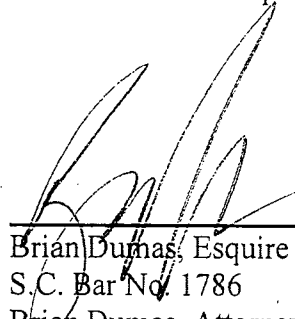
v.

George Hunter McMaster.....Appellant,

CERTIFICATE OF COUNSEL

Counsel certifies that the Record on Appeal complies with Rule 210(g) of the South Carolina Appellate Court Rules and contains all material proposed to be included by any of the parties and not any other material.

June 17, 2019
Columbia, SC



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