

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

RECEIVED

JUL 22 2019

SC Court of Appeals

Appellate Case No. 2018-001824
Trial Court Case Nos. 2016-CP-04-02464 and 2016-CP-04-02468

John Cross, ... Appellant,

v.

Gregory A. Weaver, Earl E. Weaver, Terrie Fallow and Jason Seagraves, ... Respondents,

And

Steven P. Cross, ... Appellant,

v.

Gregory A. Weaver, Earl E. Weaver, Terrie Fallow and Jason Seagraves, ... Respondents.

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-04-02464

STEVEN P. CROSS

GREGORY A. WEAVER AND EARLE E.
WEAVER

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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 additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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

MOTION TO RECONSIDER IS DENIED WITHOUT THE NECESSITY OF A HEARING. NO FORMAL ORDER IS REQUESTED UNLESS REQUESTED BY ANY OF THE PARTIES.

This order ☒ ends ☐ does not end the case.

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

2155

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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-Fileers 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.



Anderson Common Pleas

Case Caption: Steven P Cross VS Gregory A. Weaver , defendant, et al

Case Number: 2016CP0402464

Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2018-09-27 09:36:06 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-04-02468

JOHN CROSS

GREGORY A. WEAVER AND EARLE E. WEAVER

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	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 additional information.
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- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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

MOTION TO RECONSIDER IS DENIED WITHOUT THE NECESSITY OF A HEARING. NO FORMAL ORDER IS REQUESTED UNLESS REQUESTED BY ANY OF THE PARTIES.

This order ☒ ends ☐ does not end the case.

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Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
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If applicable, describe the property, including tax map information and address, referenced in the order:		

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This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

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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.



Anderson Common Pleas

Case Caption: John Cross VS Gregory A. Weaver , defendant, et al

Case Number: 2016CP0402468

Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2018-09-27 09:35:55 page 3 of 3

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS
	)	TENTH (10 TH) JUDICIAL CIRCUIT
Steven P. Cross,	)	
	)	
Plaintiff,	)	FINAL ORDER & JUDGMENT
	)	
vs.	)	C/A No. 2016-CP-04-02464
	)	
Gregory A. Weaver, Earl E. Weaver,	)	
Terrie Fallow and Jason Seagraves,	)	
	)	
Defendants.	)	
	)	

THIS MATTER came before the Court for a non-jury final hearing on the merits on May 8, 2018. Plaintiff initiated this action by filing his Summons and Complaint against Gregory A. Weaver and Earl E. Weaver on November 2, 2016. An Answer was filed on behalf of Gregory A. Weaver and Earl E. Weaver on January 23, 2017.

Subsequently, on September 19, 2017, an Amended Summons and Complaint was filed by Plaintiff adding Terrie Fallow and Jason Seagraves as parties. Terrie Fallow was served with the Amended Summons and Complaint on September 25, 2017. She has not filed an Answer or otherwise made an appearance in this case, and is in default. Jason Seagraves was served with the Amended Summons and Complaint on September 24, 2017. He has not filed an Answer or otherwise made an appearance in this case, and is also in default.¹ The Answer previously filed by Gregory A. Weaver and Earl E. Weaver to the original Summons and Complaint was treated by the parties as an Answer to the Amended Summons and Complaint.

Plaintiff (hereinafter referred to as Plaintiff, Steven Cross or Steven) is represented by David J. Brousseau. The Defendants Gregory A. Weaver and Earl E. Weaver (hereinafter collectively referred to as Weavers or Landlords) are represented by David F. Stoddard.

This case stems from injuries sustained by Steven Cross when he was attacked by a German Shepherd breed dog on property owned by the Weavers. Jason Seagraves and Terrie Fallow (hereinafter collectively referred to as Tenants) are the owners of the dog. The Weavers leased the premises where the dog attack took place to the Tenants for commercial purposes.

¹ Terrie Fallow and Jason Seagraves were given notice of this hearing in accordance with Rule 5 SCRPC. The bailiff called their names three (3) times prior to the start of the hearing and no response was given.
S. Cross v. Weaver, et al, C/A No. 2016-CP-04-02464
 Final Order & Judgment, Page 1

This case was tried at the same time as a case involving John Cross, Steven's father. John Cross was also attacked by the same dog on the day in question. Reference is invited to C/A No. 2016-CP-04-02468 for the Final Order and Judgment in that case.

For reasons more fully set forth herein, the Court finds that the Weavers are not liable to Plaintiff for the injuries he sustained in the dog attack. Tenants are jointly and severally liable in said amounts set forth herein. In arriving at this conclusion, the Court issues the following findings of facts and conclusions of law in support of this Final Order and Judgment.

Findings of Facts & Conclusions of Law

The Property

The facts of this case are essentially not in dispute. The Weavers own real property located at 4500 Belton Highway (corner of Belton Highway and Shirley Store Road) in Anderson County. The Weavers rented the property to Terrie Fallow and Jason Seagraves. The lease was not in writing, and was on a month-to-month basis.

A small building is located on the property, and it was operated by Tenants as a rummage or "garage sale" type store with various used items for sale. According to the Weavers, the Tenants sold items from this store on weekends.

The Incident and Attack

On April 19, 2016, based on a tip from a neighbor, Steven Cross went to the property in order to see if tools that were stolen from him were for sale at this store. His 8 year old daughter went with him, and stayed in their Jeep while he went to knock on the door facing Belton Highway. After knocking a few times, Steven Cross began looking at tool boxes on the ground nearby. He was then suddenly attacked by a German Shepherd breed dog.

Believing the dog was not leashed, when he got loose from the dog, Steven ran in the opposite direction of his vehicle to keep the dog away from his daughter. He was attacked again, and in the ensuing struggle with the dog, Steven's firearm was flung into a field.² Steven eventually got away from the dog. He called 911 and his father, John Cross.

John Cross arrived on the scene around the same time as law enforcement. Deputy Jamie Doyle of the Anderson County Sheriff's Office arrived on the scene. Believing that Deputy

² Steven has a concealed weapons permit.
S. Cross v. Weaver, et al, C/A No. 2016-CP-04-02464
Final Order & Judgment, Page 2

Doyle had the dog under control, John Cross was attacked when attempting to retrieve Steven's firearm.

As a result of the dog attack, Steven Cross had 32 puncture wounds and suffered a severely broken wrist / hand. He incurred \$68,876.10 in medical bills. Further, he missed approximately 5 months of work and lost \$40,000 in income. He was in intense pain for a number of months, and still experiences pain in his wrist to this day. Additionally, he described for the Court his fear of dogs and the efforts that he and his family, notably his daughter, have gone through to try to overcome this fear.

The Weavers

Earl Weaver owns and runs a garage and automobile salvage yard next door to the rummage store property. He and his son, Greg Weaver, live together five (5) minutes away, and they both drive by the rummage store at least twice a day. For at least six months prior to the attack on Steven, they saw the German Shepherd dog tethered outside the store on a long leash.

The Weavers testified that they would not approach or pet the dog. They testified that there was a "Beware of Dog" sign in the back of the property near the dog house. They both admitted that such a sign is an indication that a dog may have dangerous tendencies. Earl Weaver testified that the dog would bark and get upset whenever he opened the gate separating the rummage store property from the automobile salvage yard property. Photographs indicate that there are many items and debris that the dog could hide under or around.

The parties stipulated there was at least one (1) prior attack by this dog on this property. According to public records, that prior attack occurred on March 17, 2016.

Greg Weaver testified that Jason Seagraves told him about an attack by the dog on an individual trying to steal a boat. The attack described by Jason Seagraves to Greg Weaver was not factually similar to the attack on the Crosses. It is unknown whether the attack described by Greg Weaver is factually similar to the prior attack on March 17, 2016. (In other words, there may have been two (2) attacks prior to the attack on Steven Cross). Greg Weaver testified that after this conversation with Jason Seagraves, the dog returned to the rummage store property. Earl Weaver testified that after the attack on Steven Cross, the dog did not return to the rummage store property. Accordingly, I find that the Weavers had actual knowledge of a prior attack by this dog. Further, based upon their own interactions with the dog, I find that the Weavers knew

or should have known about the dog's dangerous propensities well before the attack on Steven Cross.

Despite this prior knowledge of the dog's dangerous propensities, the Weavers took no action. They did not inform either Terrie Fallow or Jason Seagraves to remove the dog from the property or install proper safeguards to protect the public. Further, they did not terminate the month-to-month lease, and continued to re-lease the property each month to the Tenants with knowledge of the dangerous dog being exposed to unsuspecting invitees.

Jason Seagraves & Terrie Fallow

Jason Seagraves and Terrie Fallow were the owners and keeper of the dog. Pursuant to S.C. Code Ann. § 47-3-110 (as amended), they are strictly liable to Plaintiff for all damages sustained by Plaintiff as a result of the dog attack. Additionally, I find they were negligent and grossly negligent in keeping a dog with known dangerous propensities outside of a commercial establishment exposed and open to the public and store patrons.

Damages

I find that Steven Cross incurred actual damages in the form of medical bills, lost income, and pain and suffering in the amount of One Hundred Seventy Five Thousand and 00/100 (\$175,000.00) Dollars. Additionally, due to the prior attacks by this dog and the known dangerous propensities of this dog, I also find by clear and convincing evidence that punitive damages are appropriate. I find that Steven Cross is entitled to punitive damages in the amount of Fifteen Thousand and 00/100 (\$15,000.00) Dollars.

Landlord Liability

The main issue in this case is whether or not the Weavers are liable, under a negligence theory, to Plaintiff for the injuries he sustained in this dog attack. Put another way, what duty does a landlord, in a month-to-month commercial lease, owe to third party invitees injured by a dangerous dog which the landlord knew or should have known existed in outside areas accessible to the public?

The arguments raised by Plaintiff in support of landlord liability may be reasonable on an appellate level. However, the Circuit Court must follow existing law.

"In a negligence action, a plaintiff must show (1) the defendant owed a duty of care to the plaintiff (2) defendant breached the duty by a negligent act or omission (3) defendant's breach was the actual and proximate cause of the plaintiff injury and (4) the plaintiff suffered injury or

damages.” *Jackson v. Swordfish, LLC*, 365 S.C. 608, 612, 620 S.E.2d 54, 56 (2005). “Whether the law recognizes a particular duty is an issue of law to be determined by the court.” *Id.*

Plaintiff contends that the Weavers were negligent in not affirmatively taking steps to have the tenants rid the premises of the dog or kennel the dog so that it would not be exposed to the public in the outside areas. Plaintiff further contends that the Weavers were negligent in continuing to re-lease the property each month with knowledge of the dangerous dog in a place where it was exposed to invitees. Plaintiff also attempts to differentiate cases involving dogs in the residential context versus the commercial context.

Generally, a landlord is not responsible for the negligent acts of its lessee in keeping a dangerous dog on lessee’s property. *Mitchell v. Bazzle*, 304 S.C. 402, 404 S.E.2d 910 (Ct. App. 1991). *Mitchell* was decided prior to the passing of the South Carolina Residential Landlord and Tenant Act (RLTA). See S.C. Code Ann. §§ 27-40-10 et. seq. (as amended). Following the passage of the RLTA, the Supreme Court reversed the trial court’s grant of summary judgment to a landlord of an apartment complex when an invitee was bitten by a tenant’s dog tethered in the apartment’s common areas. *Clea v. Odom*, 394 S.C. 175, 181, 714 S.E.2d 542, 546 (2011). Under a negligence theory, a landlord may be liable to injuries sustained by an invitee in common areas as the RLTA created a duty for landlords to “keep all common areas of the premises in a reasonably safe condition ...” *Id.*, 394 S.C. at 182, 714 S.E.2d at 546; see also S.C. Code Ann. § 27-40-440(a)(3) (as amended).

The RLTA does not cover this situation as the premises in question was not utilized as a residence and was instead utilized as a commercial establishment in which to sell used goods. This was a commercial lease on a month-to-month basis.

In the commercial lease context, “A duty may arise under the particular circumstances of an individual case based upon a showing of negligence constituting the proximate cause of the loss, even though the law does not impose a general duty on landlords to protect tenants or their guests from the criminal acts of third parties.” *Jackson*, 365 S.C. at 613, 620 S.E.2d at 56 (citing *Cramer v. Balcov Property Management, Inc.* 312 S.C. 440, 441 S.E.2d 317 (1994)). There are two (2) exceptions to the traditional rule of non-liability of landlords. *Id.* The exceptions are the “affirmative acts” exception and the “common areas” exception. *Id.*

In this case, there is no evidence that the Weaver ever engaged in any affirmative acts to protect the public from the dog. As such, the “affirmative acts” exception would not apply.

Plaintiff argues that the “common areas” exception should apply. A “common area” is generally an area common to tenants that is often controlled by the landlord. See *Wright v. PRG Real Estate Mgmt.*, 413 S.C. 276, 775 S.E.2d 399 (Ct. App. 2015). Plaintiff argues that while there are no other tenants with which to share a common area, the dog was kept outside of the building on a leash whereby the dog could attack any unsuspecting invitee to the business. Further, Plaintiff argues that due to the debris kept around the premises coupled with the Weavers’ knowledge of the dog’s dangerous propensities, that the Weavers had a duty to take some affirmative steps to mitigate the danger to the public. Plaintiff analogizes this outside area to a common area in other cases.

Plaintiff provided authority from other states to support its argument. The two (2) more persuasive cases provided by Plaintiff are *Shields v. Wagman*, 350 Md. 666, 714 A.2d 881 (Md. Ct. App. 1998) and *Portillo v. Aiassa*, 27 Cal. App. 4th 1128, 32 Cal. Rptr.2d 755 (Cal. Ct. App. 1994). Plaintiff further relies on Justice Pleicones’ dissent in *Jackson*.

Portillo includes in it a persuasive argument. In *Portillo*, the California Court of Appeals found that a landlord could be held liable when the landlord renewed a commercial lease with knowledge that a dog with dangerous propensities utilized as a “guard dog” stayed on the premises exposed to potential invitees. *Portillo*, 27 Cal. App. 4th at 1132, 32 Cal. Rptr.2d at 756. In differentiating between cases where a dog is kept in a residential lease versus a commercial lease, the Court stated:

Those cases [residential lease cases] involved a family pet kept in a single-family residence. In contrast here the animal was a guard dog in a liquor store which was open to the public. The risk that someone would be seriously injured was far greater in the instant case. Moreover, while we recognize that particular neighborhoods or circumstances may require the presence of guard dogs for safety reasons, there is no strong public policy in favor of guard dogs in public places. Such animals cannot be classified as ‘an important part of our way of life’ in the same way that pets can.

Id., 27 Cal. App. 4th at 1137-38, 32 Cal. Rptr. at 760.

As stated by the California Court of Appeals, “under these circumstances, a reasonable person would have sought additional assurances that the dog was not dangerous prior to transferring possession of the premises to the tenant.” *Id.*, 27 Cal. App. 4th at 1138, 32 Cal. Rptr. at 760.

In this case, this was a month-to-month lease of commercial property. The Weavers could have terminated the lease at any time for any reason or no reason at all. For six months they drove by the premises every day and saw the tethered dog. They both testified they would not approach or pet the dog. They both believed the dog was dangerous or had dangerous propensities, and was there to guard the premises. It was stipulated that an attack occurred on another individual more than a month before the attack on Plaintiff. They were aware that if any unsuspecting member of the public walked to the side of the building, like Steven Cross, that person could be attacked. However, they took no affirmative steps to notify the tenants of their concerns about the dog, inform the tenants to get rid of the dog, install safety measures (such as a kennel) for the dog, or terminate the lease in order protect unsuspecting invitees.

One of the major purposes of tort law is to encourage socially responsible behavior and deter wrongful conduct. J. Wade, V. Schwartz, K. Kelly, and D. Partlett, Prosser, Wade and Schwartz's Cases and Materials on Torts (9th Ed.), 1 (1994). In light of that, Plaintiff's argument regarding the Weaver's liability under these particular facts appears reasonable on an appellate level. However, this Court is constrained by the law as it currently stands. As this Court interprets the current law, the Weavers had no affirmative duty to act. As such, since the law imposes no legal duty on the Weavers they cannot be held liable under a negligence theory.

ACCORDINGLY, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. Defendants Earl Weaver and Greg Weaver are dismissed as parties, with prejudice.
2. Defendants Terrie Fallow and Jason Seagraves are jointly and severally liable to Plaintiff Steven Cross in the amount of One Hundred Seventy Five Thousand and 00/100 (\$175,000.00) Dollars in actual damages and Fifteen Thousand and 00/100 (\$15,000.00) Dollars in punitive damages. This results in a total judgment against Terrie Fallow and Jason Seagraves, jointly and severally, in the amount of One Hundred Ninety Thousand and 00/100 (\$190,000.00) Dollars.

IT IS SO ORDERED.

[Electronic Signature on Subsequent Page]



Anderson Common Pleas

Case Caption: Steven P Cross VS Gregory A. Weaver , defendant, et al

Case Number: 2016CP0402464

Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2018-09-04 11:18:46 page 8 of 8

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS
	)	TENTH (10 TH) JUDICIAL CIRCUIT
John Cross,	)	
	)	
Plaintiff,	)	FINAL ORDER & JUDGMENT
	)	
vs.	)	C/A No. 2016-CP-04-02468
	)	
Gregory A. Weaver, Earl E. Weaver,	)	
Terrie Fallow and Jason Seagraves,	)	
	)	
Defendants.	)	
	)	

THIS MATTER came before the Court for a non-jury final hearing on the merits on May 8, 2018. Plaintiff initiated this action by filing his Summons and Complaint against Gregory A. Weaver and Earl E. Weaver on November 2, 2016. An Answer was filed on behalf of Gregory A. Weaver and Earl E. Weaver on January 23, 2017.

Subsequently, on September 19, 2017, an Amended Summons and Complaint was filed by Plaintiff adding Terrie Fallow and Jason Seagraves as parties. Terrie Fallow was served with the Amended Summons and Complaint on September 25, 2017. She has not filed an Answer or otherwise made an appearance in this case, and is in default. Jason Seagraves was served with the Amended Summons and Complaint on September 24, 2017. He has not filed an Answer or otherwise made an appearance in this case, and is also in default.¹ The Answer previously filed by Gregory A. Weaver and Earl E. Weaver to the original Summons and Complaint was treated by the parties as an Answer to the Amended Summons and Complaint.

Plaintiff (hereinafter referred to as Plaintiff, John Cross or John) is represented by David J. Brousseau. The Defendants Gregory A. Weaver and Earl E. Weaver (hereinafter collectively referred to as Weavers or Landlords) are represented by David F. Stoddard.

This case stems from injuries sustained by John Cross when he was attacked by a German Shepherd breed dog on property owned by the Weavers. Jason Seagraves and Terrie Fallow (hereinafter collectively referred to as Tenants) are the owners of the dog. The Weavers leased the premises where the dog attack took place to the Tenants for commercial purposes.

¹ Terrie Fallow and Jason Seagraves were given notice of this hearing in accordance with Rule 5 SCRPC. The bailiff called their names three (3) times prior to the start of the hearing and no response was given.
J. Cross v. Weaver, et al, C/A No. 2016-CP-04-02468
 Final Order & Judgment, Page 1

This case was tried at the same time as a case involving Steven Cross, John's son. Steven Cross was also attacked by the same dog on the day in question. Reference is invited to C/A No. 2016-CP-04-02468 for the Final Order and Judgment in that case.

For reasons more fully set forth herein, the Court finds that the Weavers are not liable to Plaintiff for the injuries he sustained in the dog attack. Tenants are jointly and severally liable in said amounts set forth herein. In arriving at this conclusion, the Court issues the following findings of facts and conclusions of law in support of this Final Order and Judgment.

Findings of Facts & Conclusions of Law

The Property

The facts of this case are essentially not in dispute. The Weavers own real property located at 4500 Belton Highway (corner of Belton Highway and Shirley Store Road) in Anderson County. The Weavers rented the property to Terrie Fallow and Jason Seagraves. The lease was not in writing, and was on a month-to-month basis.

A small building is located on the property, and it was operated by Tenants as a rummage or "garage sale" type store with various used items for sale. According to the Weavers, the Tenants sold items from this store on weekends.

The Incident and Attack

On April 19, 2016, based on a tip from a neighbor, Steven Cross went to the property in order to see if tools that were stolen from him were for sale at this store. His 8 year old daughter went with him, and stayed in their Jeep while he went to knock on the door facing Belton Highway. After knocking a few times, Steven Cross began looking at tool boxes on the ground nearby. He was then suddenly attacked by a German Shepherd breed dog.

Believing the dog was not leashed, when he got loose from the dog, Steven ran in the opposite direction of his vehicle to keep the dog away from his daughter. He was attacked again, and in the ensuing struggle with the dog, Steven's firearm was flung into a field.² Steven eventually got away from the dog. He called 911 and his father, John Cross.

John Cross arrived on the scene around the same time as law enforcement. Deputy Jamie Doyle of the Anderson County Sheriff's Office also arrived on the scene. Believing that Deputy Doyle had the dog under control and that the dog's leash was not long enough to reach him, John

² Steven has a concealed weapons permit.
J. Cross v. Weaver, et al, C/A No. 2016-CP-04-02468
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Cross walked across the field to retrieve his son's firearm. His next recollection was waking up in the hospital. He was attacked by the dog when attempting to retrieve the firearm.

As a result of the dog attack, John Cross suffered a subdural hematoma as well as a number of puncture wounds and lacerations. He incurred \$12,249.51 in medical bills. He was in pain for a number of months, and still experiences pain in scarred areas where he was bitten. Additionally, he described for the Court his fear of dogs and the efforts that he has gone through to try to overcome this fear.

The Weavers

Earl Weaver owns and runs a garage and automobile salvage yard next door to the rummage store property. He and his son, Greg Weaver, live together five (5) minutes away, and they both drive by the rummage store at least twice a day. For at least six months prior to the attack on Steven, they saw the German Shepherd dog tethered outside the store on a long leash.

The Weavers testified that they would not approach or pet the dog. They testified that there was a "Beware of Dog" sign in the back of the property near the dog house. They both admitted that such a sign is an indication that a dog may have dangerous tendencies. Earl Weaver testified that the dog would bark and get upset whenever he opened the gate separating the rummage store property from the automobile salvage yard property. Photographs indicate that there are many items and debris that the dog could hide under or around.

The parties stipulated there was at least one (1) prior attack by this dog on this property. According to public records, that prior attack occurred on March 17, 2016.

Greg Weaver testified that Jason Seagraves told him about an attack by the dog on an individual trying to steal a boat. The attack described by Jason Seagraves to Greg Weaver was not factually similar to the attack on the Crosses. It is unknown whether the attack described by Greg Weaver is factually similar to the prior attack on March 17, 2016. (In other words, there may have been two (2) attacks prior to the attack in this case). Greg Weaver testified that after this conversation with Jason Seagraves, the dog returned to the rummage store property. Earl Weaver testified that after the attack on Crosses, the dog did not return to the rummage store property. Accordingly, I find that the Weavers had actual knowledge of a prior attack by this dog. Further, based upon their own interactions with the dog, I find that the Weavers knew or should have known about the dog's dangerous propensities well before the attack on John Cross.

Despite this prior knowledge of the dog's dangerous propensities, the Weavers took no action. They did not inform either Terrie Fallow or Jason Seagraves to remove the dog from the property or install proper safeguards to protect the public. Further, they did not terminate the month-to-month lease, and continued to re-lease the property each month to the Tenants with knowledge of the dangerous dog being exposed to unsuspecting invitees.

Jason Seagraves & Terrie Fallow

Jason Seagraves and Terrie Fallow were the owners and keeper of the dog. Pursuant to S.C. Code Ann. § 47-3-110 (as amended), they are strictly liable to Plaintiff for all damages sustained by Plaintiff as a result of the dog attack. Additionally, I find they were negligent and grossly negligent in keeping a dog with known dangerous propensities outside of a commercial establishment exposed and open to the public and store patrons.

Damages

I find that John Cross incurred actual damages in the form of medical bills, lost income, and pain and suffering in the amount of Sixty Five Thousand and 00/100 (\$65,000.00) Dollars. Additionally, due to the prior attacks by this dog and the known dangerous propensities of this dog, I also find by clear and convincing evidence that punitive damages are appropriate. I find that John Cross is entitled to punitive damages in the amount of Ten Thousand and 00/100 (\$10,000.00) Dollars.

Landlord Liability

The main issue in this case is whether or not the Weavers are liable, under a negligence theory, to Plaintiff for the injuries he sustained in this dog attack. Put another way, what duty does a landlord, in a month-to-month commercial lease, owe to third party invitees injured by a dangerous dog which the landlord knew or should have known existed in outside areas accessible to the public?

The arguments raised by Plaintiff in support of landlord liability may be reasonable on an appellate level. However, the Circuit Court must follow existing law.

"In a negligence action, a plaintiff must show (1) the defendant owed a duty of care to the plaintiff (2) defendant breached the duty by a negligent act or omission (3) defendant's breach was the actual and proximate cause of the plaintiff injury and (4) the plaintiff suffered injury or damages." *Jackson v. Swordfish, LLC*, 365 S.C. 608, 612, 620 S.E.2d 54, 56 (2005). "Whether the law recognizes a particular duty is an issue of law to be determined by the court." *Id.*

Plaintiff contends that the Weavers were negligent in not affirmatively taking steps to have the tenants rid the premises of the dog or kennel the dog so that it would not be exposed to the public in the outside areas. Plaintiff further contends that the Weavers were negligent in continuing to re-lease the property each month with knowledge of the dangerous dog in a place where it was exposed to invitees. Plaintiff also attempts to differentiate cases involving dogs in the residential context versus the commercial context.

Generally, a landlord is not responsible for the negligent acts of its lessee in keeping a dangerous dog on lessee's property. *Mitchell v. Bazzle*, 304 S.C. 402, 404 S.E.2d 910 (Ct. App. 1991). *Mitchell* was decided prior to the passing of the South Carolina Residential Landlord and Tenant Act (RLTA). See S.C. Code Ann. §§ 27-40-10 et. seq. (as amended). Following the passage of the RLTA, the Supreme Court reversed the trial court's grant of summary judgment to a landlord of an apartment complex when an invitee was bitten by a tenant's dog tethered in the apartment's common areas. *Clea v. Odom*, 394 S.C. 175, 181, 714 S.E.2d 542, 546 (2011). Under a negligence theory, a landlord may be liable to injuries sustained by an invitee in common areas as the RLTA created a duty for landlords to "keep all common areas of the premises in a reasonably safe condition ..." *Id.*, 394 S.C. at 182, 714 S.E.2d at 546; see also S.C. Code Ann. § 27-40-440(a)(3) (as amended).

The RLTA does not cover this situation as the premises in question was not utilized as a residence and was instead utilized as a commercial establishment in which to sell used goods. This was a commercial lease on a month-to-month basis.

In the commercial lease context, "A duty may arise under the particular circumstances of an individual case based upon a showing of negligence constituting the proximate cause of the loss, even though the law does not impose a general duty on landlords to protect tenants or their guests from the criminal acts of third parties." *Jackson*, 365 S.C. at 613, 620 S.E.2d at 56 (citing *Cramer v. Balcov Property Management, Inc.* 312 S.C. 440, 441 S.E.2d 317 (1994)). There are two (2) exceptions to the traditional rule of non-liability of landlords. *Id.* The exceptions are the "affirmative acts" exception and the "common areas" exception. *Id.*

In this case, there is no evidence that the Weaver ever engaged in any affirmative acts to protect the public from the dog. As such, the "affirmative acts" exception would not apply.

Plaintiff argues that the "common areas" exception should apply. A "common area" is generally an area common to tenants that is often controlled by the landlord. See *Wright v. PRG*

Real Estate Mgmt., 413 S.C. 276, 775 S.E.2d 399 (Ct. App. 2015). Plaintiff argues that while there are no other tenants with which to share a common area, the dog was kept outside of the building on a leash whereby the dog could attack any unsuspecting invitee to the business. Further, Plaintiff argues that due to the debris kept around the premises coupled with the Weavers' knowledge of the dog's dangerous propensities, that the Weavers had a duty to take some affirmative steps to mitigate the danger to the public. Plaintiff analogizes this outside area to a common area in other cases:

Plaintiff provided authority from other states to support its argument. The two (2) more persuasive cases provided by Plaintiff are *Shields v. Wagman*, 350 Md. 666, 714 A.2d 881 (Md. Ct. App. 1998) and *Portillo v. Aiassa*, 27 Cal. App. 4th 1128, 32 Cal. Rptr.2d 755 (Cal. Ct. App. 1994). Plaintiff further relies on Justice Pleicones' dissent in *Jackson*.

Portillo includes in it a persuasive argument. In *Portillo*, the California Court of Appeals found that a landlord could be held liable when the landlord renewed a commercial lease with knowledge that a dog with dangerous propensities utilized as a "guard dog" stayed on the premises exposed to potential invitees. *Portillo*, 27 Cal. App. 4th at 1132, 32 Cal. Rptr.2d at 756. In differentiating between cases where a dog is kept in a residential lease versus a commercial lease, the Court stated:

Those cases [residential lease cases] involved a family pet kept in a single-family residence. In contrast here the animal was a guard dog in a liquor store which was open to the public. The risk that someone would be seriously injured was far greater in the instant case. Moreover, while we recognize that particular neighborhoods or circumstances may require the presence of guard dogs for safety reasons, there is no strong public policy in favor of guard dogs in public places. Such animals cannot be classified as 'an important part of our way of life' in the same way that pets can.

Id., 27 Cal. App. 4th at 1137-38, 32 Cal. Rptr. at 760.

As stated by the California Court of Appeals, "under these circumstances, a reasonable person would have sought additional assurances that the dog was not dangerous prior to transferring possession of the premises to the tenant." *Id.*, 27 Cal. App. 4th at 1138, 32 Cal. Rptr. at 760.

In this case, this was a month-to-month lease of commercial property. The Weavers could have terminated the lease at any time for any reason or no reason at all. For six months they drove by the premises every day and saw the tethered dog. They both testified they would not

approach or pet the dog. They both believed the dog was dangerous or had dangerous propensities, and was there to guard the premises. It was stipulated that an attack occurred on another individual more than a month before the attack on Plaintiff. They were aware that if any unsuspecting member of the public walked to the side of the building, like John Cross, that person could be attacked. However, they took no affirmative steps to notify the tenants of their concerns about the dog, inform the tenants to get rid of the dog, install safety measures (such as a kennel) for the dog, or terminate the lease in order protect unsuspecting invitees.

One of the major purposes of tort law is to encourage socially responsible behavior and deter wrongful conduct. J. Wade, V. Schwartz, K. Kelly, and D. Partlett, Prosser, Wade and Schwartz's Cases and Materials on Torts (9th Ed.), 1 (1994). In light of that, Plaintiff's argument regarding the Weaver's liability under these particular facts appears reasonable on an appellate level. However, this Court is constrained by the law as it currently stands. As this Court interprets the current law, the Weavers had no affirmative duty to act. As such, since the law imposes no legal duty on the Weavers they cannot be held liable under a negligence theory.

ACCORDINGLY, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. Defendants Earl Weaver and Greg Weaver are dismissed as parties, with prejudice.
2. Defendants Terrie Fallow and Jason Seagraves are jointly and severally liable to Plaintiff John Cross in the amount of Sixty Five Thousand and 00/100 (\$65,000.00) Dollars in actual damages and Ten Thousand and 00/100 (\$10,000.00) Dollars in punitive damages. This results in a total judgment against Terrie Fallow and Jason Seagraves, jointly and severally, in the amount of Seventy Five Thousand and 00/100 (\$75,000.00) Dollars.

IT IS SO ORDERED.

[Electronic Signature on Subsequent Page]



Anderson Common Pleas

Case Caption: John Cross VS Gregory A. Weaver , defendant, et al

Case Number: 2016CP0402468

Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2018-09-05 14:16:38 page 8 of 8



STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON) IN THE COURT OF COMMON PLEAS
TENTH (10TH) JUDICIAL CIRCUIT

Steven P. Cross,)
Plaintiff,)
vs.) **SUMMONS**
Gregory A. Weaver and Earl E. Weaver,) C/A No. 2016-CP-04-_____
Defendants.)
_____)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to make a written Answer to the Complaint in this action, a copy of which Complaint is herewith served upon you, and to serve a copy of your written Answer to the said Complaint upon the undersigned attorney, of the law firm of McIntosh, Sherard, Sullivan & Brousseau, at 138 North Main Street, in Anderson, South Carolina, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to Answer in writing the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for a judgment by default granting the relief as prayed for in the Complaint.

TO INFANT(S) OVER FOURTEEN YEARS OF AGE (AN IMPRISONED PERSON):

YOU ARE FURTHER SUMMONED and notified to apply for the appointment of a guardian ad litem to represent you in this action within thirty days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff herein.

TO INFANT(S) UNDER FOURTEEN YEARS OF AGE (INCOMPETENT OR INSANE) AND TO _____, (GENERAL OR TESTAMENTARY GUARDIAN) (COMMITTEE) WITH WHOM (S)HE (THEY) RESIDE(S):

YOU ARE FURTHER SUMMONED and notified to apply for the appointment of a guardian ad litem within thirty days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff herein.

Dated this 2nd day of November, 2016.

s/ David J. Brousseau
David J. Brousseau, SC Bar No. 71150
McIntosh, Sherard, Sullivan & Brousseau
Post Office Box 197
Anderson, South Carolina 29622-0197
(864) 225-0001 | 225-0004 (fax)
ATTORNEYS FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS
	)	TENTH (10 TH) JUDICIAL CIRCUIT
Steven P. Cross,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	COMPLAINT
	)	
Gregory A. Weaver and Earl E. Weaver,	)	C/A No. 2016-CP-04-_____
	)	
Defendants.	)	
_____	)	

The Plaintiff, complaining of the above-named Defendants, would respectfully allege and show unto the Court that:

I

Plaintiff is a citizen and resident of the Anderson County, South Carolina.

II

Upon information and belief the Defendants are citizens and residents of Anderson County, South Carolina.

III

The incident, as plead herein, occurred in Anderson County, South Carolina.

IV

This Court has jurisdiction and venue over all parties, matters and things herein.

V

According to property records maintained with the Anderson County Register of Deeds and Anderson County tax assessor's office, the Defendants are the joint owners of real property located at the physical address of 4500 Belton Highway in Anderson County, South Carolina.

VI

The above described real property is located at the corner of Belton Highway and Shirley Store Road. It has the appearance of country store with items for sale and a parking area for patrons.

VII

On or around April 19, 2016, Plaintiff pulled up in his vehicle onto the real property. Plaintiff attempted to enter through the front door in order to view items for sale inside the store. The front door was locked. Plaintiff walked around the side of the building in order to see if anyone was present outside.

VIII

Plaintiff would show that while outside of the building, but on the real property, he was suddenly and viciously attacked by a dog of either german shepherd or belgian malinois type breed. The dog was tethered to a chain that was long enough to stretch almost to the highway.

IX

As a direct and proximate result of the attack, Plaintiff suffered great physical, emotional and psychological harm and injury, all of which has and will in the future cause him to have to undergo much physical, emotional and psychological pain and suffering, has and will in the future cause him to have to spend money for medical services, to have to undergo future surgeries and to have permanent scarring and/or impairment, as well as to lose money in the nature of wages and earnings.

**FOR A FIRST CAUSE OF ACTION
(Strict Liability - Dog Bite Statute)**

X

All of the allegations set forth above are re-alleged and incorporated herein as fully and completely as if set forth verbatim.

XI

Upon information and belief Defendants are the owners and/or keepers of the dog.

XII

Plaintiff would show that Defendants are strictly liable to him by virtue of South Carolina Code Ann. § 47-3-110 (as amended).

XIII

Plaintiff would show that as a direct and proximate result of the attack, he sustained injuries and damages more fully described in Paragraph IX above.

XIV

Upon information and belief, this dog has previously attacked other members of the public. Despite this knowledge, Defendants allowed the dog to remain on the premises. The Defendants' actions in allowing the dog to remain on the premises were willful, wanton and/or grossly negligent. As such, Plaintiff is informed and believes that he is additionally entitled to punitive damages.

WHEREFORE the Plaintiff prays for judgment against the Defendants Gregory A. Weaver and Earl E. Weaver, jointly and severally, for such actual, compensatory, incidental and punitive damages as to this Court is deemed just and proper.

**FOR A SECOND CAUSE OF ACTION
(Negligence / Gross Negligence)**

XV

All of the allegations set forth above are re-alleged and incorporated herein as fully and completely as if set forth verbatim.

XVI

Plaintiff is informed and believes that the Defendants were negligent, willful, wanton, careless and strictly liable at the time and place above mentioned in the following non-exclusive particulars:

- (A) In exposing its dangerous and vicious dog to members of the public, including Plaintiff;
- (B) In failing to warn Plaintiff of the dog's dangerous and vicious propensities;
- (C) In owning and possessing a dangerous and vicious animal;
- (D) In failing to take steps to prevent the attack on Plaintiff and/or others;
- (E) In allowing a dog who had previously attacked people to remain on the premises and property exposed to the general public; and
- (E) In generally failing to use the degree of care and caution that a reasonably prudent dog owner would have used under the circumstances then and there prevailing.

XVII

Plaintiff would show that as a direct and proximate result of the attack, he sustained injuries and damages more fully described in Paragraph IX above.

WHEREFORE the Plaintiff prays for judgment against the Defendants Gregory A. Weaver and Earl E. Weaver, jointly and severally, for such actual, compensatory, incidental and punitive damages as to this Court is deemed just and proper.

**FOR A THIRD CAUSE OF ACTION
(Premises Liability)**

XVIII

All of the allegations set forth above are re-alleged and incorporated herein as fully and completely as if set forth verbatim.

XIX

As owners of the property where the store is located, upon information and belief Defendants owe a duty to Plaintiff of exercising reasonable or ordinary care for Plaintiff's safety. Further, Defendants owe a duty to warn of latent or hidden dangers of which Defendants have knowledge.

XX

Upon information and belief, Defendants breached this duty as alleged in Paragraph XVI.

XI

Plaintiff would show that as a direct and proximate result of the attack, he sustained injuries and damages more fully described in Paragraph IX above.

WHEREFORE the Plaintiff prays for judgment against the Defendants Gregory A. Weaver and Earl E. Weaver, jointly and severally, for such actual, compensatory, incidental and punitive damages as to this Court is deemed just and proper.

/s David J. Brousseau
David J. Brousseau, SC Bar No. 71150
McIntosh, Sherard, Sullivan & Brousseau
Post Office Box 197
Anderson, South Carolina 29622
(864) 225-0001 | 225-0004 (fax)
Attorney for Plaintiffs

November 2, 2016.

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS
	)	TENTH (10 TH) JUDICIAL CIRCUIT
John Cross,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	SUMMONS
	)	
Gregory A. Weaver and Earl E. Weaver,	)	C/A No. 2016-CP-04-_____
	)	
Defendants.	)	
_____	)	

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to make a written Answer to the Complaint in this action, a copy of which Complaint is herewith served upon you, and to serve a copy of your written Answer to the said Complaint upon the undersigned attorney, of the law firm of McIntosh, Sherard, Sullivan & Brousseau, at 138 North Main Street, in Anderson, South Carolina, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to Answer in writing the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for a judgment by default granting the relief as prayed for in the Complaint.

TO INFANT(S) OVER FOURTEEN YEARS OF AGE (AN IMPRISONED PERSON):

YOU ARE FURTHER SUMMONED and notified to apply for the appointment of a guardian ad litem to represent you in this action within thirty days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff herein.

TO INFANT(S) UNDER FOURTEEN YEARS OF AGE (INCOMPETENT OR INSANE) AND TO _____, (GENERAL OR TESTAMENTARY GUARDIAN) (COMMITTEE) WITH WHOM (S)HE (THEY) RESIDE(S):

YOU ARE FURTHER SUMMONED and notified to apply for the appointment of a guardian ad litem within thirty days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff herein.

Dated this 2nd day of November, 2016.

s/ David J. Brousseau
David J. Brousseau, SC Bar No. 71150
McIntosh, Sherard, Sullivan & Brousseau
Post Office Box 197
Anderson, South Carolina 29622-0197
(864) 225-0001 | 225-0004 (fax)
ATTORNEYS FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS
	)	TENTH (10 TH) JUDICIAL CIRCUIT
John Cross,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	COMPLAINT
	)	
Gregory A. Weaver and Earl E. Weaver,	)	C/A No. 2016-CP-04-_____
	)	
Defendants.	)	
_____	)	

The Plaintiff, complaining of the above-named Defendants, would respectfully allege and show unto the Court that:

I

Plaintiff is a citizen and resident of the Anderson County, South Carolina.

II

Upon information and belief the Defendants are citizens and residents of Anderson County, South Carolina.

III

The incident, as plead herein, occurred in Anderson County, South Carolina.

IV

This Court has jurisdiction and venue over all parties, matters and things herein.

V

According to property records maintained with the Anderson County Register of Deeds and Anderson County tax assessor's office, the Defendants are the joint owners of real property located at the physical address of 4500 Belton Highway in Anderson County, South Carolina.

VI

The above described real property is located at the corner of Belton Highway and Shirley Store Road. It has the appearance of country store with items for sale and a parking area for patrons.

VII

On or around April 19, 2016, Plaintiff received a call from his son, Steven P. Cross, notifying that he was at the aforementioned location and that he had been injured during an attack by a dog.

VIII

Plaintiff went to the aforementioned location. Upon arriving, Plaintiff observed that law enforcement and EMS personnel were already present.

IX

Believing that the dog was secured by law enforcement, Plaintiff walked to obtain an item of his son's personal property that came off his person during the attack on his son. Additionally, the item was quite a distance from the building where the dog was allegedly tethered. Upon stooping down to pick up the item, Plaintiff was suddenly and viciously attacked by the dog.

X

As a direct and proximate result of the attack, Plaintiff suffered great physical, emotional and psychological harm and injury, all of which has and will in the future cause him to have to undergo much physical, emotional and psychological pain and suffering, has and will in the future cause him to have to spend money for medical services, to have to undergo future surgeries and to have permanent scarring and/or impairment, as well as to lose money in the nature of wages and earnings.

**FOR A FIRST CAUSE OF ACTION
(Strict Liability - Dog Bite Statute)**

XI

All of the allegations set forth above are re-alleged and incorporated herein as fully and completely as if set forth verbatim.

XII

Upon information and belief Defendants are the owners and/or keepers of the dog.

XIII

Plaintiff would show that Defendants are strictly liable to him by virtue of South Carolina Code Ann. § 47-3-110 (as amended).

XIV

Plaintiff would show that as a direct and proximate result of the attack, he sustained injuries and damages more fully described in Paragraph IX above.

XV

Upon information and belief, this dog has previously attacked other members of the public. Despite this knowledge, Defendants allowed the dog to remain on the premises. The Defendants' actions in allowing the dog to remain on the premises were willful, wanton and/or grossly negligent. As such, Plaintiff is informed and believes that he is additionally entitled to punitive damages.

WHEREFORE the Plaintiff prays for judgment against the Defendants Gregory A. Weaver and Earl E. Weaver, jointly and severally, for such actual, compensatory, incidental and punitive damages as to this Court is deemed just and proper.

**FOR A SECOND CAUSE OF ACTION
(Negligence / Gross Negligence)**

XVI

All of the allegations set forth above are re-alleged and incorporated herein as fully and completely as if set forth verbatim.

XVII

Plaintiff is informed and believes that the Defendants were negligent, willful, wanton, careless and strictly liable at the time and place above mentioned in the following non-exclusive particulars:

- (A) In exposing its dangerous and vicious dog to members of the public, including Plaintiff;
- (B) In failing to warn Plaintiff of the dog's dangerous and vicious propensities;
- (C) In owning and possessing a dangerous and vicious animal;
- (D) In failing to take steps to prevent the attack on Plaintiff and/or others;

- (E) In allowing a dog who had previously attacked people to remain on the premises and property exposed to the general public; and
- (E) In generally failing to use the degree of care and caution that a reasonably prudent dog owner would have used under the circumstances then and there prevailing.

XVIII

Plaintiff would show that as a direct and proximate result of the attack, he sustained injuries and damages more fully described in Paragraph IX above.

WHEREFORE the Plaintiff prays for judgment against the Defendants Gregory A. Weaver and Earl E. Weaver, jointly and severally, for such actual, compensatory, incidental and punitive damages as to this Court is deemed just and proper.

**FOR A THIRD CAUSE OF ACTION
(Premises Liability)**

XIX

All of the allegations set forth above are re-alleged and incorporated herein as fully and completely as if set forth verbatim.

XX

As owners of the property where the store is located, upon information and belief Defendants owe a duty to Plaintiff of exercising reasonable or ordinary care for Plaintiff's safety. Further, Defendants owe a duty to warn of latent or hidden dangers of which Defendants have knowledge.

XXI

Upon information and belief, Defendants breached this duty as alleged in Paragraph XVI.

XXII

Plaintiff would show that as a direct and proximate result of the attack, he sustained injuries and damages more fully described in Paragraph IX above.

WHEREFORE the Plaintiff prays for judgment against the Defendants Gregory A. Weaver and Earl E. Weaver, jointly and severally, for such actual, compensatory, incidental and punitive damages as to this Court is deemed just and proper.

/s David J. Brousseau
David J. Brousseau, SC Bar No. 71150
McIntosh, Sherard, Sullivan & Brousseau
Post Office Box 197
Anderson, South Carolina 29622
(864) 225-0001 | 225-0004 (fax)
Attorney for Plaintiffs

November 2, 2016.

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE CIRCUIT COURT
TENTH JUDICIAL CIRCUIT

Steven P. Cross,

Case# 2016-CP-04-2464

Plaintiff

ANSWER

v.

Gregory A. Weaver and Earle E. Weaver.

Defendants.

The Defendants, answering Plaintiff's Complaint, and by Third Party Complaint would show unto the court as follows:

1. All allegations set out in Plaintiff's Complaint that are not specifically admitted herein are denied and strict proof demanded thereof.
2. The Defendants admits paragraphs one(1), two(2), three(3), four(4), five(5), six(6), of Plaintiff's complaint.
3. The Defendants admit so much of paragraph seven (7) of the Complaint as alleges the Plaintiff entered the property described in the Complaint, but has insufficient information regarding the particulars of Plaintiff's movements while Plaintiff was at the property to admit or deny the remaining allegations said paragraph and, therefore, those remaining allegations are denied.
4. The Defendants admit so much of paragraph eight (8) of the complaint as alleges the Defendant was attacked by a dog while on the premises, but has insufficient information regarding the particulars of the attack to admit the remaining allegations set out in said paragraph and, therefore, the remaining allegations of paragraph eight (8) are denied.
5. The Defendants admit so much of paragraph nine (9) as alleges Plaintiff suffered injury proximately caused by the dog attack, but have insufficient information regarding the extent of the injuries to admit or deny the remaining allegations regarding the severity and permanency of the injury and, therefore, the remaining allegations set out in paragraph nine (9) are denied.

As to First Cause of Action

6. Paragraph ten(10) is denied to the extent that it realleges facts that have been denied herein.
7. Paragraphs eleven (11) (re: ownership of the dog), and twelve (12) (re: strict liability) are denied and strict proof demanded thereof. The Defendants would show that Terrie Fallow and Jason Seagraves were the owners of the dog.
8. Paragraph thirteen (13) is admitted to the extent that it alleges plaintiff suffered damages as a result of the attack, but as the extent of the damages are unknown to the Defendants, the remaining allegations are denied.
9. The Defendants have no knowledge of allegations contained in paragraph fourteen (14) of the complaint that allege the dog has previously attacked members of the public, and therefore, this allegation is denied, and strict proof demanded thereof. The defendants further deny the remaining allegations contained in paragraph fourteen that Defendants actions were willful, wanton, and/or grossly negligent, and that Plaintiff is entitled to punitive damages.

As to Second Cause of Action

10. The Defendants deny allegations contained in paragraph fifteen(15) of the complaint to the extent it realleges facts that have previously been denied herein.
11. The Defendants deny paragraph Sixteen(16) of the complaint, and strict proof is demanded thereof.
12. Paragraph Seventeen (17) is admitted to the extent that it alleges plaintiff suffered damages as a result of the attack, but as the extent of the damages are unknown to the Defendants, the remaining allegations in paragraph Seventeen (17) are denied.

As to Third Cause of Action

13. Paragraph Eighteen (18) of the Complaint is denied to the extent that it realleges facts that have already been denied herein.
14. Paragraph Nineteen (19) of the complaint alleges the Defendants, as owners of the property where the store is located, owe a duty to exercise ordinary care for Plaintiff's safety. The Defendant would show to the court that the degree of care owed depends on the status of the parties in relation to the property. Upon information and belief, paragraph Nineteen (19) accurately describes the duty owed by an "owner occupier" to a "licensee". The Defendants would show that during the events described herein, Terrie Fallow and Jason Seagraves occupied and operated the premises as Defendants' tenants, and thus, the Defendants owed no such duty to Plaintiff as the rule *caveat lessee* applies, and, therefore, paragraph Nineteen (19) is denied. Furthermore, Plaintiff would show, upon information and belief, that the Plaintiff entered the property as a trespasser to commit larceny, and that Plaintiff's status as adult trespasser affects any duty owed by the Defendants.
15. Paragraph twenty (20) is denied and strict proof demanded thereof.
16. Paragraph Twenty-one (21) is admitted to the extent that it alleges plaintiff suffered damages as a result of the attack, but as the extent of the damages are unknown to the Defendants, the remaining allegations are denied.

**DEFENSE
(Comparative Negligence)**

17. All admissions and denials set out in paragraphs one (1) through sixteen (16) herein realleged as if fully set out herein.
18. Upon information and belief, Plaintiff entered the property after hours for the purpose of committing a crime on the property, and went to the back of the property, ignoring a "Be Ware of Dog Sign", posted on the property.
19. upon information and belief, Plaintiff's actions were negligent, willful, wanton, and reckless, and this negligence was a proximate cause of Plaintiff's own injuries.

20. Upon information and belief, Plaintiff's negligence, as compared to any negligence Plaintiff can show on the part of the Defendant, accounted for more than 50% of the fault and cause of the accident.

WHEREFORE, having answered Plaintiff's Complaint, the Defendants pray that the Complaint be dismissed, and that the court award costs to the Defendants.

January 20, 2017, 2016
Anderson, South Carolina

s/ David F. Stoddard
David F. Stoddard, Bar # 5362
Attorney for the Defendants
320 E River Street
Anderson, South Carolina 29624
Telephone 864-375-0000
Facsimile 864-375-0052
david@dfslawoffice.com



STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE CIRCUIT COURT
TENTH JUDICIAL CIRCUIT

John Cross,

Case# 2016-CP-04-2468

Plaintiff

ANSWER

v.

Gregory A. Weaver and Earle E. Weaver.

Defendants.

The Defendants, answering Plaintiff's Complaint, and by Third Party Complaint would show unto the court as follows:

1. All allegations set out in Plaintiff's Complaint that are not specifically admitted herein are denied and strict proof demanded thereof.
2. The Defendants admits paragraphs one(1), two(2), three(3), four(4), five(5), six(6), of Plaintiff's complaint.
3. The Defendants admit so much of paragraph seven (7) of the Complaint as alleges the Plaintiff entered the property described in the Complaint, but has insufficient information regarding the particulars of Plaintiff's movements while Plaintiff was at the property to admit or deny the remaining allegations said paragraph and, therefore, those remaining allegations are denied.
4. The Defendants admit so much of paragraph eight (8) of the complaint as alleges the Defendant was attacked by a dog while on the premises, but has insufficient information regarding the particulars of the attack to admit the remaining allegations set out in said paragraph and, therefore, the remaining allegations of paragraph eight (8) are denied.
5. The Defendants admit so much of paragraph nine (9) as alleges Plaintiff suffered injury proximately caused by the dog attack, but have insufficient information regarding the extent of the injuries to admit or deny the remaining allegations regarding the severity and permanency of the injury and, therefore, the remaining allegations set out in paragraph nine (9) are denied.

As to First Cause of Action

6. Paragraph ten(10) is denied to the extent that it realleges facts that have been denied herein.
7. Paragraphs eleven (11) (re: ownership of the dog), and twelve (12) (re: strict liability) are denied and strict proof demanded thereof. The Defendants would show that Terrie Fallow and Jason Seagraves were the owners of the dog.
8. Paragraph thirteen (13) is admitted to the extent that it alleges plaintiff suffered damages as a result of the attack, but as the extent of the damages are unknown to the Defendants, the remaining allegations are denied.
9. The Defendants have no knowledge of allegations contained in paragraph fourteen (14) of the complaint that allege the dog has previously attacked members of the public, and therefore, this allegation is denied, and strict proof demanded thereof. The defendants further deny the remaining allegations contained in paragraph fourteen that Defendants actions were willful, wanton, and/or grossly negligent, and that Plaintiff is entitled to punitive damages.

As to Second Cause of Action

10. The Defendants deny allegations contained in paragraph fifteen(15) of the complaint to the extent it realleges facts that have previously been denied herein.
11. The Defendants deny paragraph Sixteen(16) of the complaint, and strict proof is demanded thereof.
12. Paragraph Seventeen (17) is admitted to the extent that it alleges plaintiff suffered damages as a result of the attack, but as the extent of the damages are unknown to the Defendants, the remaining allegations in paragraph Seventeen (17) are denied.

As to Third Cause of Action

13. Paragraph Eighteen (18) of the Complaint is denied to the extent that it realleges facts that have already been denied herein.
14. Paragraph Nineteen (19) of the complaint alleges the Defendants, as owners of the property where the store is located, owe a duty to exercise ordinary care for Plaintiff's safety. The Defendant would show to the court that the degree of care owed depends on the status of the parties in relation to the property. Upon information and belief, paragraph Nineteen (19) accurately describes the duty owed by an "owner occupier" to a "licensee". The Defendants would show that during the events described herein, Terrie Fallow and Jason Seagraves occupied and operated the premises as Defendants' tenants, and thus, the Defendants owed no such duty to Plaintiff as the rule *caveat lessee* applies, and, therefore, paragraph Nineteen (19) is denied. Furthermore, Plaintiff would show, upon information and belief, that the Plaintiff entered the property as a trespasser to commit larceny, and that Plaintiff's status as adult trespasser affects any duty owed by the Defendants.
15. Paragraph twenty (20) is denied and strict proof demanded thereof.
16. Paragraph Twenty-one (21) is admitted to the extent that it alleges plaintiff suffered damages as a result of the attack, but as the extent of the damages are unknown to the Defendants, the remaining allegations are denied.

**DEFENSE
(Comparative Negligence)**

17. All admissions and denials set out in paragraphs one (1) through sixteen (16) herein realleged as if fully set out herein.
18. Upon information and belief, Plaintiff entered the property after hours for the purpose of committing a crime on the property, and went to the back of the property, ignoring a "Be Ware of Dog Sign", posted on the property.
19. upon information and belief, Plaintiff's actions were negligent, willful, wanton, and reckless, and this negligence was a proximate cause of Plaintiff's own injuries.

20. Upon information and belief, Plaintiff's negligence, as compared to any negligence Plaintiff can show on the part of the Defendant, accounted for more than 50% of the fault and cause of the accident.

WHEREFORE, having answered Plaintiff's Complaint, the Defendants pray that the Complaint be dismissed, and that the court award costs to the Defendants.

January 20, 2017, 2016
Anderson, South Carolina

s/ David F. Stoddard
David F. Stoddard, Bar # 5362
Attorney for the Defendants
320 E River Street
Anderson, South Carolina 29624
Telephone 864-375-0000
Facsimile 864-375-0052
david@dfslawoffice.com

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
TENTH (10TH) JUDICIAL CIRCUIT

Steven P. Cross,

Plaintiff,

vs.

Gregory A. Weaver, Earl E. Weaver,
Terrie Fallow and Jason Seagraves,

Defendants.

AMENDED SUMMONS

C/A No. 2016-CP-04-02464

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to make a written Answer to the Complaint in this action, a copy of which Complaint is herewith served upon you, and to serve a copy of your written Answer to the said Complaint upon the undersigned attorney, of the law firm of McIntosh, Sherard, Sullivan & Brousseau, at 138 North Main Street, in Anderson, South Carolina, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to Answer in writing the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for a judgment by default granting the relief as prayed for in the Complaint.

TO INFANT(S) OVER FOURTEEN YEARS OF AGE (AN IMPRISONED PERSON):

YOU ARE FURTHER SUMMONED and notified to apply for the appointment of a guardian ad litem to represent you in this action within thirty days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff herein.

TO INFANT(S) UNDER FOURTEEN YEARS OF AGE (INCOMPETENT OR INSANE) AND TO _____, (GENERAL OR TESTAMENTARY GUARDIAN) (COMMITTEE) WITH WHOM (S)HE (THEY) RESIDE(S):

YOU ARE FURTHER SUMMONED and notified to apply for the appointment of a guardian ad litem within thirty days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff herein.

Dated this 19th day of September, 2017.

s/ David J. Brousseau
David J. Brousseau, SC Bar No. 71150
McIntosh, Sherard, Sullivan & Brousseau
Post Office Box 197
Anderson, South Carolina 29622-0197
(864) 225-0001 | 225-0004 (fax)
ATTORNEYS FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS
		TENTH (10 TH) JUDICIAL CIRCUIT
Steven P. Cross,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	AMENDED COMPLAINT
	)	
Gregory A. Weaver, Earl E. Weaver,	)	C/A No. 2016-CP-04-02464
Terrie Fallow and Jason Seagraves,	)	
	)	
Defendants.	)	
	)	

The Plaintiff, complaining of the above-named Defendants, would respectfully allege and show unto the Court that:

I

Plaintiff is a citizen and resident of the Anderson County, South Carolina.

II

Upon information and belief the Defendants are citizens and residents of Anderson County, South Carolina.

III

The incident, as plead herein, occurred in Anderson County, South Carolina.

IV

This Court has jurisdiction and venue over all parties, matters and things herein.

V

According to property records maintained with the Anderson County Register of Deeds and Anderson County tax assessor's office, Defendants Gregory A. Weaver and Earl E. Weaver are the joint owners of real property located at the physical address of 4500 Belton Highway in Anderson County, South Carolina.

VI

The above described real property is located at the corner of Belton Highway and Shirley Store Road. It has the appearance of country store with items for sale and a parking area for

patrons. Upon information and belief, the property was being rented by Terrie Fallow and Jason Seagraves at the time of the incident alleged herein.

VII

On or around April 19, 2016, Plaintiff pulled up in his vehicle onto the real property. Plaintiff attempted to enter through the front door in order to view items for sale inside the store. The front door was locked. Plaintiff walked around the side of the building in order to see if anyone was present outside.

VIII

Plaintiff would show that while outside of the building, but on the real property, he was suddenly and viciously attacked by a dog of either german shepherd or belgian malinois type breed. The dog was tethered to a chain that was long enough to stretch almost to the highway.

IX

Upon information and belief, the dog has vicious propensities with a history of prior bites. The dog was kept outside in the common area of the property subject to exposure to the public, invitees and licensees.

IX

As a direct and proximate result of the attack, Plaintiff suffered great physical, emotional and psychological harm and injury, all of which has and will in the future cause him to have to undergo much physical, emotional and psychological pain and suffering, has and will in the future cause him to have to spend money for medical services, to have to undergo future surgeries and to have permanent scarring and/or impairment, as well as to lose money in the nature of wages and earnings.

**FOR A FIRST CAUSE OF ACTION
(Strict Liability - Dog Bite Statute)**

XI

All of the allegations set forth above are re-alleged and incorporated herein as fully and completely as if set forth verbatim.

XII

Upon information and belief Defendants are the owners and/or keepers of the dog.

XIII

Plaintiff would show that Defendants are strictly liable to him by virtue of South Carolina Code Ann. § 47-3-110 (as amended).

XIV

Plaintiff would show that as a direct and proximate result of the attack, he sustained injuries and damages more fully described in Paragraph IX above.

XV

Upon information and belief, this dog has previously attacked other members of the public. Despite this knowledge, Defendants allowed the dog to remain on the premises. The Defendants' actions in allowing the dog to remain on the premises were willful, wanton and/or grossly negligent. As such, Plaintiff is informed and believes that he is additionally entitled to punitive damages.

WHEREFORE Plaintiff prays for judgment against the Defendants, jointly and severally, for such actual, compensatory, incidental and punitive damages as to this Court is deemed just and proper.

**FOR A SECOND CAUSE OF ACTION
(Negligence / Gross Negligence)**

XVI

All of the allegations set forth above are re-alleged and incorporated herein as fully and completely as if set forth verbatim.

XVII

Plaintiff is informed and believes that the Defendants were negligent, willful, wanton, careless and strictly liable at the time and place above mentioned in the following non-exclusive particulars:

- (A) In exposing its dangerous and vicious dog to members of the public, including Plaintiff;
- (B) In failing to warn Plaintiff of the dog's dangerous and vicious propensities;
- (C) In owning and possessing a dangerous and vicious animal;
- (D) In failing to take steps to prevent the attack on Plaintiff and/or others;
- (E) In allowing a dog who had previously attacked people to remain on the premises and property exposed to the general public; and

- (E) In generally failing to use the degree of care and caution that a reasonably prudent dog owner would have used under the circumstances then and there prevailing.

XVIII

Plaintiff would show that as a direct and proximate result of the attack, he sustained injuries and damages more fully described in Paragraph IX above.

WHEREFORE the Plaintiff prays for judgment against the Defendants, jointly and severally, for such actual, compensatory, incidental and punitive damages as to this Court is deemed just and proper.

**FOR A THIRD CAUSE OF ACTION
(Premises Liability)**

XIX

All of the allegations set forth above are re-alleged and incorporated herein as fully and completely as if set forth verbatim.

XX

As owners of the property where the store is located, upon information and belief Defendants owe a duty to Plaintiff of exercising reasonable or ordinary care for Plaintiff's safety. Further, Defendants owe a duty to warn of latent or hidden dangers of which Defendants have knowledge.

XXI

Upon information and belief, Defendants breached this duty as alleged in Paragraph XVI. Further, as previously alleged herein, the dog was housed outside of the building in view of the public and the landowners in a common area. The dog had a vicious history, and should not have been allowed to be present outside where it was exposed to the public.

XXII

Plaintiff would show that as a direct and proximate result of the attack, he sustained injuries and damages more fully described in Paragraph IX above.

WHEREFORE the Plaintiff prays for judgment against the Defendants, jointly and severally, for such actual, compensatory, incidental and punitive damages as to this Court is deemed just and proper.

September 19, 2017

/s David J. Brousseau
David J. Brousseau, SC Bar No. 71150
McIntosh, Sherard, Sullivan & Brousseau
Post Office Box 197
Anderson, South Carolina 29622
(864) 225-0001 | 225-0004 (fax)
Attorney for Plaintiffs

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS
		TENTH (10 TH) JUDICIAL CIRCUIT
John Cross,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	AMENDED SUMMONS
	)	
Gregory A. Weaver, Earl E. Weaver,	)	C/A No. 2016-CP-04-02468
Terrie Fallow and Jason Seagraves,	)	
	)	
Defendants.	)	
	)	

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to make a written Answer to the Complaint in this action, a copy of which Complaint is herewith served upon you, and to serve a copy of your written Answer to the said Complaint upon the undersigned attorney, of the law firm of McIntosh, Sherard, Sullivan & Brousseau, at 138 North Main Street, in Anderson, South Carolina, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to Answer in writing the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for a judgment by default granting the relief as prayed for in the Complaint.

TO INFANT(S) OVER FOURTEEN YEARS OF AGE (AN IMPRISONED PERSON):

YOU ARE FURTHER SUMMONED and notified to apply for the appointment of a guardian ad litem to represent you in this action within thirty days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff herein.

TO INFANT(S) UNDER FOURTEEN YEARS OF AGE (INCOMPETENT OR INSANE) AND TO _____, (GENERAL OR TESTAMENTARY GUARDIAN) (COMMITTEE) WITH WHOM (S)HE (THEY) RESIDE(S):

YOU ARE FURTHER SUMMONED and notified to apply for the appointment of a guardian ad litem within thirty days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff herein.

Dated this 19th day of September, 2017.

s/ David J. Brousseau
David J. Brousseau, SC Bar No. 71150
McIntosh, Sherard, Sullivan & Brousseau
Post Office Box 197
Anderson, South Carolina 29622-0197
(864) 225-0001 | 225-0004 (fax)
ATTORNEYS FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS
	)	TENTH (10 TH) JUDICIAL CIRCUIT
John Cross,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	AMENDED COMPLAINT
	)	
Gregory A. Weaver, Earl E. Weaver,	)	C/A No. 2016-CP-04-02468
Terrie Fallow and Jason Seagraves,	)	
	)	
Defendants.	)	
	)	

The Plaintiff, complaining of the above-named Defendants, would respectfully allege and show unto the Court that:

I

Plaintiff is a citizen and resident of the Anderson County, South Carolina.

II

Upon information and belief the Defendants are citizens and residents of Anderson County, South Carolina.

III

The incident, as plead herein, occurred in Anderson County, South Carolina.

IV

This Court has jurisdiction and venue over all parties, matters and things herein.

V

According to property records maintained with the Anderson County Register of Deeds and Anderson County tax assessor's office, the Defendants Gregory A. Weaver and Earl E. Weaver are the joint owners of real property located at the physical address of 4500 Belton Highway in Anderson County, South Carolina.

VI

The above described real property is located at the corner of Belton Highway and Shirley Store Road. It has the appearance of country store with items for sale and a parking area for

patrons. Upon information and belief, the property was being rented by Terrie Fallow and Jason Seagraves at the time of the incident alleged herein.

VII

On or around April 19, 2016, Plaintiff received a call from his son, Steven P. Cross, notifying that he was at the aforementioned location and that he had been injured during an attack by a dog. Upon information and belief, the dog was housed outside of the building in the common area open to view of the land owners.

VIII

Plaintiff went to the aforementioned location. Upon arriving, Plaintiff observed that law enforcement and EMS personnel were already present.

IX

Believing that the dog was secured by law enforcement, Plaintiff walked to obtain an item of his son's personal property that came off his person during the attack on his son. Additionally, the item was quite a distance from the building where the dog was allegedly tethered. Upon stooping down to pick up the item, Plaintiff was suddenly and viciously attacked by the dog.

X

As a direct and proximate result of the attack, Plaintiff suffered great physical, emotional and psychological harm and injury, all of which has and will in the future cause him to have to undergo much physical, emotional and psychological pain and suffering, has and will in the future cause him to have to spend money for medical services, to have to undergo future surgeries and to have permanent scarring and/or impairment, as well as to lose money in the nature of wages and earnings.

**FOR A FIRST CAUSE OF ACTION
(Strict Liability - Dog Bite Statute)**

XI

All of the allegations set forth above are re-alleged and incorporated herein as fully and completely as if set forth verbatim.

XII

Upon information and belief Defendants are the owners and/or keepers of the dog.

XIII

Plaintiff would show that Defendants are strictly liable to him by virtue of South Carolina Code Ann. § 47-3-110 (as amended).

XIV

Plaintiff would show that as a direct and proximate result of the attack, he sustained injuries and damages more fully described in Paragraph IX above.

XV

Upon information and belief, this dog has previously attacked other members of the public. Despite this knowledge, Defendants allowed the dog to remain on the premises. The Defendants' actions in allowing the dog to remain on the premises were willful, wanton and/or grossly negligent. As such, Plaintiff is informed and believes that he is additionally entitled to punitive damages.

WHEREFORE Plaintiff prays for judgment against the Defendants, jointly and severally, for such actual, compensatory, incidental and punitive damages as to this Court is deemed just and proper.

**FOR A SECOND CAUSE OF ACTION
(Negligence / Gross Negligence)**

XVI

All of the allegations set forth above are re-alleged and incorporated herein as fully and completely as if set forth verbatim.

XVII

Plaintiff is informed and believes that the Defendants were negligent, willful, wanton, careless and strictly liable at the time and place above mentioned in the following non-exclusive particulars:

- (A) In exposing its dangerous and vicious dog to members of the public, including Plaintiff;
- (B) In failing to warn Plaintiff of the dog's dangerous and vicious propensities;
- (C) In owning and possessing a dangerous and vicious animal;
- (D) In failing to take steps to prevent the attack on Plaintiff and/or others;

- (E) In allowing a dog who had previously attacked people to remain on the premises and property exposed to the general public; and
- (E) In generally failing to use the degree of care and caution that a reasonably prudent dog owner would have used under the circumstances then and there prevailing.

XVIII

Plaintiff would show that as a direct and proximate result of the attack, he sustained injuries and damages more fully described in Paragraph IX above.

WHEREFORE the Plaintiff prays for judgment against the Defendants, jointly and severally, for such actual, compensatory, incidental and punitive damages as to this Court is deemed just and proper.

**FOR A THIRD CAUSE OF ACTION
(Premises Liability)**

XIX

All of the allegations set forth above are re-alleged and incorporated herein as fully and completely as if set forth verbatim.

XX

As owners of the property where the store is located, upon information and belief Defendants owe a duty to Plaintiff of exercising reasonable or ordinary care for Plaintiff's safety. Further, Defendants owe a duty to warn of latent or hidden dangers of which Defendants have knowledge.

XXI

Upon information and belief, Defendants breached this duty as alleged in Paragraph XVI. Further, as previously alleged herein, the dog was housed outside of the building in view of the public and the landowners in a common area. The dog had a vicious history, and should not have been allowed to be present outside where it was exposed to the public.

XXII

Plaintiff would show that as a direct and proximate result of the attack, he sustained injuries and damages more fully described in Paragraph IX above.

WHEREFORE the Plaintiff prays for judgment against the Defendants, jointly and severally, for such actual, compensatory, incidental and punitive damages as to this Court is deemed just and proper.

September 19, 2017

/s David J. Brousseau
David J. Brousseau, SC Bar No. 71150
McIntosh, Sherard, Sullivan & Brousseau
Post Office Box 197
Anderson, South Carolina 29622
(864) 225-0001 | 225-0004 (fax)
Attorney for Plaintiffs

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS 10 TH JUDICIAL CIRCUIT
Steven P. Cross,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION TO RECONSIDER, ALTER AND/OR AMEND
	)	
Gregory A. Weaver, Earl E. Weaver,	)	C/A No. 2016-CP-04-02464
Terrie Fallow and Jason Seagraves,	)	
	)	
Defendants.	)	
	)	

TO: THE HON. R. LAWTON McINTOSH, PRESIDING CIRCUIT COURT JUDGE; and
THE DEFENDANTS GREGORY A. WEAVER AND EARL E. WEAVER and THEIR
ATTORNEY DAVID F. STODDARD, ESQ.:

NOW COMES the Plaintiff, by and through his undersigned counsel, pursuant to Rules 59 and 52 of the *South Carolina Rules of Civil Procedure* requesting that the Court reconsider, alter and/or amend the Final Order and Judgment filed in this matter on September 4, 2018. As a basis for this motion, Plaintiff requests that the Court consider the following in support of this motion:

1. Defendant Gregory A. Weaver and Earl E. Weaver are landlords of commercial property. They leased the property in question to Defendants Terrie Fallow and Jason Seagraves on a month to month basis. The Circuit Court found that the Weavers were aware that their tenants kept a dog with dangerous propensities on a long leash outside of the building utilized as a rummage store. The Weavers, despite being aware of a prior attack and the dog's dangerous propensities, took no affirmative steps with the tenants to rid the premises of the dog or to require tenants to put in place safety measures to keep unsuspecting invitees safe from the dog.
2. Plaintiff reiterates many of his arguments presented at trial and in post-trial briefs. Most notably, Plaintiff asks this Court to reconsider its decision regarding the Weavers' legal duty. In *Jackson v. Swordfish Invs.*, the South Carolina Supreme Court addressed the liability of commercial landlords and stated as follows: "A duty may arise under the particular circumstances of an individual case based upon a showing of negligence constituting the

proximate cause of the loss, even though the law does not impose a general duty on landlords to protect tenants or their guests from the criminal acts of third parties.” See *Jackson v. Swordfish Invs.*, 365 S.C. 608, 613, 620 S.E.2d 54, 56 (2005).

3. In this case, the Weavers were aware of the dangerous dog that was being kept on a long leash. They were aware that the dog could attack unsuspecting invitees to the commercial property. However, despite this knowledge the Weavers continued to re-lease the premises to the tenants each month without any assurances from tenants to either remove the dog or put in place safety measure to avoid any attacks on unsuspecting invitees by the dog.

4. The purpose of tort law is to promote socially responsible behavior and deter wrongful conduct. To that end, Plaintiff contends that a reasonable commercial landlord, under the specific facts of this case, would take some type of affirmative steps to safeguard against the dog attacking unsuspecting members of the general public. However, they did not do so. One of the exceptions to the landlord liability rule is when a landlord takes affirmative actions. It seems to follow that if the Weavers may be liable for negligent affirmative acts, then they should also be liable for complete inaction when action is reasonable under a reasonable person standard.

ACCORDINGLY, Plaintiff requests that the Court reconsider, alter or amend the Final Order and Judgment in the following manner:

- A. To find that Defendants Earl E. Weaver and Gregory A. Weaver did have a legal duty to act, and that they breached said duty. Further, to find that Defendants Earl E. Weaver and Gregory A. Weaver are also liable, jointly and severally, to Plaintiff in the amounts set forth in the Final Order & Judgment; and
- B. Such other and further relief as to this Court is deemed just and proper.

September 12, 2018

s/ David J. Brousseau
David J. Brousseau
McIntosh, Sherard, Sullivan & Brousseau
Post Office Box 197
Anderson, South Carolina 29622
(864) 225-0001 | 225-0004 (fax)
Attorney for Plaintiff

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS
	)	10 TH JUDICIAL CIRCUIT
John Cross,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION TO RECONSIDER, ALTER
	)	AND/OR AMEND
	)	
Gregory A. Weaver, Earl E. Weaver,	)	C/A No. 2016-CP-04-02468
Terrie Fallow and Jason Seagraves,	)	
	)	
Defendants.	)	
	)	

TO: THE HON. R. LAWTON McINTOSH, PRESIDING CIRCUIT COURT JUDGE; and
THE DEFENDANTS GREGORY A. WEAVER AND EARL E. WEAVER and THEIR
ATTORNEY DAVID F. STODDARD, ESQ.:

NOW COMES the Plaintiff, by and through his undersigned counsel, pursuant to Rules 59 and 52 of the *South Carolina Rules of Civil Procedure* requesting that the Court reconsider, alter and/or amend the Final Order and Judgment filed in this matter on September 4, 2018. As a basis for this motion, Plaintiff requests that the Court consider the following in support of this motion:

1. Defendant Gregory A. Weaver and Earl E. Weaver are landlords of commercial property. They leased the property in question to Defendants Terrie Fallow and Jason Seagraves on a month to month basis. The Circuit Court found that the Weavers were aware that their tenants kept a dog with dangerous propensities on a long leash outside of the building utilized as a rummage store. The Weavers, despite being aware of a prior attack and the dog's dangerous propensities, took no affirmative steps with the tenants to rid the premises of the dog or to require tenants to put in place safety measures to keep unsuspecting invitees safe from the dog.
2. Plaintiff reiterates many of his arguments presented at trial and in post-trial briefs. Most notably, Plaintiff asks this Court to reconsider its decision regarding the Weavers' legal duty. In *Jackson v. Swordfish Invs.*, the South Carolina Supreme Court addressed the liability of commercial landlords and stated as follows: "A duty may arise under the particular circumstances of an individual case based upon a showing of negligence constituting the

proximate cause of the loss, even though the law does not impose a general duty on landlords to protect tenants or their guests from the criminal acts of third parties.” See *Jackson v. Swordfish Invs.*, 365 S.C. 608, 613, 620 S.E.2d 54, 56 (2005).

3. In this case, the Weavers were aware of the dangerous dog that was being kept on a long leash. They were aware that the dog could attack unsuspecting invitees to the commercial property. However, despite this knowledge the Weavers continued to re-lease the premises to the tenants each month without any assurances from tenants to either remove the dog or put in place safety measure to avoid any attacks on unsuspecting invitees by the dog.

4. The purpose of tort law is to promote socially responsible behavior and deter wrongful conduct. To that end, Plaintiff contends that a reasonable commercial landlord, under the specific facts of this case, would take some type of affirmative steps to safeguard against the dog attacking unsuspecting members of the general public. However, they did not do so. One of the exceptions to the landlord liability rule is when a landlord takes affirmative actions. It seems to follow that if the Weavers may be liable for negligent affirmative acts, then they should also be liable for complete inaction when action is reasonable under a reasonable person standard.

ACCORDINGLY, Plaintiff requests that the Court reconsider, alter or amend the Final Order and Judgment in the following manner:

- A. To find that Defendants Earl E. Weaver and Gregory A. Weaver did have a legal duty to act, and that they breached said duty. Further, to find that Defendants Earl E. Weaver and Gregory A. Weaver are also liable, jointly and severally, to Plaintiff in the amounts set forth in the Final Order & Judgment; and
- B. Such other and further relief as to this Court is deemed just and proper.

September 12, 2018

s/ David J. Brousseau
David J. Brousseau
McIntosh, Sherard, Sullivan & Brousseau
Post Office Box 197
Anderson, South Carolina 29622
(864) 225-0001 | 225-0004 (fax)
Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
TENTH (10TH) JUDICIAL CIRCUIT

Steven P. Cross,

Plaintiff,

vs.

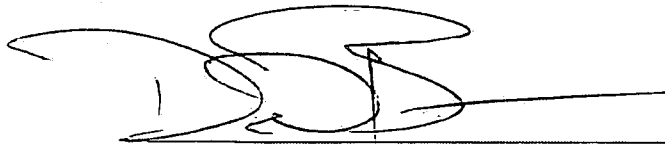
Gregory A. Weaver, Earl E. Weaver,
Terrie Fallow and Jason Seagraves,

Defendants.

**AFFIDAVIT OF DEFAULT AS TO
JASON SEAGRAVES**

C/A No. 2016-CP-04-02464

PERSONALLY appeared before me David J. Brousseau, who, being duly sworn, deposes and says that he is the attorney for the Plaintiff in the above-captioned action, that, pursuant to the Affidavit of Service, the Amended Summons and Complaint were personally served on Defendant Jason Seagraves on the 25th day of September, 2017; that more than thirty (30) days have elapsed since the service of said Amended Summons and Complaint and no Answer, Motion, or Notice of Appearance has been made therein; and that said Defendant Jason Seagraves is now in default.

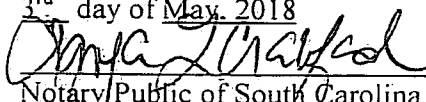


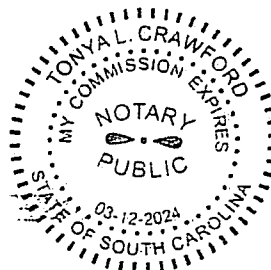
David J. Brousseau
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(864) 225-0001 | 225-0004 (fax)
ATTORNEYS FOR PLAINTIFF

May 3, 2018

Sworn to before me this

3rd day of May, 2018


Notary Public of South Carolina
My Commission expires: 3-12-24





Common Pleas

Case Caption: Steven P Cross VS Gregory A. Weaver , defendant, et al

Case Number: 2016CP0402464

Type: Affidavit/Default

So Ordered

**s/Richard A. Shirley, Anderson County Clerk of
Court**

Electronically signed on 2018-05-04 11:28:00 page 2 of 2

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
TENTH (10TH) JUDICIAL CIRCUIT

Steven P. Cross,

Plaintiff,

vs.

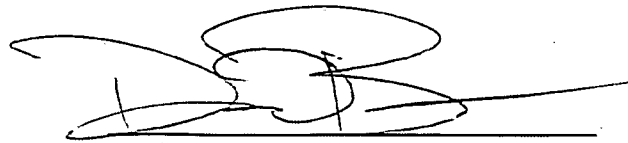
Gregory A. Weaver, Earl E. Weaver,
Terrie Fallow and Jason Seagraves,

Defendants.

**AFFIDAVIT OF DEFAULT AS TO
TERRIE FALLOW**

C/A No. 2016-CP-04-02464

PERSONALLY appeared before me David J. Brousseau, who, being duly sworn, deposes and says that he is the attorney for the Plaintiff in the above-captioned action, that, pursuant to the Affidavit of Service, the Amended Summons and Complaint were personally served on Defendant Terrie Fallow on the 24th day of September, 2017; that more than thirty (30) days have elapsed since the service of said Amended Summons and Complaint and no Answer, Motion, or Notice of Appearance has been made therein; and that said Defendant Terrie Fallow is now in default.

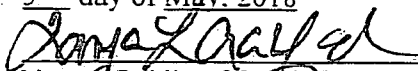


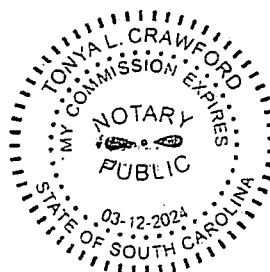
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May 3, 2018

Sworn to before me this

3rd day of May, 2018


Notary Public of South Carolina
My Commission expires: 3-12-24



Cross ROA 000060



Common Pleas

Case Caption: Steven P Cross VS Gregory A. Weaver , defendant, et al

Case Number: 2016CP0402464

Type: Affidavit/Default

So Ordered

s/Richard A. Shirley, Anderson County Clerk of
Court

Electronically signed on 2018-05-04 11:28:20 page 2 of 2

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
TENTH (10TH) JUDICIAL CIRCUIT

John Cross,)
Plaintiff,)

vs.)

Gregory A. Weaver, Earl E. Weaver,)
Terrie Fallow and Jason Seagraves,)
Defendants.)

**AFFIDAVIT OF DEFAULT AS TO
TERRIE FALLOW**

C/A No. 2016-CP-04-02468

PERSONALLY appeared before me David J. Brousseau, who, being duly sworn, deposes and says that he is the attorney for the Plaintiff in the above-captioned action, that, pursuant to the Affidavit of Service, the Amended Summons and Complaint were personally served on Defendant Terrie Fallow on the 24th day of September, 2017; that more than thirty (30) days have elapsed since the service of said Amended Summons and Complaint and no Answer, Motion, or Notice of Appearance has been made therein; and that said Defendant Terrie Fallow is now in default.

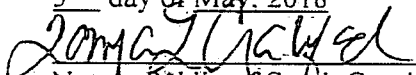


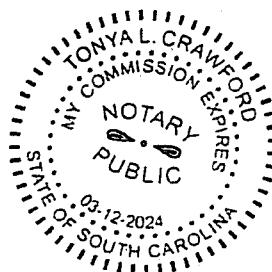
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ATTORNEYS FOR PLAINTIFF

May 3, 2018

Sworn to before me this

3rd day of May, 2018


Notary Public of South Carolina
My Commission expires: 3/12/24





Common Pleas

Case Caption: John Cross VS Gregory A. Weaver , defendant, et al

Case Number: 2016CP0402468

Type: Affidavit/Default

So Ordered

s/Richard A. Shirley, Anderson County Clerk of
Court

Electronically signed on 2018-05-04 11:28:40 page 2 of 2

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
TENTH (10TH) JUDICIAL CIRCUIT

John Cross,)
Plaintiff,)

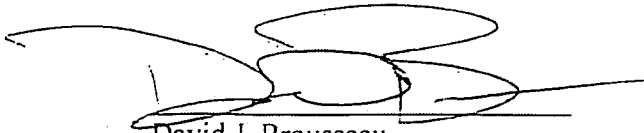
vs.)

Gregory A. Weaver, Earl E. Weaver,)
Terrie Fallow and Jason Seagraves,)
Defendants.)

**AFFIDAVIT OF DEFAULT AS TO
JASON SEAGRAVES**

C/A No. 2016-CP-04-02468

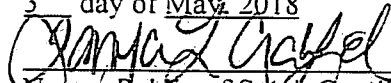
PERSONALLY appeared before me David J. Brousseau, who, being duly sworn, deposes and says that he is the attorney for the Plaintiff in the above-captioned action, that, pursuant to the Affidavit of Service, the Amended Summons and Complaint were personally served on Defendant Jason Seagraves on the 25th day of September, 2017; that more than thirty (30) days have elapsed since the service of said Amended Summons and Complaint and no Answer, Motion, or Notice of Appearance has been made therein; and that said Defendant Jason Seagraves is now in default.

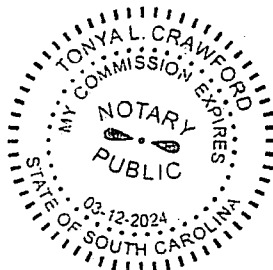


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May 3, 2018
Sworn to before me this

3rd day of May, 2018


Notary Public of South Carolina
My Commission expires: 3/12/24





Common Pleas

Case Caption: John Cross VS Gregory A. Weaver , defendant, et al

Case Number: 2016CP0402468

Type: Affidavit/Default

So Ordered

s/Richard A. Shirley, Anderson County Clerk of
Court

Electronically signed on 2018-05-04 11:29:10 page 2 of 2

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON) IN THE COURT OF COMMON PLEAS
TENTH (10TH) JUDICIAL CIRCUIT

Steven P. Cross,)
Plaintiff,)
vs.) C/A No. 2016-CP-04-02464

Gregory A. Weaver, Earl E. Weaver,)
Terrie Fallow and Jason Seagraves,)
Defendants.)

John Cross,)
Plaintiff,)
vs.) C/A No. 2016-CP-04-02468

Gregory A. Weaver, Earl E. Weaver,)
Terrie Fallow and Jason Seagraves,)
Defendants.)

POST-TRIAL BRIEF OF PLAINTIFFS

This case came before the Court for a non-jury hearing on May 8, 2018. Following the hearing, the Court requested that the parties brief certain legal issues reflecting their respective positions as to those issues.

Summary of Relevant Facts

Defendants Gregory A. Weaver and Earl E. Weaver own real property located at 4500 Belton Highway (corner of Belton Highway and Shirley Store Road). The Weavers rented the property to Terrie Fallow and Jason Seagraves. The lease was not in writing, and was on a month-to-month basis.

A small building is located on the property, and it was operated as a rummage or "garage sale" type store with various used items for sale. According to the Weavers, Ms. Fallow and Mr. Seagraves sold items from this store on weekends.

S. Cross v. Weaver, et al, C/A No. 2016-CP-04-02464

J. Cross v. Weaver, et al, C/A No. 2016-CP-04-02468

Plaintiffs' Post-Trial Brief Re: Liability of Weavers, Page 1

On April 19, 2016, based on a tip from a neighbor, Steven Cross went to the property in order to see if tools that were stolen from him were for sale at this store. His 8 year old daughter went with him, and stayed in their Jeep while he went to knock on the door facing Belton Highway. After knocking a few times, Steven Cross began looking at tool boxes on the ground nearby. He was then attacked by a German Shepherd breed dog.

Believing the dog was not leashed, when he got loose from the dog, Steven ran in the opposite direction of his vehicle to keep the dog away from his daughter. He was attacked again, and in the ensuing struggle Steven's firearm was flung into a field. Steven eventually got away from the dog. Steven called 911 and his father John Cross.

John Cross arrived on the scene around the same time as Deputy Doyle. Believing that Deputy Doyle had the dog under control, John Cross was attacked when retrieving his son's firearm. Both John and Steven Cross had significant injuries as a result of the attack.

John Cross suffered numerous lacerations and puncture wounds as well as a subdural hematoma. He incurred medical bills of \$12,249.51.

Steven Cross had 32 puncture wounds and suffered a severely broken wrist / hand. He incurred \$68,876.10 in medical bills. Further, he missed approximately 5 months of work and lost \$40,000 in income.

Earl Weaver owns and runs a garage and salvage yard next door to the rummage store property. He and Greg Weaver live together five (5) minutes away, and they drove by the rummage store at least twice a day. For at least six months they saw the German Shepherd tethered outside the store on a long leash.

They testified that they would not approach or pet the dog. They testified that there was a "Beware of Dog" sign in the back of the property near the dog house. They both admitted that such a sign is an indication that a dog may have dangerous tendencies. Earl Weaver testified that the dog would bark and get upset whenever he opened the gate separating the rummage store property from the salvage yard property. There was many items and debris that the dog would use to sleep under at the property.

Greg Weaver testified that Jason Seagraves told him about an attack by the dog on an individual trying to steal a boat. The attack described by Jason Seagraves to Greg Weaver was not factually similar to the attack on the Crosses. Greg Weaver testified that after this conversation with Jason Seagraves, the dog returned to the rummage store property. Earl Weaver

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Plaintiffs' Post-Trial Brief Re: Liability of Weavers, Page 2

testified that after the attack on the Plaintiffs, the dog did not return to the rummage store property. Accordingly, Plaintiffs contend that the Weavers were aware that the dog had attacked another individual before the attack that occurred to the Plaintiffs in this case.

Despite this information, the Weavers did not inform either Terrie Fallow or Jason Seagraves to get rid of the dog. Further, the Weavers did not terminate the month-to-month lease, and re-leased the property each month.

ISSUE

What duty does a landlord, in a month-to-month commercial lease, owe to third party invitees for injuries sustained by a dangerous dog which the landlord knew or should have known existed in outside areas accessible to the public?

ARGUMENT

“In a negligence action, a plaintiff must show (1) the defendant owed a duty of care to the plaintiff (2) defendant breached the duty by a negligent act or omission (3) defendant’s breach was the actual and proximate cause of the plaintiff injury and (4) the plaintiff suffered injury or damages.” *Jackson v. Swordfish, LLC*, 365 S.C. 608, 612, 620 S.E.2d 54, 56 (2005). “Whether the law recognizes a particular duty is an issue of law to be determined by the court.” *Id.*

“A duty may arise under the particular circumstances of an individual case based upon a showing of negligence constituting the proximate cause of the loss, even though the law does not impose a general duty on landlords to protect tenants or their guests from the criminal acts of third parties.” *Id.*, 365 S.C. at 613, 620 S.E.2d at 56 (citing *Cramer v. Balcor Property Management, Inc.* 312 S.C. 440, 441 S.E.2d 317 (1994)).

The facts in this case are strikingly similar to the facts in *Clea v. Odom*, 394 S.C. 175, 714 S.E.2d 542 (2011). In *Clea*, the Supreme Court found that a landlord was liable for the injuries sustained to a child when the child was attacked by a dog tethered by a tenant in a common area. *Id.* 394 S.C. at 183, 714 S.E.2d at 546-47. The landlord was aware that the dog was leashed in the common area, and took no steps to have the tenant remove the dog or remove the tenant. *Id.* In making this finding, the Supreme Court opined that the *Residential Landlord Tenant Act* (RLTA) created a statutory duty for a landlord to maintain common areas in a safe condition. *Id.* Further, that the failure to remove the dog from the common area violated that duty. *Id.*

The only difference between the facts of this case and the facts of *Clea* is that the property in question in this matter was a commercial lease. However, a landlord in a commercial lease also has a duty to maintain common areas in a safe manner for possible invitees. See *Jackson*, 365 S.C. at 614, 620 S.E.2d at 57.¹

The question is then “what is a common area?” Generally, a common area is an area common to tenants. It is an area of control for the landlord. However, the broader question in this case is not - did the landlord have control of the area where the dog was located; but rather, what control could the landlord have exerted to ensure the safety of the public?

This was a month-to-month lease upon which the Weavers could have terminated the lease at any time for any reason or no reason at all. For six months they drove by the premises every day and saw the German Shepherd dog tethered. They both testified they would not approach or pet the dog. They both believed the dog was dangerous or had dangerous propensities, and was there to guard the premises. Greg Weaver testified as to an attack described by the tenant that was factually not similar to the attack on Plaintiff. The Weavers were aware the premises was used as a rummage store where goods were marketed for sale to the public. They were aware that if any unsuspecting member of the public walked to the side of the building, like Steven Cross, that person could be attacked. Yet, they did nothing.

We know of and it was stipulated that the dog attacked another individual more than a month prior to the attack in this case². Again, the Weavers did nothing. They made no attempt to tell the tenants to get rid of the dog. They made no attempt to end the lease, and continued to re-lease the premises each month.

The question of whether a landlord has an affirmative duty to terminate a lease when the landlord is aware and has knowledge of a dog on the premises with dangerous propensities has never been directly addressed by the South Carolina courts. As persuasive authority, Plaintiffs ask this Court to consider the analysis of the Maryland Court of Appeals in *Shields v. Wagman*, 350 Md. 666, 714 A.2d 881 (Md. Ct. App. 1998). In *Shields*, a commercial landlord was found

¹ In *Jackson* the Supreme Court never directly addressed the issue as it found that the incident did not occur in common areas subject to the landlord’s control. However, as the majority noted, “In a case presenting different facts, we might well agree with the dissent that a commercial landlord has a duty to reasonably protect invitees for foreseeable criminal acts in areas under the commercial landlord’s control.” *Id.* (See also dissent from same opinion).

² The prior attack stipulated by the parties occurred on March 17, 2016. The attack in this case occurred on April 19, 2016.

S. Cross v. Weaver, et al, C/A No. 2016-CP-04-02464

J. Cross v. Weaver, et al, C/A No. 2016-CP-04-02468

Plaintiffs’ Post-Trial Brief Re: Liability of Weavers, Page 4

liable for a dog attack on an invitee in a parking lot by a dog kept in a store rented on a month-to-month basis. *Id.* 350 Md. at 684, 714 A.2d at 889-90. The tenant kept a pit bull in an auto repair shop located in a strip mall. *Id.* 350 Md. at 670, 714 A.2d at 882. The tenant had a written lease with the landlord, but the lease had expired and the tenant was leasing on a month-to-month basis. *Id.* The landlord had knowledge of the dog's dangerous propensity and the fact the dog had previously attacked another person. *Id.* 350 Md. at 687, 714 A.2d at 891. The landlord was also aware that the dog would get out of the shop from time to time. *Id.* Despite this knowledge the landlord made no attempt to either inform the tenant that the dog needed to be removed from the premises or terminate the month-to-month lease. *Id.*

In reversing the decision of the lower court, the Maryland Court of Appeals found that a) the landlord had a duty because the attack occurred in a parking lot or common area but also b) that the landlord had a duty to either require removal of the dangerous dog or terminate the month-to-month lease. *Id.* 350 Md. at 684, 714 A.2d at 889-90. In support of this opinion, the Maryland Court of Appeals cited to the following precedent: *Portillo v. Aiassa*, 27 Cal. App. 4th 1128, 32 Cal. Rptr.2d 755 (Cal. Ct. App. 1994); *Vigil v. Payne*, 725 P.2d 1155 (Colo. Ct. App. 1986); *Strunk v. Zoltanski*, 62 N.Y.2d 572, 468 N.E.2d 13 (N.Y. 1984); *Cronin v. Chrosniak*, 145 A.D.2d 905 (N.Y. App. Div. 1988).

The analysis in *Portillo v. Aiassa* is also persuasive. *Portillo* is a case originating out of California. California law regarding dog attacks formed the basis of South Carolina law on the same issue. See *Hossenlopp v. Cannon*, 285 S.C. 367, 329 S.E.2d 438 (1985). In *Portillo*, the California Court of Appeals affirmed a verdict against a landlord from a dog attack occurring inside a commercial tenant's business. *Portillo*, 27 Cal. App. 4th at 1131-32, 32 Cal. Rptr. at 756. The commercial tenant operated a liquor store and kept a "guard dog" of German Shepherd breed on the premises. *Id.*, 27 Cal. App. 4th at 1132, 32 Cal. Rptr. at 756. There was a sign posted on the building warning of the "guard dog." *Id.* 27 Cal. App. 4th at 1132, 32 Cal. Rptr. at 757. The dog had attacked a patron two weeks before the lease was renewed, and there was a copy of newspaper article in the store bragging of the dog's dangerous propensities. *Id.*

The California Court of Appeals found that had the landlord inspected the property prior to renewing the lease, the landlord would have discovered the dog and evidence leading one to believe that the dog was dangerous, and should have taken steps to either remove the dog or not renew the lease if tenant was unwilling to remove the dog. *Id.*, 27 Cal. App. 4th at 1136, 32 Cal.

S. Cross v. Weaver, et al, C/A No. 2016-CP-04-02464

J. Cross v. Weaver, et al, C/A No. 2016-CP-04-02468

Plaintiffs' Post-Trial Brief Re: Liability of Weavers, Page 5

Rptr. at 759. Additionally, the California Court of Appeals also differentiated between dogs that are kept in a residential lease versus a commercial lease. In differentiating between cases where a dog is kept in a residential lease versus a commercial lease, the Court stated:

Those cases [residential lease cases] involved a family pet kept in a single-family residence. In contrast here the animal was a guard dog in a liquor store which was open to the public. The risk that someone would be seriously injured was far greater in the instant case. Moreover, while we recognize that particular neighborhoods or circumstances may require the presence of guard dogs for safety reasons, there is no strong public policy in favor of guard dogs in public places. Such animals cannot be classified as 'an important part of our way of life' in the same way that pets can.

Id., 27 Cal. App. 4th at 1137-38, 32 Cal. Rptr. at 760.

The California Court of Appeals found that the landlord should not have renewed the commercial lease with implied knowledge that a dog with dangerous propensities was located on the premises and exposed to the public. *Id.* As stated, "under these circumstances, a reasonable person would have sought additional assurances that the dog was not dangerous prior to transferring possession of the premises to the tenant. *Id.*, 27 Cal. App. 4th at 1138, 32 Cal. Rptr. at 760.

In this case, the Weavers had actual knowledge of the dog's dangerous propensities. They themselves would not approach the dog. The store was rented to the tenants with knowledge that the store would be open to the public. However, they continued to re-lease the property each month with knowledge of the existence of the dangerous dog.

CONCLUSION

The Weavers were aware of the dangerous propensities of this dog. They were aware that the dog was kept in an area where it would be exposed to unsuspecting invitees. They were aware that the dog had previously attacked another person. They had a month-to-month lease. They took no actions to have the tenant remove the dog. They continued to re-lease the property to tenant each month instead of terminating the lease.

A reasonable person in the same position as the Weavers should have been concerned for the safety of unsuspecting invitees, and would have taken affirmative steps to rid the property of the dangerous dog by either requesting the removal of the dog or not re-letting the premises each month. Instead, the Weavers did nothing. They are now utilizing their status as commercial

landlords as a shield to insulate them from their indifference and lack of affirmative steps to protect third parties. Plaintiffs contend that the Weavers had an affirmative duty to act, they failed to act and that their failure to rid the premises of either the dog or the tenants led to injuries and damages that they sustained. Plaintiffs contend that the Weavers should be held liable for Plaintiffs' damages sustained as a result of the Weavers' negligence.

Respectfully Submitted,

s/ David J. Brousseau
David J. Brousseau
McIntosh, Sherard, Sullivan & Brousseau
Post Office Box 197
Anderson, South Carolina 29622
(864) 225-0001 | 225-0004 (fax)
Attorney for Plaintiffs

May 18, 2018

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Steven P. Cross,
Plaintiff

2016 – CP-04-2464

v.

Gregory A. Weaver, Earl E. Weaver,
Terrie Fallow and Jason Seagraves.
Defendants

2016 – CP-04-2468

John Cross,
Plaintiff(s)

v.

Gregory A. Weaver, Earl E. Weaver,
Terrie Fallow and Jason Seagraves.
Defendant(s)

DEFENDANTS REPLY TO PLAINTIFF'S POST TRIAL BRIEF

FACTS

The defendants do not take issue with Plaintiffs' statement of facts, except for the following particulars. The Defendants highlight the fact that this case does not involve a *Residential* Landlord Tenant Relationship. The Defendants further take issue with Plaintiffs' conclusion that the Defendants had knowledge that the dog in this case is vicious. While evidence was presented that there were prior bites, there was no evidence that the Defendants had knowledge of the prior attacks, and the defendants denied knowledge of these attacks.

The Defendants will show the court that they breached no duty owed to Plaintiffs, but to the extent that they may have owed such a duty, the Defendants would also point out the comparative negligence of the tenants, which should not be overlooked despite their not participating in the trial.

ARGUMENT

The defendants owed no duty to third parties regarding the tenants' dog. In *Mitchell v. Bazzle*, 304 S.C. 402, 404 S.E.2d 910 (1991), the Court of Appeals ruled that a landlord owes no duty to protect third parties from a tenant's vicious dog. The South Carolina Supreme Court reaffirmed this ruling in *Fair v. United States*, 334 S.C. 321, 513 S.E.2d 616 (1999)

The Plaintiffs cite *Shields v. Wagman*, 350 Md. 666, 714 A.2d 881 (Md.Ct.App. 1998) as persuasive authority that a landlord owes a duty of care to third parties in regard to a tenant's dog, especially where the Landlord can terminate the lease. The Maryland court followed the reasoning of *Portillo v. Aiassa*, 27 Cal.App.4th, 32 Cal.Rptr.2d 755 (Cal.Ct.App. 1994). While the *Portillo* case was decided after *Mitchell v. Bazzle*, *Mitchell* specifically rejected the reasoning of the Californian case on which *Portillo* is based. *Portillo* followed *Ucello v. Laudenslayer*, 44 Cal.App.3d, 118 Cal.Rptr. 741 (1975). The *Ucello* case held that a landlord owes a duty to the public in regards to a tenant's dog based on a California statute that provides for a duty of care in the management of one's property. The South Carolina Court of Appeals specifically rejected this reasoning. It is important to note that the plaintiff in the *Mitchell* case argued specifically that where a landlord has a right to terminate a month-to-month tenancy, and has knowledge the tenant's dog is vicious, the Landlord owes a duty to the public. The Court of Appeals rejected this rationale, and the Supreme Court affirmed the *Mitchell* ruling in *Fair*.

The question of whether a landlord in a commercial lease owes a duty to the public regarding animals kept in common areas is not presented in this case. Where a property is occupied by multiple tenants, there can be common areas such as hallways, parking lots, walkways, etc. In this case, there is one single tenant and therefore no common areas. The issue in this case is controlled by the rulings in the *Fair* and *Mitchell* cases.

Respectfully Submitted,

s/ David F. Stoddard

David F. Stoddard, Bar # 5362

Attorney for the Defendants

320 E River Street

Anderson, South Carolina 29624

Telephone 864-375-0000

Facsimile 864-375-0052

david@dfslawoffice.com

May 24, 2016

Anderson, South Carolina

1 State of South Carolina
2 County of Anderson In the Court of Common Pleas

3
4 John Cross and Steven Cross,)

5 Plaintiffs,)

6 -vs-)

7 Gregory A. Weaver, et al.,)

8 Defendants.)

9

2016-CP-04-02468
2016-CP-04-02464

May 8, 2018

Transcript of Record

10

11

B E F O R E:

12

The Honorable R. Lawton McIntosh, Judge

13

14 A P P E A R A N C E S:

15 David J. Brousseau, Esquire
Attorney for Plaintiffs

16

17 David F. Stoddard, Esquire
Attorney for Defendants

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E x h i b i t s

For the Plaintiffs:

Marked	Description	I.D.	Admitted
1	Series of photographs		19
2			
3			

For the Defendants:

Marked	Description	I.D.	Admitted
	None offered.		

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 9:50 a.m.)

4 THE COURT: Thank you. All right. Where are you
5 guys on your case next? Cross versus Weaver.

6 MR. BROUSSEAU: That's correct. We're ready to
7 go.

8 THE COURT: Number one this morning.

9 MR. BROUSSEAU: What's that.

10 THE COURT: You will be number one this morning.

11 MR. BROUSSEAU: That would be great.

12 THE COURT: And --

13 MR. BROUSSEAU: Both cases are related. We're
14 hoping to try them at the same time.

15 THE COURT: What are the cases involving?

16 MR. BROUSSEAU: It's a dog bite case that both of
17 my clients were attacked by a dog. The real issue in
18 this case is going to be liability. The owners of the
19 dog are in default and there's no coverage with them.
20 The landlord or the owners of the land -- and we have
21 got some testimony about that. We're trying to get to
22 the landlord, so it's really going to be a legal
23 question more than it is anything else and, of course,
24 Your Honor assessing damages as well.

25 THE COURT: Okay. Do you have everybody here?

1 MR. BROUSSEAU: We're ready to go.

2 THE COURT: Let's take about five minutes.

3 Yes, sir.

4 MR. STODDARD: One thing, and hopefully it won't
5 be a problem with Mr. Brousseau or the court, there are
6 two landowners. I only have one here. Any testimony
7 would be cumulative, I think. One is here.

8 MR. BROUSSEAU: The only issue I have with that --

9 THE COURT: Where is the other landowner?

10 MR. STODDARD: He is at work. It's my client's
11 son too, so I said I don't think I need him for the
12 trial.

13 MR. BROUSSEAU: The only issue I have with that,
14 Your Honor, is that -- and we can probably stipulate to
15 it. We have already stipulated to all the evidence and
16 all that. We're going to streamline this thing as
17 quick as we can this morning. The only issue I have
18 with that is his son, the other landowner, testified he
19 was the one who actually got notice from the dog owner
20 about the bite. And I wanted to question him about
21 when that happened.

22 THE COURT: Well, let me ask you.

23 MR. BROUSSEAU: There was two bites. Just so you
24 know, there's actually a bite -- this was the dog's
25 second attack. The dog had attacked another individual

1 a month earlier before this attack.

2 THE COURT: Let me ask you this.

3 MR. STODDARD: I was going to see if he thinks he
4 can get him up here.

5 My second question is, is that ambiguous in his
6 deposition? Because I can't remember. In your mind, I
7 mean.

8 MR. BROUSSEAU: Yeah, probably.

9 MR. STODDARD: So, yeah, I was about to say -- I
10 don't object to deposition testimony coming in, but it
11 sounds like you want to clarify it.

12 MR. BROUSSEAU: I may. He was going to be my last
13 witness. So I was going to call both defendants as
14 hostile witnesses in my case in chief.

15 THE COURT: Okay.

16 MR. BROUSSEAU: What was the question, Your Honor?

17 THE COURT: Let him do that.

18 Let me ask y'all this while we're here. It's more
19 than just an issue of notice. Isn't it an issue of
20 control?

21 MR. STODDARD: That's a huge issue, yeah.

22 THE COURT: Of the dog.

23 MR. BROUSSEAU: I'm looking at -- and what I'm
24 looking at, Your Honor, is the *Clea vs. Odom* case.

25 THE COURT: I'm not familiar with it.

1 MR. BROUSSEAU: I can hand it up.

2 THE COURT: Is that the landlord case?

3 MR. BROUSSEAU: As to the landlord case about the
4 common areas.

5 THE COURT: And the dog was tied to a tree.

6 MR. BROUSSEAU: And that's almost exactly what we
7 have in this case. What we have here is -- and a lot
8 of this is undisputed, I mean.

9 THE COURT: You don't need to give me your facts
10 now. I just want to clarify. You remind us that it's
11 more than just notice.

12 MR. BROUSSEAU: That's right.

13 THE COURT: All right. Five minutes.

14 MR. BROUSSEAU: Sure.

15 THE COURT: And if you need to make a call, let me
16 know. You're the only game in town today.

17 MR. BROUSSEAU: Just to make the court aware, I
18 don't think we're going to go that long, but I do have
19 a family court motion, DSS removal hearing, this
20 afternoon at like 4 o'clock.

21 THE COURT: If you're not done by 4 o'clock, we'll
22 make sure that you are.

23 Mr. Brousseau, are you ready to proceed?

24 MR. BROUSSEAU: We are, Your Honor.

25 THE COURT: Mr. Stoddard, you ready?

1 MR. STODDARD: Yes, sir, we're ready.

2 THE COURT: Very good. All right.

3 MR. BROUSSEAU: Before we get started, Your Honor,
4 we have a couple stipulations. Number one, we're
5 stipulating that there was, as opposed to getting
6 somebody from DHEC out here, that this dog had
7 previously attacked another individual a month earlier.

8 We're also stipulating that the tenants and the
9 landlord, the tenant being Terrie Fallow and Jason
10 Seagraves, they're the named defendants that are in
11 default, they had a month-to-month lease with Greg and
12 Earl Weaver.

13 We're also stipulating that the injuries -- we
14 have a couple of packets. I put copies up there for
15 Your Honor. Those are judge copies -- that the
16 injuries sustained, that we put a couple of summaries
17 from some doctors in there, that the injuries sustained
18 were as a result of this attack as opposed to having
19 the doctors be deposed and testify to that.

20 We have also stipulated that the medical bills
21 which are also attached to both Mr. Cross' exhibit --
22 Steven Cross' exhibits and John Cross' exhibits -- were
23 incurred as a result of this attack as well.

24 Those are all the stipulations. The exhibits have
25 already been marked, but Your Honor has copies up on

1 the bench up there and we're ready to go.

2 THE COURT: So the stipulations are that the dog
3 previously attacked another person before the attacks
4 in this case?

5 MR. BROUSSEAU: One month before. The attack
6 occurred on 3/16/16. This incident, Your Honor,
7 occurred on April 19th of 2016.

8 THE COURT: Also, that the plaintiffs have a
9 month-to-month lease or tenancy with the defendants.

10 MR. BROUSSEAU: Sorry. The defendants -- the
11 plaintiffs had no relationship with the defendants.
12 The defendants, Terrie Fallow and Jason Seagraves,
13 they're the defendants that are in default. They had a
14 month-to-month lease with defendants Greg Weaver and
15 Earl Weaver, who are the joint owners of the property.

16 THE COURT: Okay. So Weavers are whom? They're
17 the tenants or the landlords?

18 MR. BROUSSEAU: They're the landlord. The Weavers
19 are represented by Mr. Stoddard.

20 THE COURT: What's the name, Mr. Stoddard?

21 MR. STODDARD: Greg Weaver is at work. Earl
22 Weaver is here in the courtroom. They're joint owners
23 of the property, landlords.

24 THE COURT: Okay. The other one was the injury
25 sustained by plaintiffs caused by this attack and that

1 their medical bills were incurred as a result of the
2 attack; is that correct?

3 MR. STODDARD: Yes.

4 MR. BROUSSEAU: That's correct, Your Honor.

5 THE COURT: Go ahead. Call your first witness,
6 please.

7 MR. BROUSSEAU: Thank you, Your Honor.

8 THE COURT: Excuse me one second. I apologize.
9 Did you get your joint owner on the phone?

10 MR. STODDARD: We were not able to get him on the
11 phone.

12 THE COURT: He needs to be here. He's a
13 defendant. If there is a reason he's not here, I want
14 to hear it.

15 MR. STODDARD: He had some business to tend to
16 today. I didn't feel like I needed him as a witness
17 because it's cumulative.

18 THE COURT: I mean, the issue -- did you subpoena
19 him here?

20 MR. BROUSSEAU: I did not subpoena him here, Your
21 Honor. I felt -- I figured he would be here. That was
22 not something that was brought to my attention. I
23 assumed he is a defendant and would be here.

24 THE COURT: What business is he tending to, if I
25 may ask?

1 MR. BROUSSEAU: During his deposition, Your Honor,
2 he testified he was unemployed, so I figured he would
3 be here.

4 MR. STODDARD: And I apologize. He said it would
5 be difficult for him to be here. I made a decision,
6 well, I don't need him as a witness. Now, I will tell
7 the court, I understand why Mr. -- it's a very
8 specific --

9 THE COURT: Okay.

10 MR. STODDARD: I'm just saying, depending on your
11 ruling on the legal issue, if it's in our favor, it
12 would render his point that he wants to cross-examine
13 him on moot, I think. And we could possibly get him up
14 here later today or tomorrow.

15 THE COURT: You know trial is today.

16 MR. STODDARD: Yes, sir.

17 THE COURT: So all right. Call your first
18 witness.

19 MR. BROUSSEAU: Thank you, Your Honor. Call Jamie
20 Doyle.

21 JAMIE DOYLE,

22 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

23 THE CLERK: Please come around and take a seat in
24 the witness stand, and please state your name and spell
25 your last name for the court reporter.

1 THE WITNESS: Jamie Doyle, D-o-y-l-e.

2 DIRECT EXAMINATION

3 BY MR. BROUSSEAU:

4 Q Thank you. Mr. Doyle, what do you do for a
5 living, sir?

6 A Currently I am a computer programmer.

7 Q And before that, of course, you worked in law
8 enforcement; is that right?

9 A Yes, sir, as a sheriff's deputy for Anderson
10 County.

11 Q And how long did you work for as a deputy in the
12 Anderson County Sheriff's Office?

13 A Seven years. I'm bad with time frames. Seven or
14 eight years.

15 Q And before that, did you have a background in law
16 enforcement?

17 A Yes, sir. I worked in Ohio as a sheriff's deputy
18 as well.

19 Q How long did you work in Ohio as a sheriff's
20 deputy?

21 A Two years.

22 Q Now, sir, you were in the animal control division;
23 is that correct?

24 A Yes, sir.

25 Q And how long had you been operating in that role

1 with the sheriff's office here in Anderson?

2 A Approximately two years.

3 Q Now, on April 19th, 2016, you were called out to
4 4500 Belton Highway; is that right?

5 A That's correct.

6 Q And what was the nature of the call?

7 A It was reported through dispatch that it was a dog
8 bite.

9 Q Now, what happened when you arrived? What did you
10 witness?

11 A When I arrived on scene, there were several people
12 gathered around. I'm sorry, I cannot remember the
13 defendant's or the subject's name. But he was down,
14 sitting next to a vehicle holding his wrist. I went
15 over and spoke with him. He had --

16 Q Let me stop you right there. You're pointing to
17 the younger gentleman seated to my left?

18 A Yes, sir.

19 Q And that would be Steven Cross, the son?

20 A Steven Cross the son, yes.

21 Q Go ahead. Keep going.

22 A He had -- he was holding his wrist, saying he
23 thought it might be broken. He had some dog bite
24 injuries. I went over and spoke with him. He told me
25 that he was looking at what he thought was merchandise

1 and then the dog came up and bit him. So I told
2 everybody to stay -- stay where they were in that area,
3 and I went back to my truck to get my catch pole to --
4 I'm sorry. I left one thing out.

5 Mr. Cross, he said that he had dropped his firearm
6 when the dog attacked him, so I went back to my truck
7 to get my catch pole so that I could go and secure the
8 firearm that was over in that area. When I went back
9 to my truck and got my catch pole, I turned around and
10 the father -- I'm sorry, I don't remember his name.

11 Q Mr. John Cross.

12 A Mr. John Cross was over in the area where the dog
13 was tethered, taking pictures. The dog then came out
14 and jumped up and bit him on the chest, knocked him
15 down and then started biting him on the leg.

16 Q What did you do then at that stage?

17 A At that point I went over, and I hit the dog with
18 my catch pole to get it to get away from him. The dog
19 ran back into its house, and then I pulled Mr. Cross,
20 Mr. John Cross, out of that area where the dog was
21 tethered and started performing aid to him, and I also
22 called for a second ambulance.

23 Q And at that stage, what did -- what was Steven
24 Cross' appearance like when you saw him sitting up
25 against the wheel?

1 A He was in pain. He was in pain, holding his
2 wrist.

3 Q Could you tell what kind of injuries he had at
4 that time?

5 A I saw some puncture wounds from a dog bite, but
6 that's -- I didn't do a thorough examination of him.
7 EMS was en route to come and check on him.

8 Q Absolutely. What about Mr. John Cross?

9 A He -- when I arrived, he was fine. There were no
10 injuries.

11 Q But after the dog attacked?

12 A After the dog attacked, at first he was
13 unconscious because when he fell down, I believe he hit
14 his head on the ground. And he had blood on his chest,
15 I believe. I can't remember, but the dog was actively
16 biting his leg when I came up and got the dog to
17 disengage from him. So he had wounds on his leg.

18 Q What kind of dog was this?

19 A It was a German Shepherd.

20 Q Now, you took -- as part of your investigation,
21 you took a number of photos of the scene; is that
22 correct?

23 A Yes, sir.

24 MR. BROUSSEAU: Your Honor, may I approach the
25 witness?

1 THE COURT: Yes, sir.

2 BY MR. BROUSSEAU:

3 Q I'm going to show you what's been marked as
4 Plaintiffs' Exhibit Number 1, and that's -- these are
5 photos of the scene; is that correct?

6 A Yes, sir.

7 Q And this is -- what did the building appear like
8 to you? This is that old building that's on the corner
9 of Shirley Store Road and Belton Highway, correct?

10 A Yes, sir.

11 Q So what was going on in that building? What did
12 it look like to you?

13 A To me it looked like a store.

14 Q All right.

15 A A storefront of some sort.

16 Q Like rummage sale kind of items?

17 A Yes, sir.

18 Q Now, you took a number of photos. Did you see --
19 did any of those photos show any signs, and I'm just
20 going to ask you to look at Photo Number 1. And
21 approximately where people would park on this property;
22 is that right?

23 A Yes, sir. As you can see over in the left-hand
24 side of the picture, there looks to be like a railroad
25 tie or a big piece of wood where people could park up

1 to like -- like it was a parking lot area.

2 Q Okay. And is there a sign on Photo Number 1? I
3 think there's some close-ups of it on Photos Number 2
4 and 3, over here on the pillar?

5 A Yes, sir.

6 Q And does that sign say anything about dogs?

7 A No, sir.

8 Q There was a "beware of dog" sign on the property,
9 right?

10 A Yes, sir.

11 Q Where was that located?

12 A That was located directly above the dog house.

13 Q On the back side of the building, correct?

14 A Correct.

15 Q So if you were at the front of the building, you
16 wouldn't be able to see that sign; is that right?

17 A Correct.

18 Q Okay. Are all these photos true and accurate
19 depictions of the scene as you saw it that day?

20 A Yes, sir.

21 Q Now, you also took some other photos too, correct?

22 A Yes, sir.

23 Q I'm going to show you what's been marked as
24 Plaintiffs' Exhibit Number 2 and 3, and they both have
25 been tabbed as Tabs A on both of them.

1 What other photos did you take that day?

2 A I took photos of the injuries for Mr. Cross and
3 Mr. Cross.

4 Q Both the Mr. Crosses; is that right?

5 A Yes, sir.

6 Q All right. And are those accurate depictions of
7 what you saw both victims appear like that day in the
8 hospital?

9 A Yes, sir.

10 Q All right. Now, you previously worked a prior
11 bite with this dog with another officer; is that right?

12 A That's correct. The other officer technically
13 worked the case. I just happened to be riding with
14 that officer that particular day. So I didn't do any
15 of the paperwork. I didn't do any of the actual police
16 work. I was just there while she was doing all of the
17 work.

18 Q Now, this dog was tethered?

19 A Yes, sir.

20 Q Describe for the court how long of a leash that
21 dog had?

22 A The -- the leash for the dog was, in my opinion as
23 an officer, extremely long. It -- I would say it was
24 probably 15 yards long.

25 Q So even further than you and I standing to each

1 other right now?

2 A Yes, sir.

3 Q How far back in this courtroom, if you're sitting
4 in that witness stand, how far back would that leash
5 have gone?

6 A Maybe halfway down the aisle.

7 MR. BROUSSEAU: Would you answer any questions
8 that either Mr. Stoddard or the court may have for you,
9 sir.

10 THE COURT: Cross-examination.

11 MR. STODDARD: I've got no questions.

12 THE COURT: May this officer be excused?

13 MR. BROUSSEAU: Yes, Your Honor. That's what I
14 was going to request.

15 THE COURT: Thank you, sir. You are --

16 MR. STODDARD: Oh, wait a minute, Judge. I knew
17 there was a question I wanted to ask. Could I ask?

18 MR. BROUSSEAU: That's fine.

19 MR. STODDARD: I was sitting there thinking there
20 was something I wanted to bring up.

21 CROSS-EXAMINATION

22 BY MR. STODDARD:

23 Q When you went back to get -- what did you call it,
24 a catch pole?

25 A Yes, sir.

1 Q Prior to that, did you tell the individuals on the
2 scene to stay where they're at and not go to the back?

3 A Yes, sir.

4 MR. STODDARD: No further questions.

5 MR. BROUSSEAU: One follow-up to that, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. BROUSSEAU:

8 Q Was this leash long enough that it would be hard
9 to tell for an individual how long the radius for this
10 dog would have been?

11 A Probably. It's hard to say.

12 Q Okay.

13 MR. BROUSSEAU: Nothing further.

14 THE COURT: All right. Thank you, sir. You are
15 excused.

16 THE WITNESS: Thank you.

17 THE COURT: Are you moving those photos into
18 evidence?

19 MR. BROUSSEAU: Yes, Your Honor.

20 MR. STODDARD: No objection.

21 THE COURT: So Plaintiffs' 1, 2 and 3 admitted
22 without objection.

23 MR. BROUSSEAU: That's correct.

24 MR. STODDARD: No objection.

25 (WHEREUPON, Plaintiffs' Exhibit Numbers 1, 2 and 3

1 were admitted into evidence.)

2 THE COURT: Next witness, please, sir.

3 MR. BROUSSEAU: Your Honor, call Steve Cross.

4 STEVEN CROSS,

5 BEING FIRST DULY AFFIRMED, TESTIFIED AS FOLLOWS:

6 THE CLERK: Please come around and take a seat in
7 the witness stand. Please state your name and spell
8 your last name for the court reporter.

9 THE WITNESS: Steven Cross, C-r-o-s-s.

10 DIRECT EXAMINATION

11 BY MR. BROUSSEAU:

12 Q Steven, can you pull that mic down just a little
13 bit for me. Thank you. Hopefully I can hear you.

14 Mr. Cross, are you married, sir?

15 A Yes, sir.

16 Q And how long have you been married?

17 A This September will be 13 years.

18 Q And do you have any children?

19 A Yes, sir. I have three girls.

20 Q And what are their ages?

21 A 11, 10, and 6.

22 Q And do you live here in Anderson County?

23 A Yes, sir, all my life.

24 Q Now, Mr. Cross, where do you work at?

25 A I work at Robert Bosch.

1 Q And what's your title there?

2 A Technician.

3 Q How long have you been working at Bosch?

4 A August will be 24 years.

5 Q And at the time that this incident occurred, how

6 much were you earning?

7 A I'm an hourly associate. I guess \$30 an hour.

8 Q Okay. And work overtime as well?

9 A Yes, sir.

10 Q We'll get to that later on, but you work overtime

11 as well?

12 A Yes, sir, mandatory.

13 Q Mr. Cross, tell the court -- you know, we just

14 heard Mr. Doyle testify. Tell the court why you went

15 to this location of 4500 Shirley Store Road. What was

16 going on?

17 A Well, sir, I was actually working on my

18 grandmother's house. I had taken all my tools over

19 there and was doing some demo and my family and I on

20 spring break, and I had taken some extra days off from

21 work so I could finish the demo because we were

22 remodeling the house. And when we arrived back after

23 spring break, I noticed that the door had been cut open

24 to my grandmother's house, and upon entry, I found that

25 all of my tools were missing. They were stolen.

1 I had learned later that there was another
2 break-in in the neighborhood and that a lady had
3 retrieved some of her items at this location. So I
4 wanted -- I worked very hard. My wife and I went for
5 weekend after weekend to pawn shops, all pawn shops all
6 the way to Greenville looking for my tools, and I
7 thought this was a good lead. So I went to this
8 location to scout and see if anything there belonged to
9 me.

10 Q Approximately what time did you go up there? Was
11 it daylight?

12 A Yes, sir. It was maybe 4:30, 5 o'clock in the
13 afternoon.

14 Q And who went with you to this location to this
15 store?

16 A My oldest daughter, she's 11.

17 Q Was she 11 at the time.

18 A No, sir. She would have been nine. Eight or
19 nine.

20 Q Okay. Now, I'm going to show you --

21 MR. BROUSSEAU: Approach the witness, Your Honor?

22 THE COURT: Yes, sir.

23 BY MR. BROUSSEAU:

24 Q Showing you what's been marked as Plaintiffs'
25 Exhibit Number 1.

1 MR. BROUSSEAU: And, again, Your Honor, we have
2 copies of these up on the bench for you.

3 Q And that's -- that is the scene of where this
4 attack occurred; is that right?

5 A Yes, sir, it is.

6 Q Now, Photo Number 1, that's -- where is that
7 located? What does that face, that wall?

8 A This wall faces the Belton Anderson Highway.

9 Q All right. Now, and where was your car parked in
10 relation to this view from Photo Number 1?

11 A It appears that the person that took this picture
12 was probably standing directly in front of my vehicle.

13 Q All right. Now, when you got -- when you arrived
14 on the location, what did you do?

15 A Well, my intention was to take my daughter into
16 the store, but I didn't see any -- anyone outside, so I
17 asked her to stay in the Jeep.

18 Q Okay.

19 A I went over to the door underneath the air
20 conditioner, opened the screen door and knocked.

21 Q And did anybody come to the door?

22 A No, sir. I waited two or three minutes. I wasn't
23 sure if I knocked loud enough. I turned around to my
24 left. I saw some toolboxes laying on the ground. I
25 took those two or three minutes, not to walk around or

1 anything, but to just glance over what was laying out
2 on the ground.

3 Q And let me stop you there. In these photos, are
4 the toolboxes, did they end up in any of these photos?

5 A No, sir, they didn't.

6 Q They're out of frame?

7 A Yes, sir, they're out of frame. I recall they
8 were sitting in the gravel part of the parking lot,
9 which is just out of frame.

10 Q All right. Okay. So go ahead. You were saying
11 that you had just knocked on the door. You were
12 looking at the toolboxes. Go ahead and inform the
13 court what happened then.

14 A Okay. After two or three minutes, I decided a
15 second knock. I knocked a little louder because I
16 really, you know, had gone through a lot of trouble to
17 locate my stuff, and I really wanted to look in there,
18 so I knocked again. I waited another two or
19 three minutes, pausing in that one spot. And after
20 another two or three minutes, I decided no one was
21 there.

22 Q Now, at that time, and if you look on Photo 1 and
23 then if you follow up with Photos 2 and 3, there's a
24 sign there, correct?

25 A Yes, sir.

1 Q Did you see that sign or did you notice that sign
2 when you first walked up to the building?

3 A I may have noticed the sign.

4 Q Does it say anything about dogs?

5 A No, sir. Actually, I do recall seeing the sign
6 because I actually was going -- I thought that was a
7 doorway and I was going to knock on the front door of
8 the building. And I saw that sign, and I noticed that
9 I could not gain entrance to the front porch.

10 Q Did you see any signs about "beware of dog" or
11 anything like that?

12 A No, sir, I did not.

13 Q Was there any dog barking when you pulled up to
14 the driveway?

15 A No, sir.

16 Q All right. Now, you were telling the court that
17 you had knocked for a second time and you were backing
18 away. Go ahead and tell the court what happened next.

19 A Yes, sir. I recall looking at my daughter and
20 saying, "Well, I guess no one is here." And I actually
21 made plans to meet my wife and my other children for
22 ice cream, and I remember taking a couple of steps
23 toward the Jeep.

24 Q And then what happened?

25 A The next thing I knew, I was on the ground

1 fighting for my life.

2 Q Go ahead and describe the attack for the court, if
3 you could, as best you can.

4 A It was a German Shepherd. He was actually on my
5 chest with his weight, and he was trying to get at my
6 face and my throat.

7 Q And how long was the -- how long did the attack
8 take?

9 A Of course it seemed like forever. I -- I fought
10 him and fought him. He -- I managed to push him away
11 from my neck and my face. He started biting me down my
12 left side from about my waist all the way down to my
13 boot. Once he got down to my boot, I managed to get to
14 my feet. I tried to run in the opposite direction.

15 During my struggle with the dog, I did not notice
16 that he was tethered. This worried me that I might --
17 if I ran to the Jeep towards my child, the dog could
18 get in the Jeep or, you know, so I ran in the opposite
19 direction.

20 Q And when you ran in the opposite direction, what
21 happened?

22 A I ran in the opposite direction, and the dog
23 pursued me, grabbed me by my left boot and pulled me to
24 the ground again. We -- again he was on top of my
25 chest, trying to bite my face and my neck. I pushed

1 him away. And I realized at that moment that I was
2 going to have to shoot the dog.

3 Q And you had a pistol on you; is that correct?

4 A Yes, sir. I have a South Carolina concealed
5 weapons permit. My pistol was on my right side. I had
6 pulled my shirt up to draw my pistol, and when I did,
7 the dog bit me on my right side. I think I either
8 elbowed him or punched him in the head to get him to
9 release me. He released me and bit again, and it hurt
10 so bad, I pushed the dog. And when I did, the gun was
11 in his mouth, and the gun went flying across this
12 parking lot.

13 Q Okay. Eventually you got away from the dog; is
14 that right?

15 A Yes, sir. Once I pushed the dog off, he came back
16 and he was on my chest again and biting me all over.
17 And I was more focused on what my daughter was seeing
18 than anything else. And I was like, you know, God help
19 me get out of this situation. I could hear cars going
20 up and down the highway. No one was stopping. I was
21 in fear for my life, and God told me to start rolling.
22 And I started rolling.

23 I rolled out into the highway. Cars were whizzing
24 by. And the dog, actually his chain stopped at the
25 road, and I was able to stand up.

1 Q And so at that stage you were able to get away
2 from the dog, correct?

3 A Yes, sir. Yes, sir.

4 Q Any idea how long in total this took?

5 A I couldn't say. I mean, it was possibly only five
6 or six minutes, but it felt like an hour.

7 Q What were you thinking during this episode?

8 A I'm sorry. I could say I was more concerned about
9 my daughter seeing what was happening. Me being a
10 jokester -- I made a path safely to the Jeep. And the
11 look of horror on my daughter's face, and that's what
12 I'm thinking of now. I tried to make a joke to ease
13 the situation for her and make her feel a little bit
14 better because she just had this look of horror on her
15 face, you know, of what she had to witness. I'm sorry.

16 Q It's okay. Once you got back to the Jeep, you
17 ended up calling 911; is that right?

18 A Yes, sir, I did.

19 Q And who else did you call at that stage?

20 A Well, sir, I called 911 because I did not have
21 possession of my weapon. I was very worried that my
22 first intention was to drive myself to the hospital to
23 be checked because I knew I had been bitten several
24 times. When I went around to the driver's door of the
25 Jeep, I reached up with my left hand to open the door

1 and my fingers wouldn't work. And I knew I was in
2 trouble. So there was no driving to the emergency room
3 myself, so I called 911 to let them know I needed
4 animal control to capture the dog so I could gain
5 access to my pistol.

6 Q And EMS and your dad, they arrived around the same
7 time; is that correct?

8 A Yes, sir. Once I got off the phone with 911, I
9 went ahead and called my dad because I did not want my
10 Jeep to be left there. I can't lock the doors, and I
11 was afraid it would be vandalized or stolen. So I
12 called my father and alerted him to what happened, and
13 I told him that my -- that Kaylee was with me and that
14 he could come and get her and take her home with him.
15 And they both, the officer and my dad, arrived
16 approximately 30 minutes -- 30 seconds to a minute of
17 each other.

18 Q So when they got there, where were you located at
19 this stage?

20 A I think I might have been going into shock from
21 the attack. I was sitting on the ground, and I just
22 remember my wrist was swollen about the size of a
23 softball.

24 Q Now, did you witness the events involving your
25 father?

1 A I -- the aftermath. There again, I was on the
2 ground. The officer and my dad, they were discussing
3 where my weapon was exactly. I think the officer
4 wanted to retrieve the pistol. And the officer and my
5 dad walked around the front of my Jeep and disappeared
6 out of my sight.

7 Q And what's the next thing you remember after that?

8 A The next thing I recall is my daughter Kaylee was
9 yelling, "The dog's attacking Papa."

10 Q And after this occurred, EMS arrived?

11 A Yes, sir.

12 Q And who did they take to the hospital first?

13 A I think Officer Doyle sent them over to me, and I
14 said, no, I want my dad to go first because he was
15 unconscious.

16 Q That's what I was about to ask you. What was the
17 state of your dad's injury at that stage that you could
18 witness?

19 A I recall Mr. Doyle, Officer Doyle, dragging my dad
20 over out of the reach of the dog into the grass and he
21 was unconscious, motionless. I was very concerned.

22 I -- I told the EMS to take my dad first.

23 Q All right. Let's talk about your injuries.

24 Eventually you got to the ER; is that right?

25 A Yes, sir.

1 Q Now, how many puncture wounds did you count on
2 your body as a result of this attack?

3 A My wife and I counted about 32 puncture wounds.

4 Q And I've given you what's been marked as
5 Plaintiffs' either 2 or 3 -- Plaintiffs' 3. And
6 there's some photographs in that packet.

7 Do you remember Officer Doyle taking those
8 photographs that day?

9 A Vaguely, yes, sir.

10 Q All right. And besides the puncture wounds and
11 the bite marks, what other injuries did you sustain as
12 a result of this attack?

13 A I knew my wrist was damaged. At the time my
14 adrenaline was pumping so much, I didn't actually know
15 it was broken. I did not know why my fingers weren't
16 working. I assumed in the ER because of the swelling
17 it was broken, but it was hours and hours before I was
18 able to speak with anyone.

19 Q How badly was it broken?

20 A My wrist was shattered to the extent where they
21 could not reattach anything with pins or screws. My
22 surgeon told me that it was crushed. They -- the only
23 way they could fix the distance from my arm to my hand
24 was to install an external fixator. I had four pins
25 sticking out of my arm and hand, and they were

1 connected with a rod on the outside.

2 Q Okay. Now, if you go to Tab E of your packet,
3 sir, of Plaintiffs' Exhibit Number 3, how much were
4 your medical bills as a result of this attack?

5 A \$68,876.10.

6 Q And most of that, of course, was due to the
7 operations and all that at AnMed; is that right?

8 A Yes, sir. I required three surgeries.

9 Q And did you spend the night at AnMed as well?

10 A Yes, sir. I was there approximately a week.

11 Q All right. Now, you also missed time from work;
12 is that correct?

13 A Yes, sir.

14 Q How much time did you miss from work?

15 A I think it was around four and a half, five months
16 total.

17 Q All right. And did you get paid during this time?

18 A Very limited. I have, I'm trying to remember what
19 it's called, but it's a lower percentage of what I
20 would normally earn.

21 Q Okay.

22 A I think, if I remember correctly, it was 6- or
23 \$700 a month.

24 Q In 2015, did you make about the same in 2016 as
25 what you made in 2015?

1 A No, sir.

2 Q How much did you make in 2015?

3 A I don't recall the exact amount. I think the
4 difference between the two years was about 43,000.

5 Q Okay. And if I told you it was in 2015 you made
6 about 82,000, does that sound about right?

7 A That sounds about right, yes, sir.

8 Q And in 2016 you made 43,000. Does that sound
9 about right?

10 A Yes, sir.

11 Q How long were you in pain as a result of this,
12 sir?

13 A I'm still in pain every day. As long as I was on
14 the pain medicine that the surgeon had prescribed to
15 me, it was minimized, so I would say about a level 5 or
16 a 6.

17 Q Out of a 10?

18 A Out of a 10, yes, sir.

19 Q Now, you mentioned medication. What kind of pain
20 medications did your doctor prescribe for you?

21 A At the ER, they originally gave me morphine. It
22 didn't have any effect, not even knocking the edge off.
23 They tried about two or three doses of morphine. It
24 would not take the edge off. I was in excruciating
25 pain. They brought me something called Dilaudid, which

1 I believe was -- the ER nurse said it was ten times
2 more potent.

3 Q And how long were you on the Dilaudid?

4 A I was on Dilaudid for about two and a half, three
5 months.

6 Q And eventually you got off of that; is that
7 correct?

8 A Yes, sir. I realized I was having visitors from
9 work and family, and reoccurring visitors were talking
10 about conversations that we had had a week or two
11 before and I could not recall anything. And I started
12 realizing that I was losing a lot of memory.

13 Q Now, so you got off of it, and what did you -- did
14 you use any medications after that?

15 A Yes, sir. I weaned myself off of the Dilaudid. I
16 went through about a week and a half of withdrawals. I
17 started taking ibuprofen.

18 Q And are you still taking it today?

19 A Yes, sir.

20 Q How do you feel about dogs today?

21 A You know, I don't have any ill will toward the
22 dog. I think the dog was doing his job. But, you
23 know, if I hear a dog bark in our neighborhood, I
24 cringe. When me and my children go outside to play, I
25 have a loaded pistol on me at all times. It's just

1 something that's in the back of my mind.

2 Q What efforts did you and your family do to try to
3 help you and your daughter through this? What efforts
4 did you do? Describe that for the court.

5 A Well, we took our oldest daughter to see the
6 pastor. We tried to get her some help that way because
7 we noticed really early on after the attack that the
8 smallest animal would freak her out. If she saw a
9 squirrel in the yard, she would panic. And just
10 anything, even a cat at a neighbor's house or anything
11 would just freak her out.

12 This was very troubling to us. My wife and I had
13 discussed possibly getting a dog. And for Christmas
14 2017 we decided to do that. We thought that would be
15 more beneficial than any kind, for lack of a better
16 term, a shrink or someone like that.

17 Q Okay. And has that helped at all?

18 A Yes, sir. I think, you know, all three girls were
19 affected because they had to listen to the story
20 multiple times, as I had visitors. So they all would
21 freak out if they saw a squirrel or a cat or anything
22 or heard a dog bark. So I thought that, you know,
23 getting the dog would be beneficial for the whole
24 family, me included.

25 Q Now, you're obviously, as part of your damages,

1 you're asking for reimbursement of your medical bills;
2 is that right?

3 A Yes, sir.

4 Q You're also asking for your lost wages, correct?

5 A Yes, sir.

6 Q Now, let me ask you this. You described that
7 you're still in pain even today. And you may have
8 answered this and I may have missed the answer. What
9 level of pain are you in today?

10 A I would say I'm at a 5 or a 6. It's a constant
11 pain.

12 Q Describe for the court what kind of pain. Is it a
13 throbbing pain, is it a piercing pain? What is it
14 like?

15 A It's a throbbing, I would say a sharp pain at some
16 times.

17 Q And, of course, you're asking the court to assess
18 a monetary amount for pain and suffering; is that
19 right?

20 A Yes, sir.

21 Q Now, you have, as part of this lawsuit, you sued
22 the owners of the dog, the tenants, the folks who
23 actually lived there, I guess, at this building, but
24 you also sued the landlord. Can you explain for the
25 court why you have sued the landlords under this case?

1 A Well, sir, I found out in their deposition that
2 they were aware that the dog was on the property and --

3 Q Where was their place of business at?

4 A The place of business was right next door at, I
5 believe it's called Weaver's Garage.

6 Q And what else -- what are some other reasons as to
7 why you sued them?

8 A Also in the deposition I found that they were
9 afraid to approach the dog themselves.

10 Q And you sued them because they knew or should have
11 known and should have acted?

12 A Yes, sir. I think knowing that the dog was there,
13 knowing that the dog was dangerous, in my eyes it was
14 gross negligence. It should have been taken care of.

15 Q Is there anything that -- have you been limited in
16 your activities as a result of your surgery, your left
17 wrist? Is there anything you can't do today that you
18 would have been able to do prior to this attack?

19 A Yes, sir. I mean, my whole --

20 Q Describe for the court some of those things.

21 A My whole life is changed. I have two motorcycles.
22 I can't hardly ride more than a mile or two without,
23 you know, my wrist throbbing even harder. I can't play
24 with my children like I used to. I used to crawl
25 around on the floor, let them ride on my back. I can't

1 do that anymore. I can't play catch in the yard. I'm
2 very limited.

3 Q Would you answer any questions that either
4 Mr. Stoddard or the court may have?

5 A Sure.

6 THE COURT: Cross-examination.

7 CROSS-EXAMINATION

8 BY MR. STODDARD:

9 Q When you were talking about the things that you
10 believe Mr. Weaver knew about the dog, all that you
11 know about that is from his deposition; is that
12 correct?

13 A Yes, sir.

14 MR. STODDARD: I have no further questions.

15 THE COURT: Redirect?

16 MR. BROUSSEAU: No, sir.

17 THE COURT: All right. Thank you, sir. Step
18 down.

19 THE WITNESS: Thank you.

20 MR. BROUSSEAU: John Cross, Your Honor.

21 THE COURT: Let me clarify something for the
22 record before Mr. Cross is sworn in.

23 The photographs that has the first one has
24 consecutive pictures 1 through 17, and, Mr. Stoddard,
25 my understanding is, unless I'm incorrect, that all

1 those pictures are admitted without objection; is that
2 correct?

3 MR. STODDARD: That's correct.

4 THE COURT: Thank you.

5 MR. BROUSSEAU: My understanding, Your Honor, of
6 our stipulations was everything in Plaintiffs' 1, 2 and
7 3, everything is coming in.

8 THE COURT: Just group exhibits?

9 MR. BROUSSEAU: That's right.

10 THE COURT: All right.

11 Come around, please, sir.

12 JOHN CROSS, SR.,

13 BEING FIRST DULY AFFIRMED, TESTIFIED AS FOLLOWS:

14 THE CLERK: You may step around and take a seat in
15 the witness stand. Please state your name and spell
16 your last name for the court reporter.

17 THE WITNESS: John Cross, Sr., C-r-o-s-s.

18 DIRECT EXAMINATION

19 BY MR. BROUSSEAU:

20 Q Mr. Cross, what is your relationship to Mr. Steve
21 Cross seated over here to my left?

22 A He's my son.

23 Q Now, do you reside here in Anderson County?

24 A Yes.

25 Q How long have you lived there?

1 A I've lived here all my life.

2 Q And you're married as well, correct?

3 A Yes.

4 Q And how many children, grandchildren do you have?

5 A I've got three children, 13 grandchildren and

6 three great-grandchildren.

7 Q Now, Mr. Cross, are you currently employed?

8 A No, I'm disabled and retired.

9 Q And what did you do before you became disabled?

10 A I was a truck driver.

11 Q All right. Now, Mr. Cross, on April 19th of 2016,

12 you received a call from your son, correct?

13 A Yes.

14 Q And what was that call about, and what did you do?

15 A He called me and he seemed in great distress. He

16 said that he believed his wrist was broken, that a dog

17 had attacked him, and I -- my wife and I immediately

18 got in the car and drove over there.

19 Q And he told you where he was at?

20 A Yes, he told me where he was at.

21 Q All right. And I believe that Plaintiffs' Exhibit

22 Number 1 is in front of you, the photos of the scene.

23 And Photograph Number 1, you heard your son testify

24 that's approximately where he parked. Is that where

25 you parked as well?

1 A Yes. This is the building.

2 Q Now, when you got there, what did you first do?

3 A First thing I done when I arrived was I went and
4 checked on my son.

5 Q Okay.

6 A I wanted --

7 Q What was he like at that stage?

8 A He was sitting on the ground holding his wrist.
9 He was in a lot of pain, and he was propped up against
10 a friend's truck that had come by and stopped and
11 pulled in there. I believe the gentleman worked at
12 Bosch with him.

13 Q All right. Now, we heard -- we saw Officer Doyle
14 earlier, Deputy Doyle. Was Deputy Doyle on the scene
15 at that stage?

16 A Yes. I believe he had already arrived when I got
17 there.

18 Q All right. Now, you talked to your son. Explain
19 to the court what happened after that.

20 A Okay. After talking to my son, Officer Doyle got
21 his pole out and started up to the dog, and I went with
22 him. Then when we got up there, I felt like he was
23 going to subdue the dog with the pole and the noose on
24 the end of it, and I noticed something out in the
25 field.

1 Q Now, when you say you noticed something out in the
2 field, how far away from the home are we talking about?

3 A It was at least 30 foot from where he was at with
4 the dog.

5 Q So if you're sitting in that witness stand, how
6 far out going towards the back door of this courtroom,
7 where do you think that gun was or that item that you
8 saw in the field, how far out would it have been?

9 A The item that I seen, from where I was standing
10 at, and I was probably even with the dog house, it had
11 to be from here to the lady back in the back there.

12 Q Okay. So you just testified that you thought
13 Deputy Doyle was noosing the dog. What then happened?
14 You saw this item. What occurred after that?

15 A When I seen that, I thought it was his gun, and I
16 had no idea there was so much leash on that dog. I
17 would have never walked on up there. I just walked out
18 to the road, walked around, walked over. And as soon
19 as I started to look down, the next thing I knew I was
20 in the hospital. Don't remember anything.

21 Q So you don't remember anything after the attack?

22 A No.

23 Q Now, I'm going to show you what's been marked as
24 Plaintiffs' Exhibit Number 2. This has photographs of
25 you in the hospital as well; is that correct?

- 1 A Yes.
- 2 Q And do you recall Deputy Doyle taking those
- 3 photographs of you at the hospital?
- 4 A No, sir, I don't.
- 5 Q What injuries did you sustain as a result of this
- 6 attack?
- 7 A The dog had -- I don't know if he knocked me
- 8 forward and I hit my head and knocked me out or
- 9 backwards, but it had knocked me out. And when I woke
- 10 up in the hospital, I had a big gash here.
- 11 Q Pointing to your chest on --
- 12 A My chest. I felt like the dog was trying to get
- 13 to my throat. And then I had two big gashes on each
- 14 side of my leg, on the inside of my leg. My left leg
- 15 was a big hole, where it tore the skin out.
- 16 Q And that's depicted -- can you identify which
- 17 photo shows your leg? There's numbers up in the top
- 18 right-hand corner.
- 19 A Yes. Number 2 and Number 3.
- 20 Q Okay. And you also had a severe hematoma as well?
- 21 A I did.
- 22 Q How long did you stay in the hospital?
- 23 A I believe I stayed overnight in the hospital.
- 24 They wanted to be sure that the bleeding had subsided.
- 25 Q Now, you have, as a result of at least the bite on

1 the leg, you've actually had some scarring; is that
2 right?

3 A Yes.

4 Q Okay.

5 MR. BROUSSEAU: And, Your Honor, he can lift his
6 pant leg up for you if you want to see it. Doesn't
7 matter. It's up to you.

8 THE COURT: However y'all want to handle it.

9 MR. BROUSSEAU: Mr. Weaver, if you could just step
10 back a little bit and show Judge McIntosh where that
11 scarring is on your leg.

12 THE WITNESS: Okay. Let me set it on the chair.
13 This is the scar on that side, and then the rest of it
14 is on this side.

15 THE COURT: We're looking at the lower part of
16 your left leg.

17 THE WITNESS: Uh-huh.

18 THE COURT: Calf area. Okay, sir.

19 THE WITNESS: If you look at that picture, you can
20 see that's where he had his mouth. And his teeth
21 prints went out way around here and across here, so his
22 whole mouth was on me, had me locked.

23 THE COURT: Okay, sir. Thank you.

24 THE WITNESS: Thank you, sir.

25 BY MR. BROUSSEAU:

1 Q Now, Mr. Cross, you actually, before this attack
2 occurred, you had a surgery planned; is that right?

3 A Yes, sir.

4 Q And what surgery was that that you had planned?

5 A The replacement of my right knee.

6 Q And how long did that get delayed?

7 A I believe it was delayed for three or four weeks.
8 It may have been longer. I'm trying to go back and
9 remember exactly, but I know it was at least three or
10 four weeks.

11 Q And do you recall why it was delayed?

12 A They were concerned that there might be some
13 infection in the leg and it might cause a problem for
14 the surgery, and he also wanted to make sure that the
15 bleeding had stopped.

16 Q When you say bleeding, you just pointed to your
17 head. You're talking about the hematoma?

18 A Right, on my brain.

19 Q And so as a result, you also had to have follow-up
20 CAT scans; is that right?

21 A Yes. I had to go back -- before he would do the
22 surgery, I had to go back and have another CT scan done
23 to make sure it had stopped. I'm sure he wanted to do
24 everything he could and make sure I didn't die on the
25 table.

1 Q Now, if you flip to Tab D of your exhibit packet
2 of Plaintiffs' Exhibit Number 2, how much were your
3 medical bills incurred as a result of this attack?

4 A I'm sorry, what tab did you say?

5 Q Tab D.

6 A B?

7 Q D, as in David.

8 A There was \$12,249.51.

9 Q Okay. And you weren't working at the time of
10 this -- that this attack occurred, correct?

11 A I was not working.

12 Q All right. How much -- describe for the court the
13 amount of pain that you were in as a result of these
14 wounds from the dog.

15 A When I awoke in the hospital, I was in horrible
16 pain. I had to get them to bring some pain medicine in
17 and give it to me. It was, I'd say from 1 to 10, it
18 was a good 10, and then the pain stayed with me for a
19 long time. I still have some pain in that area when I
20 walk.

21 Q Describe what it feels like now when you walk for
22 the court, if you could.

23 A It feels like the skin is sticking to something
24 and coming loose when I walk. It's like it sticks and
25 comes loose, and it's just a very irritating pain.

1 Q Now?

2 A Now it's only about, I'd say on a scale again from
3 1 to 10, it probably would be about 2 or 3.

4 Q Okay.

5 A But it's there.

6 Q And you said when you first went into the hospital
7 it was a 10. How long did that pain marked as a 10
8 last?

9 A In the hospital?

10 Q Yes, sir.

11 A It was still there after the morphine, after they
12 gave me that. It was weeks of pain. The one on the
13 inside of my leg, the big hole that was pulled out, the
14 big chunk of skin, it drained for months. I didn't
15 know if it was ever going to heal up.

16 Q Now, of course, as part of this lawsuit, you're
17 asking for, as part of your damages, reimbursement for
18 your medical bills; is that right?

19 A Yes, sir.

20 Q And you're also asking the court to assess damages
21 for pain and suffering; is that right?

22 A Yes, sir.

23 Q Now, you too have sued the landlords as part of
24 this. Can you explain to the court why that is?

25 A I'm sorry. I have a little problem hearing.

1 Q I'm sorry. I should have looked at you when I was
2 talking instead of looking down at my notes.

3 You too have sued the landlords. As part of your
4 lawsuit you have sued these landlords. Can you also
5 explain to the court why they should be liable in
6 addition to the dog owner?

7 A Okay. Their shop is probably 100 yards from this
8 building. They drove by it every day. They knew the
9 dog was there. The dog had bitten somebody a month
10 before. They just didn't do anything about it. The
11 dog would have got my throat. I would be gone if it
12 had got my throat. He would be gone.

13 Q Now, you heard Officer Doyle testify he told
14 everybody to stay back. Do you recall him saying that
15 to you?

16 A I was walking with Officer Doyle going up there.
17 One thing, I wanted to assist him if the dog attacked
18 him. I was going to pick a stick up off the ground and
19 hit the dog and run it away. And when an officer is in
20 distress, the public is supposed to assist them if
21 they're in danger.

22 Q Now, let me ask you this. If you had any idea
23 that that leash was as long as it was, would you have
24 walked out in that field?

25 A No, sir. No, sir. That was a big dog.

1 Q Would you answer any questions that either
2 Mr. Stoddard or the court may have for you.

3 THE COURT: Cross-examination.

4 MR. STODDARD: I've got no questions.

5 THE COURT: Thank you, sir. You may step down.

6 Let's take about five minutes, and we'll come back
7 for further testimony. Thank you.

8 (WHEREUPON, a recess was taken from 11:06 a.m. to
9 11:17 a.m.)

10 THE COURT: Any other witnesses from the
11 plaintiff?

12 MR. BROUSSEAU: Your Honor, I'm calling Earl
13 Weaver as an adverse witness.

14 THE COURT: Come around, Mr. Weaver.

15 EARL WEAVER,

16 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17 THE CLERK: Please come around and have a seat in
18 the witness stand. Please state your name and spell
19 your last name for the court reporter.

20 THE WITNESS: Earl Weaver, W-e-a-v-e-r.

21 DIRECT EXAMINATION

22 BY MR. BROUSSEAU:

23 Q Mr. Weaver, you reside in Anderson County; is that
24 right?

25 A Yes.

1 Q How long have you lived there -- here?

2 A 50 years.

3 Q And you actually live in a home with your son,
4 Greg Weaver, who's also a defendant in this case?

5 A Yes.

6 Q Now, Mr. Weaver, we've been talking today about
7 the location 4500 Belton Highway, and that's on the
8 corner of Shirley Store Road and Belton Highway. I'm
9 going to ask you to look at Plaintiffs' Exhibit 1, and
10 it's a series of photographs.

11 MR. BROUSSEAU: Your Honor, may I approach the
12 witness?

13 THE COURT: Yes.

14 BY MR. BROUSSEAU:

15 Q That's the storefront where we're talking about
16 where this dog attack occurred; is that right?

17 A Yes.

18 Q You're the owner of that property; is that
19 correct?

20 A Yes.

21 Q Now, Mr. Weaver, you actually own property right
22 next door as well?

23 A Yes.

24 Q And that is known as Weaver's Garage and Salvage
25 Yard?

- 1 A Yes.
- 2 Q And is that a business that you operate?
- 3 A Yes.
- 4 Q Now, if you flip, sir, now the first photo that
- 5 you see there, that is the side of the building that
- 6 faces Belton Highway; is that correct?
- 7 A Yes.
- 8 Q And, generally speaking, that would be where most
- 9 people would park if they're pulling up to that store;
- 10 is that right?
- 11 A Yes.
- 12 Q Now, Mr. Weaver, the folks who -- you rented this
- 13 building out at the time that this attack occurred; is
- 14 that right?
- 15 A Say that again.
- 16 Q You were renting this building out at the time
- 17 that this attack occurred?
- 18 A Yes.
- 19 Q And you were renting it to the other named
- 20 defendants in this case, Terrie Fallow and Jason
- 21 Seagraves; is that right?
- 22 A Yes.
- 23 Q And you didn't actually have a written lease. It
- 24 was just on a month-to-month basis?
- 25 A Yes.

1 Q How much rent did they pay you?

2 A 250 a month.

3 Q All right. Now, if you flip, sir, pages 2 and 3
4 are just warning signs about the premises being
5 monitored by security. You see that, correct?

6 A Yes.

7 Q Now, Photo Number 4, that's the front of the
8 building that kind of faces where Belton Highway and
9 Shirley Store Road meet; is that right?

10 A Yes.

11 Q Photo Number 5, that's the side of the building
12 facing Shirley Store Road; is that correct?

13 A Yes.

14 Q Now, sir, if you could, flip to Photo Number 8.
15 There is -- that's a photograph of a gate; is that
16 right?

17 A Yes.

18 Q And does that gate go to your property, where
19 Weaver's Garage is?

20 A Yes.

21 Q And is that --

22 A That's the back gate.

23 Q Okay. And is that the gate you utilized in order
24 to enter your property every day?

25 A No. That's the back gate.

1 Q Okay. Is there another gate on that same fence
2 line that you would use?

3 A No.

4 Q Now, it's true, though, that you would drive
5 across it, the back side of this property, to get to
6 your salvage yard; is that right?

7 A Yes.

8 Q And you would do that on a regular basis?

9 A Once a week or once a month maybe.

10 Q To get --

11 A That is just an access to the back of the
12 property.

13 Q All right. But you drove by these premises every
14 single day?

15 A Yes.

16 Q Multiple times a day?

17 A Yes.

18 Q And your home where you and Mr. Greg Weaver
19 reside, your home is only five minutes away; is that
20 right?

21 A Yes.

22 Q And, in fact, it's going down Shirley Store Road.
23 So in order to get to your work, you have to go by this
24 property every single day, right?

25 A Yes.

1 Q Now, the tenants, in this case Ms. Fallow and
2 Mr. Seagraves, they had been renting that property from
3 you for about six months?

4 A Yes.

5 Q Now, when you would drive by and drive across the
6 back side of this property, you saw this dog every
7 single day; is that right?

8 A Not every day, no, sir.

9 Q Saw it most days?

10 A Most days if I went into the fence, into the back
11 gate. Not every day.

12 Q But if you went into the back gate, that dog --

13 A Yeah. If I went in the back gate, I saw the dog,
14 yes.

15 Q And, in fact, isn't it true, sir, that when you
16 would go to the back gate, that dog would come out and
17 start barking at you when you would go to that gate; is
18 that right?

19 A Yes.

20 Q You were aware that that dog was on a leash?

21 A Yes.

22 Q And you were also aware that the tenants were
23 using this dog for protection out at that property; is
24 that right?

25 A That's right.

1 Q Now, sir, isn't it true that you were also aware
2 that this -- that the property was primarily being
3 used, I think your words were like a garage sale-type
4 store on weekends?

5 A That's right.

6 Q So really the only time you would see the tenants
7 out there was on weekends; is that right?

8 A Most of the time, yes.

9 Q Now, sir, you've heard testimony now from
10 Mr. Doyle and from Mr. John Cross about how long that
11 leash was, and you would agree that their testimony is
12 about correct, that from where you're sitting about
13 halfway to the back door back there --

14 A If it had been that long, the dog would have been
15 in the road. The main highway.

16 Q Now, if you flip, sir, to Photograph Number 9,
17 that's the back side of this building; is that right?

18 A Yes.

19 Q And there is a whole bunch of items and just
20 basically junk out there; is that right?

21 A That's right.

22 Q If you flip to Photograph Number 10, it looks to
23 be like there is a dog house there. Do you see that?

24 A Yes.

25 Q Is that where that dog used to stay?

1 A No.

2 Q Or sleep?

3 A No.

4 Q In fact, the tether was further out away from all
5 that stuff, was it not?

6 A Yes. The dog, when I saw the dog, he would be
7 laying under this jon boat in Number 9.

8 Q Okay. Now, in Number 10, there is a "beware of
9 dog" sign. Do you see that?

10 A Yes.

11 Q But that sign is on the back side of the property,
12 correct?

13 A Yes.

14 Q Now, isn't it true, sir, that you never once --
15 now, you would go over to this property to go talk to
16 Ms. Fallow from time to time; is that right?

17 A Yes.

18 Q About -- I think your testimony previously was you
19 would go about once or twice a month, talk to her about
20 the rent?

21 A Yes.

22 Q Okay. Now, you never once stopped to try to pet
23 this dog; is that correct?

24 A No. I'm dogs -- or I'm not a good dog lover. And
25 I know better than to go around a dog with a leash or,

1 you know, that's his job. Most of the time when a dog
2 is on a leash, they're, you know, that's their job.

3 Q When you say "their job," that means protection?

4 A Yes, uh-huh. Protect. They had had -- I
5 understand they had had problems before the dog came.

6 Q And I'll get to that here in just a second.

7 You also have previously agreed with me that,
8 generally speaking, if folks put up a "beware of dog"
9 sign, those people understand that there's probably
10 been some issues with this dog in the past, right?

11 A At that time I was not aware of it, of a past, at
12 that time.

13 Q But you've previously admitted to me that folks
14 who have docile dogs don't normally put up "beware of
15 dog" signs, do they?

16 A No, huh-uh.

17 Q You never went near the dog?

18 A No. I never tried to go near the dog, which I did
19 see the dog, but I never tried to go by him because if
20 the leash had been as long as they said it was, I
21 couldn't have went through my fence.

22 Q You never told the renters, "Hey, there is an
23 issue with this dog. You know, people come over to
24 this store to buy things, you know, that dog could
25 attack somebody." You never said that to them, did

1 you?

2 A No.

3 Q Didn't even cross your mind, did it?

4 A No, huh-uh.

5 Q Now, this dog, before this dog attacked my
6 clients, this dog previously had a prior attack; is
7 that right?

8 A I was not aware of it.

9 Q Now --

10 A It was never -- it was never brought to my
11 attention.

12 Q Now, you talked to Ms. Fallow once or twice a
13 month about the rent?

14 A Yes.

15 Q And it's your testimony that she never brought up
16 the fact that this dog had the prior bite beforehand?

17 A Not to me.

18 Q And again, you understand that that store -- and I
19 believe your testimony has been before that building
20 does look like a store, correct?

21 A Yes.

22 Q And, in fact, that's what it was utilized for,
23 right?

24 A Yes.

25 Q And so the general public would potentially be

1 milling around that store outside; is that right?

2 A Yes.

3 Q And there's -- if you look at Photograph Number
4 10, there's plenty of places for that dog to hide?

5 A Yes.

6 Q And if somebody doesn't see the "beware of dog"
7 sign, there's very much a good opportunity that they're
8 not going to know that there is a dog on that property,
9 correct?

10 A There was a sign there to see "beware of dog," not
11 on the side -- not at the back but on the side, there
12 was a big sign there "beware of dog." You can see it
13 there in Number 10. And there is a big sign -- that's
14 a "beware of dog" --

15 Q Now, that sign --

16 THE COURT: Hang on, y'all. Let him finish.

17 THE WITNESS: Okay.

18 BY MR. BROUSSEAU:

19 Q That sign in Photograph Number 10, and I believe
20 it was your testimony previously and there is a
21 close-up of it in Photograph Number 13 and 14, that
22 sign is on the back side of the property, correct?

23 A Yes.

24 Q That's not where people would normally park,
25 correct?

1 A No.

2 Q And if you could flip to Photograph Number 1.

3 That's generally -- that location right there is
4 generally where people would park if they're up there
5 to buy things at the salvage store, correct?

6 A Probably, but there are more parking places than
7 that.

8 Q And if you look at Number -- and there on
9 Photograph Number 1 underneath, it looks like the
10 little front porch, looks like to be a sign there,
11 correct?

12 A In Number 1?

13 Q Yes, sir.

14 A Yes.

15 Q And if you flip to Photograph Number 2 and
16 Photograph Number 3, that sign doesn't say anything
17 about a dog, does it?

18 A No.

19 Q Sir, isn't it true that after the first dog
20 attack, that dog came back, correct?

21 A Yes.

22 Q And isn't it also true that after the attack on my
23 clients, the dog did not come back, the dog never
24 reappeared; is that right?

25 A Yes.

1 Q Now --

2 MR. BROUSSEAU: One second, Your Honor.

3 Q After the first attack, and even after the second
4 attack, you and your son didn't really think anything
5 about this until you received a letter from me; isn't
6 that correct?

7 A No. We had knew about the dog bite the same day.
8 Jason came to the house and told my son about the dog
9 bite.

10 Q Would you answer any further questions that either
11 Mr. Stoddard or the court may have?

12 A Yes, I will.

13 CROSS-EXAMINATION

14 BY MR. STODDARD:

15 Q Besides the "beware of dog" sign that you see in
16 the picture, were there other signs that you saw about
17 the place?

18 A At one time there were some small signs near the
19 roadway, little wire signs that moved in the wind that
20 you could see "beware of dog."

21 Q And they were -- you could see those from the
22 road?

23 A At that time, yes.

24 Q If you went in the parking lot, would you see
25 those?

- 1 A No. They would be near where the dog was at on
2 the back side, on the Belton Highway side, but they
3 don't show up here.
- 4 Q Do you have any of those pictures in front of you?
- 5 A Yes.
- 6 Q Is there a picture you can find that you could
7 possibly show us, demonstrate where those signs were?
- 8 A Number 10.
- 9 Q Let me make sure I understand what exhibit we're
10 talking about. So we're talking about Exhibit 1, and
11 the picture you're talking about is labeled Number 10?
- 12 A Yes.
- 13 Q All right. Could you describe where on the
14 picture you would see that these signs would have been?
- 15 A To the rear, to the left of this picture.
- 16 Q The left of the picture?
- 17 A Yes.
- 18 Q So it would be off the picture?
- 19 A Yes.
- 20 Q And was it facing the Belton Highway?
- 21 A Yes.
- 22 Q All right. And was it more -- one sign or more
23 than one sign?
- 24 A There was more than one.
- 25 Q You say at one time they were there. Do you

1 remember seeing them get removed?

2 A No.

3 Q Is the reason you know they weren't there when
4 these pictures were taken because of the pictures
5 themselves?

6 A I'm not sure on that.

7 Q Okay. So you don't know -- on the date that this
8 attack happened, were you aware those signs were not
9 there?

10 A No.

11 Q As far as you knew, they were still there?

12 A Yes.

13 MR. STODDARD: I've got no further questions.

14 MR. BROUSSEAU: Just couple of questions on
15 redirect.

16 REDIRECT EXAMINATION

17 BY MR. BROUSSEAU:

18 Q Mr. Weaver, you admit, though -- you were just
19 talking about these little signs out in front of Belton
20 Highway. They weren't there on the day in question; is
21 that right?

22 A I'm not sure. I'm not sure.

23 Q Well, I'm going to show you, if you can look at
24 Photograph Number 4 in Plaintiffs' Exhibit Number 1.
25 The road on the left there is Belton Highway; is that

1 right?

2 A Yes.

3 Q Is there any signs there along that side?

4 A Not that you can see, but there were small signs
5 on a wire that stuck in the ground. But it don't show
6 up there if they were there. But there were more than
7 one sign.

8 Q If you go to Plaintiffs' Exhibit 9 -- sorry,
9 Photograph Number 9 of Plaintiffs' Exhibit 1, that
10 looks to be Deputy Doyle's vehicle, his police officer
11 truck there. Do you see that?

12 A Yes.

13 Q And over to the right of that is Belton Highway;
14 is that right?

15 A Yes.

16 Q And there's no signs there, is there?

17 A Not in this picture, but it don't show the whole
18 yard.

19 Q Okay. Now, Deputy Doyle, he took all these
20 photographs; is that right?

21 A Yes.

22 Q And, in fact, he took photographs of every sign
23 that was on the property, the 24-hour surveillance
24 sign, "beware of dog" sign in the back, yet you're
25 telling this court that he wouldn't have taken

1 photographs of "beware of dog" signs along Belton
2 Highway?

3 A You know, they were limber. The wind could have
4 blowed them down. But there were signs there at one
5 time.

6 MR. BROUSSEAU: Nothing further, Your Honor.

7 THE COURT: All right. Thanks, sir. You can step
8 down.

9 MR. STODDARD: The other defendant was on his way.
10 Do you want to take a break?

11 THE COURT: Sure. Would you just send word down
12 when he gets here.

13 Is this him behind you?

14 MR. STODDARD: Could I have a minute with him?

15 THE COURT: Sure. Do you have any objection?

16 MR. BROUSSEAU: No, Your Honor.

17 THE COURT: All right.

18 (Pause in proceedings.)

19 MR. STODDARD: Judge, one other thing I'll bring
20 to your attention. The other client's wearing shorts.
21 I normally would tell them not to wear shorts.

22 THE COURT: That's all right. We'll let it go by.
23 You ready?

24 MR. BROUSSEAU: Yes, sir, Your Honor.

25 THE COURT: Okay. Call your next witness.

1 MR. BROUSSEAU: Thank you, Your Honor. Call Greg
2 Weaver also as an adverse witness.

3 THE CLERK: Please come forward to be sworn.

4 GREGORY A. WEAVER,

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 THE CLERK: Please take a seat at the witness
7 stand and state your name and spell your last name for
8 the reporter.

9 THE WITNESS: Gregory A. Weaver, W-e-a-v-e-r.

10 DIRECT EXAMINATION

11 BY MR. BROUSSEAU:

12 Q Thank you, Mr. Weaver.

13 You are the son of Earl Weaver; is that correct?

14 A Yes.

15 Q And he's seated here in the courtroom next to
16 Mr. Stoddard?

17 A Yes.

18 Q You live in Anderson County?

19 A Yes, sir.

20 Q And have your whole life; is that right?

21 A That's correct.

22 Q Now, you actually live with your father; is that
23 right?

24 A Yes.

25 Q And how long have you been living with your dad?

1 A 20 years.

2 Q Now, you -- I'm going to show you what's been
3 marked as Plaintiffs' Exhibit Number 1. It should be
4 right in front of you. Take your time.

5 A Okay.

6 Q All right. That's the building located at 4500
7 Belton Highway; is that right?

8 A Yes.

9 Q And you are also part owner of that building with
10 your father; is that right?

11 A Yes.

12 Q Now, you didn't deal much with the renters on this
13 property; that was more your dad; is that right?

14 A Yes.

15 Q And you also from time to time would help your dad
16 out at his place of business?

17 A Yes.

18 Q And Weaver's Garage and Salvage Yard is located
19 right next door to this location; is that right?

20 A Yes.

21 Q And, in fact, you drove by this property every
22 single day?

23 A Yes.

24 Q You and your father's home is only five minutes
25 away from this?

1 A Yes.

2 Q And you also saw this dog every day; is that
3 right?

4 A Yes.

5 Q And what kind of dog was it?

6 A It was a black German Shepherd.

7 Q Now, and that dog was tethered to a leash; is that
8 correct?

9 A That's correct.

10 Q And isn't it true, sir, I believe your testimony
11 before has been that that leash was at least 30 feet
12 long; is that right?

13 A Yes.

14 Q Now, if you flip to -- now, first of all,
15 Photograph Number 1, that's, generally speaking -- this
16 property was only used on weekends as a salvage
17 sale-type of place, is that right, to your knowledge?

18 A Yeah.

19 Q And Photograph Number 1 of Plaintiffs' Exhibit
20 Number 1, that's, generally speaking, where the general
21 public would park to rummage through things; is that
22 right?

23 A Yeah.

24 Q Now, if you could, sir, flip to Photograph Number
25 9. Did you find it?

- 1 A Yeah.
- 2 Q There's the back side of this property; is that
3 correct?
- 4 A Yes.
- 5 Q And there is a little jon boat?
- 6 A There is, uh-huh.
- 7 Q And isn't it true that that dog would oftentimes
8 be sleeping underneath that jon boat?
- 9 A That's correct.
- 10 Q Now, and if you look at this photograph, Belton
11 Highway runs down there on the right-hand side over by
12 the deputy's truck, right?
- 13 A Yes, sir.
- 14 Q And Shirley Store Road is actually running on the
15 left side of the photo on the top left-hand corner; is
16 that right?
- 17 A That's correct.
- 18 Q Now, if you flip to Photograph Number 10 of the
19 same exhibit, that's also looking at the back side of
20 the property really from the Belton Highway location;
21 is that right?
- 22 A Yes.
- 23 Q And there is a sign there, is there not?
- 24 A The "beware of dog" sign?
- 25 Q Yes, sir.

1 A Yeah.

2 Q And to your knowledge, that was the only "beware
3 of dog" sign on this property, is that right, on the
4 day this happened?

5 A I'm thinking there was another "beware of dog"
6 sign.

7 Q Now, if you flip to Photograph Number 1, back to
8 Number 1, the front location of this property, up
9 underneath the porch there, there is a sign; is that
10 right?

11 A I see it.

12 Q Now, if you flip to Photos Number 2 and 3, it's
13 not a "beware of dog" sign, is it?

14 A No.

15 Q It's about surveillance on the premises; is that
16 right?

17 A Yes.

18 Q And, in fact, if you're sitting at the front of
19 this property, you can't see the "beware of dog" sign
20 in the back; is that right?

21 A No.

22 Q Now, you never petted this dog; is that correct?

23 A Correct.

24 Q Never approached this dog, right?

25 A No.

1 Q And, in fact, you felt the dog was dangerous too,
2 did you not?

3 A Well, I'm not going to pet a dog on a chain that I
4 don't know, no.

5 Q I'm sorry, I didn't catch that.

6 A I'm not going to pet a dog on a chain that I do
7 not know.

8 Q And that's because that dog may be dangerous; is
9 that right?

10 A Could be, yes.

11 Q And, in fact, when folks have a "beware of dog"
12 sign, that generally means that the owners of that dog
13 feel that that dog has a propensity to be dangerous; is
14 that right?

15 A Yes.

16 Q You never asked the tenants to remove the dog; is
17 that correct?

18 A No.

19 Q Now, you had previously told me that you're the
20 one who discovered about the owners of the dog coming
21 to you saying there had been a dog bite, correct?

22 A That's correct.

23 Q And you agree with me and it was your testimony
24 previously that the dog came back after the owner told
25 you about that; is that right?

1 A I didn't understand that question.

2 Q The dog returned to the property after you were
3 informed of a bite, of an attack?

4 A Yes. Yeah.

5 Q All right. Now, if the dog did not return after
6 the attack on my clients, then that owner was informing
7 you of the first attack; is that correct?

8 A That -- that owner informed me of both attacks
9 that day.

10 Q Answer any questions that -- hold on just one
11 second.

12 You've also agreed previously, agreed with me, if
13 somebody doesn't see a sign and they walk back there to
14 that location, I believe your words were it's a bad day
15 for them, correct?

16 A I never said that, no.

17 Q Okay. All right.

18 MR. BROUSSEAU: Nothing further from this witness,
19 Your Honor.

20 Answer any questions either Mr. Stoddard or the
21 court has.

22 CROSS-EXAMINATION

23 BY MR. STODDARD:

24 Q When -- it was Mr. Seagraves that came to tell you
25 about the dog attack?

1 A Yeah, Jason Seagraves.

2 Q Tell me what he described about the attack, how he
3 described it to you.

4 A When he came to the front door, I went to the
5 door. He was going to pay the rent. And he was
6 smiling a little bit. It was either the day of or day
7 after or within two days he said that he had his dog --
8 somebody was there to steal a boat, this boat in the
9 picture. It's a little paddle boat. And the person
10 that was there first got nipped by the dog, and then
11 the second person was there, and I don't remember what
12 he said there, but he said the dog really got ahold of
13 him, drug him -- started dragging him, and he wasn't
14 going to -- he was kind of like laughing.

15 He was trying to get the guy to admit he was there
16 trying to steal the boat. And the guy wouldn't. So he
17 was kind of bragging, like, "I'm not going to call this
18 dog off until you admit that you were here to get my
19 boat." And he was real cocky about it, and I thought
20 it was a strange conversation. And that's about it.
21 He paid the rent and went on.

22 Q And had you ever heard of any attack before that
23 one?

24 A No, sir.

25 Q And when you say the dog came back, was the dog

1 gone for a while?

2 A Yeah. I mean, gone for a while, yeah. Yeah.

3 MR. STODDARD: I've got no further questions.

4 MR. BROUSSEAU: Nothing further, Your Honor.

5 THE COURT: Thank you, sir. You may step down.

6 Thank you.

7 Any additional witnesses?

8 MR. BROUSSEAU: That's our case, Your Honor.

9 THE COURT: All right.

10 Mr. Stoddard, do you have any witnesses?

11 MR. STODDARD: Mine have already testified. No
12 witnesses.

13 THE COURT: All right. I'll be glad to hear
14 motions.

15 MR. STODDARD: I make a motion for a -- well, now
16 the case is closed, either a directed verdict or
17 dismissal. And it's based on the case law that
18 controls. I think South Carolina law says a landlord
19 is not responsible for a tenant's or attack by a
20 tenant's dog. And I've handed you up a case. This one
21 is *Bruce vs. Durney*.

22 The second case carves out what could be called an
23 exception that I don't believe applies to this case,
24 but I believe that's what the plaintiffs are relying
25 on, so I'll talk about that a minute and that's *Clea*

1 vs. *Odom*. And that one relies on the Residential
2 Landlord and Tenant Act, and it talks about common
3 areas. And the common area has a little bit of
4 different language.

5 One of the things that both cases talk about, they
6 basically say a landlord's responsible only for defects
7 related to the structure of the premises, not the
8 tenant's activities. And the only differences in the
9 Residential Landlord Tenant Act, a common area, the
10 statute says, I believe it says something must make the
11 common area safe, keep the common area safe.

12 So that's a little different. And they do say a
13 landlord can be liable. I don't believe strictly
14 liable, but can be liable for a dog in that area. And
15 I think you would have to show negligence for that to
16 happen.

17 This place had no common areas. That's a multiple
18 family complex with common areas. There was only one
19 tenant here, a boyfriend and girlfriend. It's a store.
20 That common area exception I don't believe applies
21 here. I understand the public's coming in and out, but
22 that doesn't make it a common area. The tenants are
23 still responsible for the operation of that store. And
24 so I do believe it's an issue of control.

25 If a landlord could be responsible, there's been

1 testimony that there were "beware of dog" signs, you
2 know, in different areas of the store. And I don't
3 believe these tenants, even though they knew a dog was
4 there, they had not witnessed anything that would make
5 him vicious or so forth.

6 And I know they have said, well, I guess "beware
7 of dog sign" means the dog is vicious, but that doesn't
8 necessarily mean that. People with a little innocent
9 dog or little nonvicious dog might put those up just to
10 scare people. There was nothing, nobody had ever been
11 injured. They had never seen this dog do anything
12 other than bark.

13 MR. BROUSSEAU: Thank you, Your Honor. May it
14 please the court. Your Honor, a landlord has the
15 responsibility to keep all common areas in a reasonably
16 safe condition. That's what the statute says. And the
17 statute is to be literally construed in order to
18 encourage safe housing. That's 27-40-20. And then
19 there's some exclusions to the Landlord Tenant Act
20 under 27-40-120, none of which apply in this case.

21 What we have -- and Your Honor, too, when we're
22 talking, honestly I don't know if this would fall under
23 Residential Landlord Tenant Act or not, but even if
24 it's commercial, and that would honestly be a stretch,
25 but even if it is, the case of *Jackson vs. Swordfish*,

1 which talked about a completely different issue but
2 talks about landlord-tenant liability or landlord
3 liability in the premises liability context.

4 And the dissenting opinion, and that is really
5 interesting, is Justice Pleicones talking about, you
6 know, the landlord still having a duty to maintain safe
7 common areas. And what was a common area? Well, in
8 that case it was a mall where the general public, the
9 area where the general public would be that -- not a
10 store owner owns or anything like that.

11 That's what we have in this situation. What we
12 have is this building or this structure where the
13 owners knew or should have known that the general
14 public is going to go to that looks like a store. They
15 knew the dog was there. They knew the dog had
16 dangerous propensities. They wouldn't even approach
17 the dog.

18 What's interesting about the testimony is, is we
19 heard Mr. Earl Weaver testify the dog did not come back
20 after the attack on my clients. What we heard Mr. Greg
21 Weaver testify to in regards to the actual, what he
22 received from the owner of the dog, the notice he
23 received from that person was something completely
24 different than what we've heard described in this
25 courtroom.

1 And what's interesting to me is that must have
2 been the first attack that we know of, or maybe it was
3 a different attack. Who knows? But the fact of the
4 matter is that it wasn't this attack. I mean, what he
5 described Mr. Seagraves told him about had nothing to
6 do or didn't seem anything like this. And they didn't
7 tell them -- they didn't tell them, you know, "That's
8 not the best idea. You know, you guys need to really
9 get rid of this dog. People may be pulling up."

10 And the fact of the matter is that this dog was
11 tethered up to a really long chain, 30-foot, where if
12 anybody was to walk up on that property, they're going
13 to get attacked. That dog wasn't kenneled. The dog
14 hid under different things.

15 You know, what we filed this as, and if you look
16 at our amended complaint, Your Honor, we filed this not
17 only as a dog bite case under the statute, we also
18 filed this as a negligence and premises liability case
19 as well. And so really I think what we're looking at
20 here is what notice did the owners have of a hidden
21 danger to those who may -- who could come across this
22 premises.

23 THE COURT: Let me ask you this.

24 MR. BROUSSEAU: Yes, sir.

25 THE COURT: If, under the Clea case, you have

1 three scenarios that point out, first, where under
2 strict liability, you're the owner and common law
3 doesn't apply.

4 MR. BROUSSEAU: That's right.

5 THE COURT: Or if you are a property owner and he
6 exercised control over the property, assumed some
7 responsibility for the dog, you're still under strict
8 liability.

9 MR. BROUSSEAU: That's right.

10 THE COURT: Then you have the property owner is
11 not liable and has no control off the premises or the
12 dog or to care for the dog. Then landlord-tenant under
13 negligence.

14 MR. BROUSSEAU: That's right.

15 THE COURT: In that landlord-tenant has a duty
16 under the Residential Landlord Tenant Act to maintain
17 control of common areas.

18 Now, first, in this case, do you think Residential
19 Landlord Tenant Act applies at all?

20 MR. BROUSSEAU: That's a really good question.
21 And my answer to you would be I think it does.

22 THE COURT: Based on what?

23 MR. BROUSSEAU: Well, my understanding -- and,
24 yes, they use this as a commercial location, in other
25 words, a store, but it could also be used, I guess

1 somebody could be able to sleep there.

2 THE COURT: There's no evidence of that in the
3 record, though.

4 MR. BROUSSEAU: Well, and the other thing is, of
5 course, in the statute, you know, under the Residential
6 Landlord Tenant Act, it doesn't have an exception for,
7 for instance, if you're operating a small store or
8 something like that.

9 I understand what you're asking. Of course, you
10 see me struggling with the question, and it's always
11 the question I've struggled with in this case. I think
12 that, you know, the way I couched it is whether it's
13 residential landlord-tenant or whether it's a common
14 area because it's similar to a common area described in
15 the Swordfish case, they're still at some stage
16 responsible to go to the tenant and say, you know,
17 "You've created a dangerous area here for patrons of
18 this store."

19 THE COURT: Under a negligence theory.

20 MR. BROUSSEAU: Under a negligence theory and
21 under a premises liability theory, yes, sir.

22 THE COURT: What if this is deemed to be
23 commercial property? Does that make a distinction?

24 MR. BROUSSEAU: It would make a distinction in the
25 sense that the Residential Landlord Tenant Act probably

1 would not apply.

2 THE COURT: Sure. Well, I understand that.

3 MR. BROUSSEAU: I don't think that it makes a
4 distinction in the commercial context. If it was
5 deemed commercial, I think a landlord still has
6 responsibility for the common areas of the property.
7 And I guess what I'm thinking about is, for instance,
8 like in a mall, the areas that aren't owned by the
9 stores that the store owners have or a parking lot or
10 an area where the general public could be milling
11 around or be around.

12 And that's what I liken this to is, you know,
13 you're talking about an outside area there where, you
14 know, the general public could easily -- and that's
15 what's interesting about this case too. When you hear
16 Steven Cross testify, he goes to the door right there
17 on the side of the building, knocks on it, basically
18 takes a few steps back, and that's when he gets
19 attacked initially.

20 And I think, you know, the idea and the concept
21 behind, you know, if it is deemed commercial property,
22 the landlord still has a responsibility to make sure
23 that the common areas are safe for the general public.

24 THE COURT: Well, two things. One is the case you
25 were citing. Is it referenced in the Clea-Odom case,

1 or what is the case that you said Justice Pleicones --

2 MR. BROUSSEAU: That's the *Jackson vs. Swordfish*
3 case, Your Honor. What I was doing is, in anticipation
4 of questions similar -- and I'll hand it up to the
5 court. That's my only copy so I don't have it in front
6 of me while I'm talking about it. You know, that case,
7 what that case involved was, if I'm not mistaken, and
8 I'm probably going to butcher some of the facts. But,
9 essentially, it was a dance club, that's what it was,
10 in a mall area.

11 And the landlord, there was a shooting that
12 happened in the dance club itself. And so the landlord
13 was not found responsible for that, but the majority
14 opinion started talking about common areas and things
15 of that nature. And so you had Justice Pleicones kind
16 of, in my opinion, trying to distinguish the fact that,
17 hey, you know, this was a common area. You know, the
18 landlord is still responsible for that common area. It
19 doesn't really go to the heart of the actual case
20 there.

21 THE COURT: Well, how is -- is landlord, is common
22 area defined either under statutes or in common law?

23 MR. BROUSSEAU: It's not. And I looked it up. I
24 mean, essentially, if I'm -- I even went to Black's Law
25 Dictionary, and, basically, I think the definition in

1 that was common areas is areas where the general public
2 can congregate or something like that. There is no --
3 I looked it up in the Residential Landlord under the
4 definition section. There is no definition for common
5 areas, which is kind of shocking to me, actually. I
6 figured there would be one in there.

7 And I guess the reason why there is no definition
8 is, I mean, common area kind of speaks for itself. I
9 guess. I don't know. I found that to be odd too, to
10 be perfectly blunt. So I would think the same thing.
11 I mean, I think a common area, if you think about it in
12 the context of *Clea vs. Odom*, a common area is an area
13 where the public can go.

14 I mean, it's, you know, you're in a condo unit or
15 an apartment complex and you're talking in a hallway.
16 That's where the general public would go. And that's
17 where this dog was tethered up in the Clea case, you
18 know, in a common area that, you know, the landlord has
19 control over and a duty to make reasonably safe.

20 THE COURT: All right. Let me ask, do you agree
21 with me or disagree with me that, based on the facts
22 that have been presented, that strict liability doesn't
23 appear to be applicable to this case?

24 MR. BROUSSEAU: I would agree with that.

25 THE COURT: So that actually the analysis is under

1 negligence and negligence only.

2 MR. BROUSSEAU: I agree with that. I do agree
3 with that.

4 THE COURT: All right.

5 Mr. Stoddard, do you agree or disagree with that?

6 MR. STODDARD: I agree.

7 THE COURT: I'm sure.

8 (Laughter from the attorneys.)

9 MR. BROUSSEAU: Did you even have to ask that?

10 MR. STODDARD: To be honest, I saw where you were
11 going with this. I agreed -- when you asked me do I
12 agree, I'm like, what, did you say something new when
13 you heard the laughter.

14 THE COURT: Well, that's interesting. Quite
15 frankly, there's another issue that's in my mind a
16 little bit, and that is that father potentially
17 exposing himself to the dog. I don't think he provoked
18 the dog but exposed himself to it, but I think it turns
19 on whether or not this property has areas considered to
20 be common areas or not.

21 MR. BROUSSEAU: And that's what we're arguing, of
22 course. Our point is that that area outside the
23 building where, you know, you park and you walk up --

24 THE COURT: The way the facts in this case are, I
25 mean, clearly Residential Landlord Act does not apply.

1 I mean, this is a business. All the facts of the case
2 are that it's used on weekends for selling basically
3 junk, it looked like to me, but yard sale-type
4 materials, so I don't think that Residential Landlord
5 Tenant Act has any applicability in this case.

6 Do you really strenuously disagree with that?

7 MR. BROUSSEAU: You could probably tell by my
8 argument earlier I do not and I'm being honest with the
9 court in that regard. And certainly, I definitely
10 think that this is more in the context of a commercial
11 context.

12 THE COURT: Okay.

13 MR. BROUSSEAU: But I think we still have to get
14 to the heart of, a landlord is still responsible to
15 make sure that common areas are safe.

16 THE COURT: I'm going to listen to you,
17 Mr. Stoddard.

18 MR. BROUSSEAU: So that's essentially what the
19 crux of this argument is, is that this area where this
20 attack occurred, you know, that's an area where the
21 general public would mill and congregate and go to in
22 order to enter the building.

23 THE COURT: I got that. I understand.

24 All right. Mr. Stoddard.

25 MR. STODDARD: Yes, sir. I think we're misusing

1 the term "common areas." I think that is a term that
2 applies only to the Residential Landlord Tenant Act.

3 THE COURT: Do you have any authority for that?

4 MR. STODDARD: The act itself. It uses that term,
5 and I don't think the other has that as a term. I may
6 be wrong.

7 THE COURT: How many times have you seen in a
8 commercial context where you have, say, a mall and you
9 have the quote/unquote common areas assessed jointly
10 amongst the clients based upon the square footage for
11 parking lots, et cetera, et cetera. There's clearly
12 common areas in commercial establishments.

13 MR. STODDARD: To me, those areas are not -- areas
14 that the public comes into doesn't make it a common
15 area.

16 THE COURT: That's another question I have.

17 MR. STODDARD: If you have multiple tenants, if
18 you have a mall, the hallways, the parking lot, all
19 that are common to the tenant, but it's all available
20 to the public. And if you start saying where the
21 public's going to go is a common area, I think, you
22 know -- and under the Cleo case, it's the Residential
23 Landlord Tenant Act that has that language you have to
24 keep those reasonably safe. I don't think it applies
25 outside the Residential Landlord Tenant Act. That's in

1 the Landlord Tenant Act.

2 THE COURT: Well, I mean, it's based on the
3 existence of duty under negligence.

4 MR. STODDARD: Right.

5 THE COURT: And that is what that case held. But
6 it doesn't mean that it's limited to the Residential
7 Landlord Tenant Act only if there is a duty on the
8 commercial side. I think. Now, I may be wrong.

9 MR. STODDARD: If you read Cleo, it says this.

10 THE COURT: I read it.

11 MR. STODDARD: Well, I just want to highlight.

12 THE COURT: That's what I was doing when I was
13 gone.

14 MR. STODDARD: "A landlord may be held liable only
15 for defects relating to the inherent physical state of
16 the leased premises."

17 THE COURT: Say that again.

18 MR. STODDARD: "A landlord may be held liable only
19 for defects relating to the inherent physical state of
20 the leased premises." So what I'm saying is I think in
21 the --

22 THE COURT: Are you talking about in the
23 attractive nuisance cause of action you say they did
24 not allow in that case? You said a dog was not an
25 attractive nuisance?

1 MR. STODDARD: Let's see. I may be, but --

2 THE COURT: Let me just tell you what I think
3 about this case, and I'll be glad to let y'all submit
4 stuff, but it seems to me, first, strict liability is
5 out. There's no evidence that the defendants assumed
6 any control over this dog. A question still may be
7 whether they had a right to control this property.

8 But, typically, when you have common areas, that
9 means just multiple tenants in my mind there, and
10 that's why it's common. If not, if, as you suggest, it
11 is based on the public access, then that gives the
12 commercial landlord right to control based on that,
13 then I think you're right.

14 If not, unfortunately as it is, I think you're
15 limited to get a judgment against the landlord -- I
16 mean the tenants only. Clearly you're entitled to a
17 judgment against them, for what it's worth. And will
18 get one. The question is whether it's going to be a
19 joint and several judgment against these defendants
20 too.

21 So if you have any persuasive authority or other
22 authority that helps me determine what in fact common
23 areas are when you have, essentially, a sole tenant,
24 even though there's two of them, basically a sole
25 tenant, not multiple, different tenants to a piece of

1 property, I would like to look at it. If there is some
2 good case law, then I would find for the plaintiffs.
3 If not, then, unfortunately, I'm going to find for the
4 defendants.

5 I'm not throwing that off on you. I'm just going
6 over the law with everybody.

7 Any other issues you think I'm missing that I need
8 to address? I'm more than glad to do it.

9 MR. BROUSSEAU: No. I think we have narrowed down
10 the issue. Your Honor, could I get ten days to submit
11 something to you on that?

12 THE COURT: If that turns out to be too short a
13 time, please let me know.

14 MR. STODDARD: And I may want to reply to his.

15 THE COURT: All right. Just please don't give me
16 a never-ending stream of back-and-forth, back-and-forth
17 because after about the second one, it doesn't get
18 looked at. If you can't hit the nail on the head, then
19 I probably don't need to look at it anyway.

20 Thank you, guys. Appreciate it.

21 For the record, Group Exhibits 1, 2 and 3 have
22 been admitted in this case from the plaintiffs'
23 perspective.

24 And from the defense, is that right, Mr. Stoddard,
25 you have no exhibits in this case?

1 MR. STODDARD: No exhibits.

2 THE COURT: All right. Thank you, guys. I
3 appreciate your being here and being ready to try it.

4 And young Mr. Weaver, thank you for coming. I
5 appreciate it.

6 (WHEREUPON, the proceedings adjourned concluded at
7 12:12 p.m.)

8 ***END OF REQUESTED TRANSCRIPT OF RECORD***

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1 Certificate of Reporter
2

3 I, Diane L. Marcengill, Official Court Reporter
4 for the Tenth Judicial Circuit of the State of South
5 Carolina, do hereby certify that the foregoing is a
6 true, accurate, and complete transcript of record of a
7 portion of the proceedings had and evidence introduced
8 in the trial of the captioned case, relative to appeal,
9 in the Circuit Court for Anderson County, South
10 Carolina, on the 8th day of May 2018.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

13 I do further certify that I am neither of kin, counsel,
14 nor interest to any party hereto.

15 December 20, 2018

16 Diane L. Marcengill
17

18 Diane L. Marcengill, RPR, CRR, CRC
19 Circuit Court Reporter
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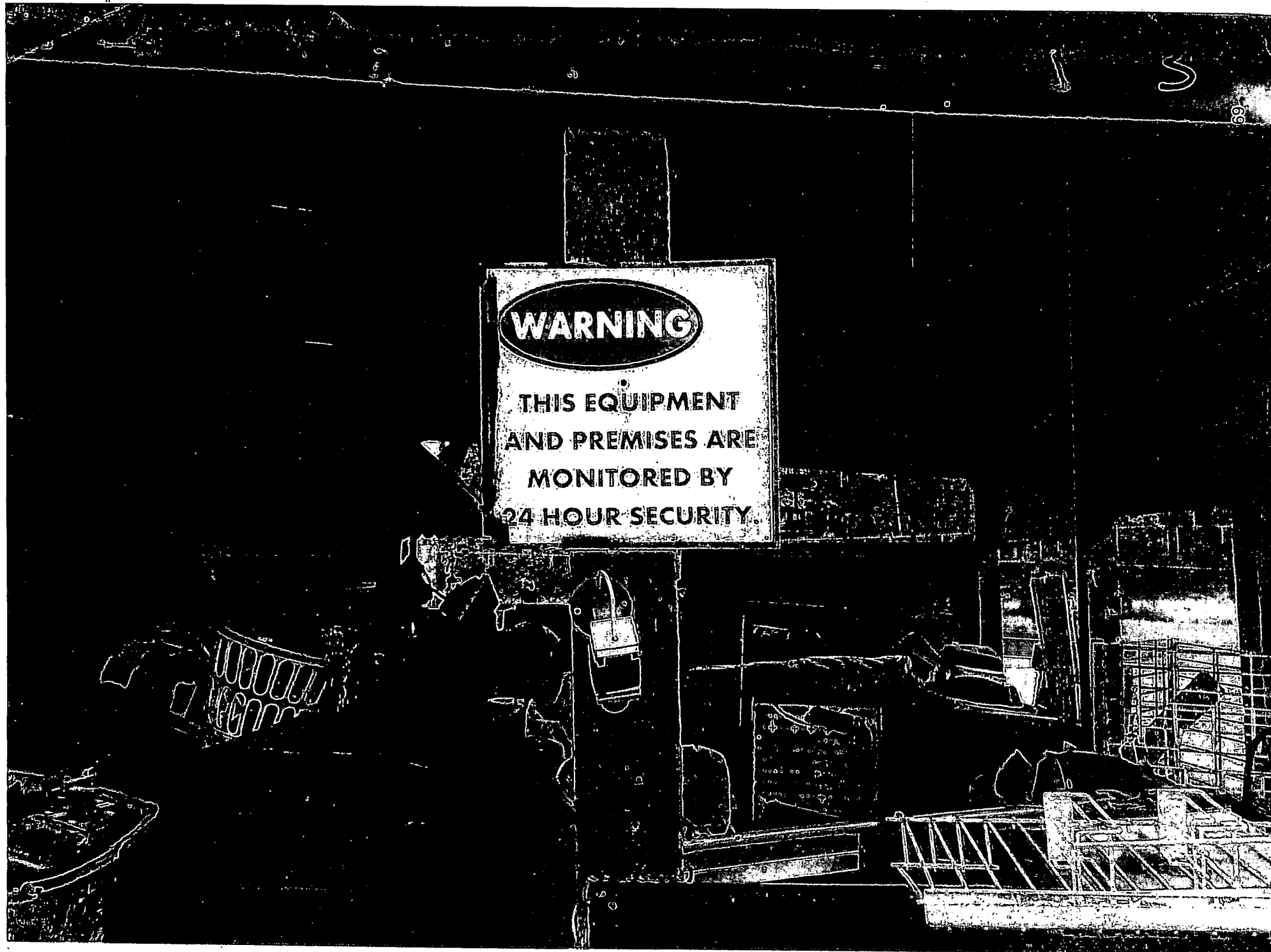
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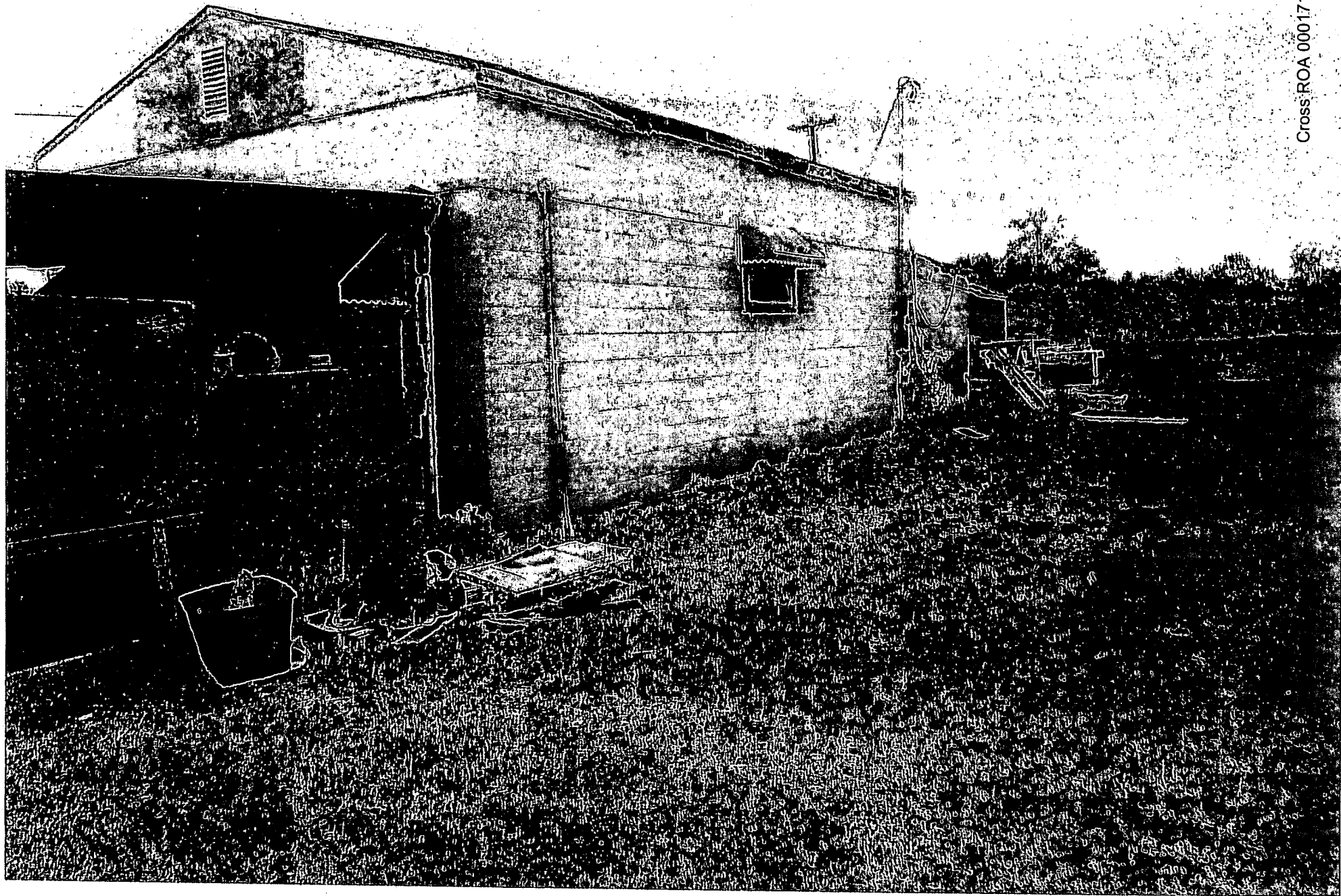
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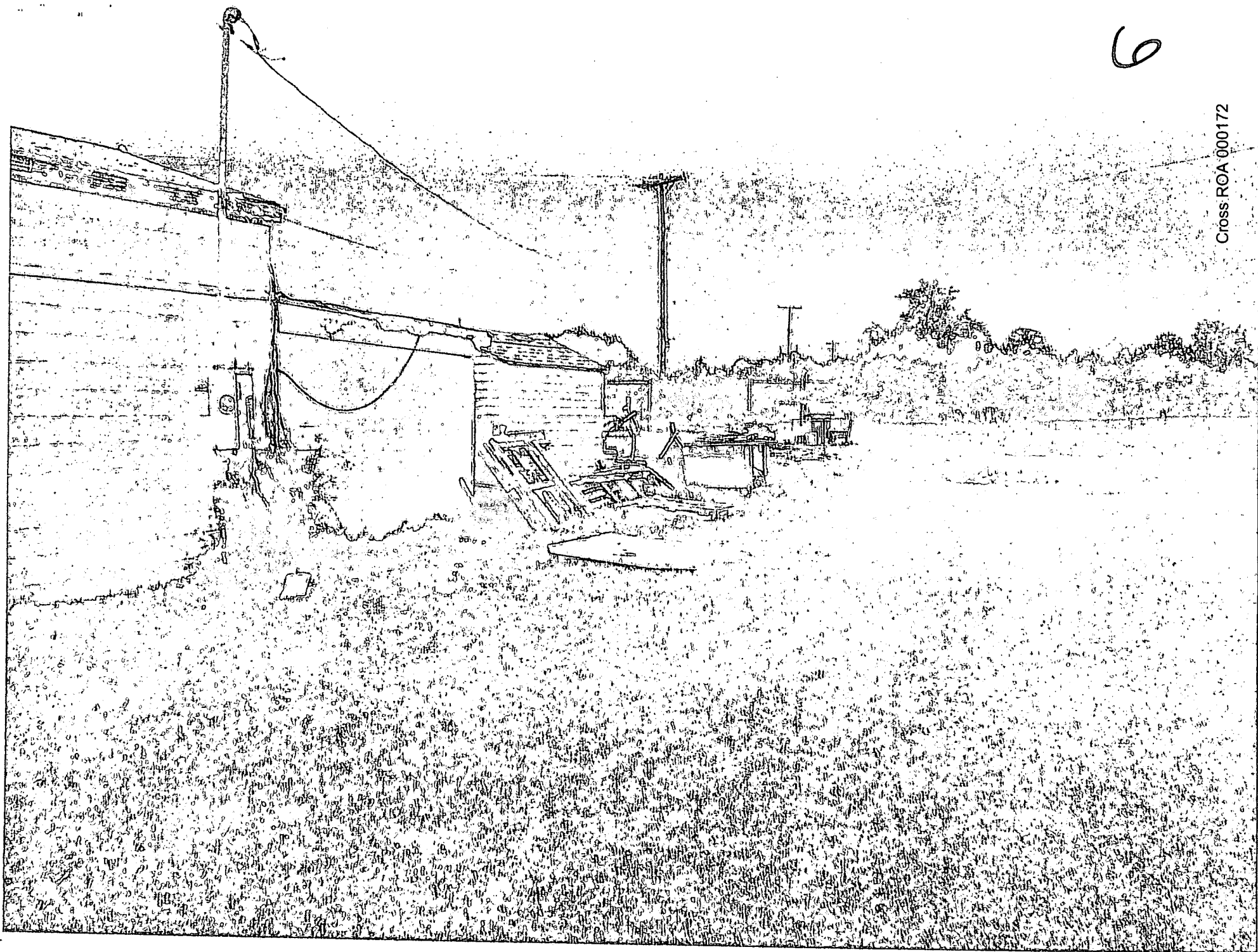
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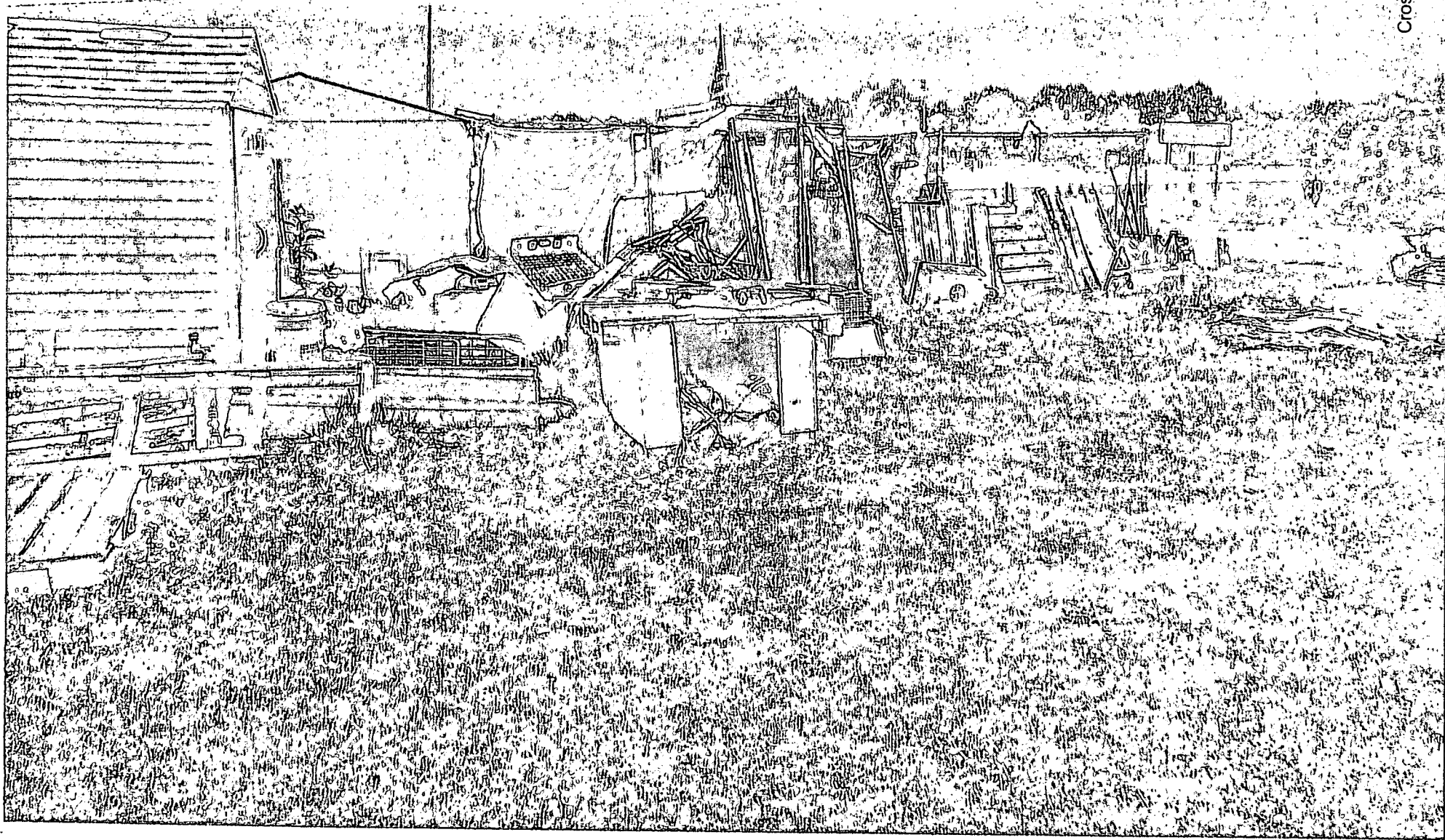
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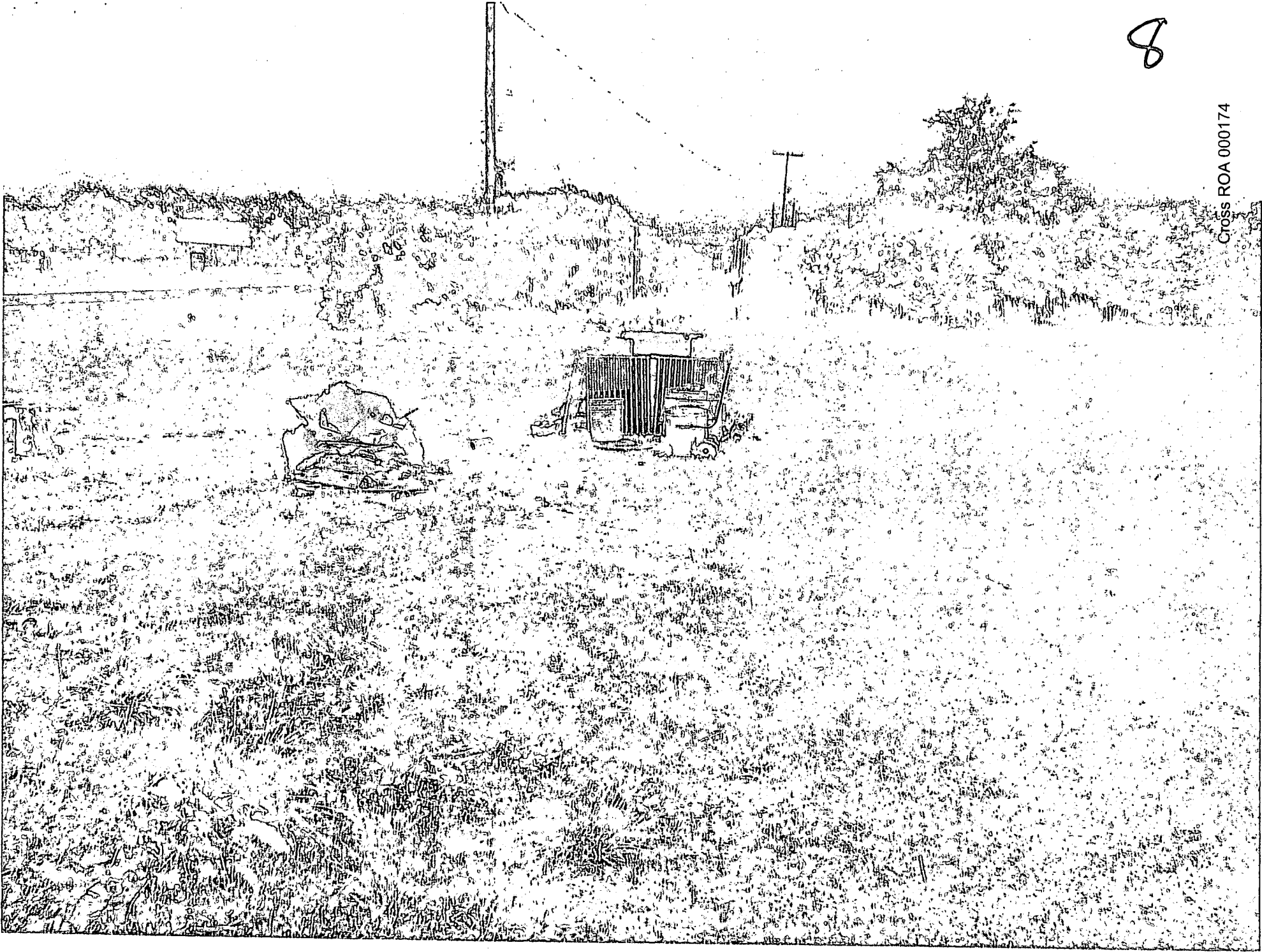


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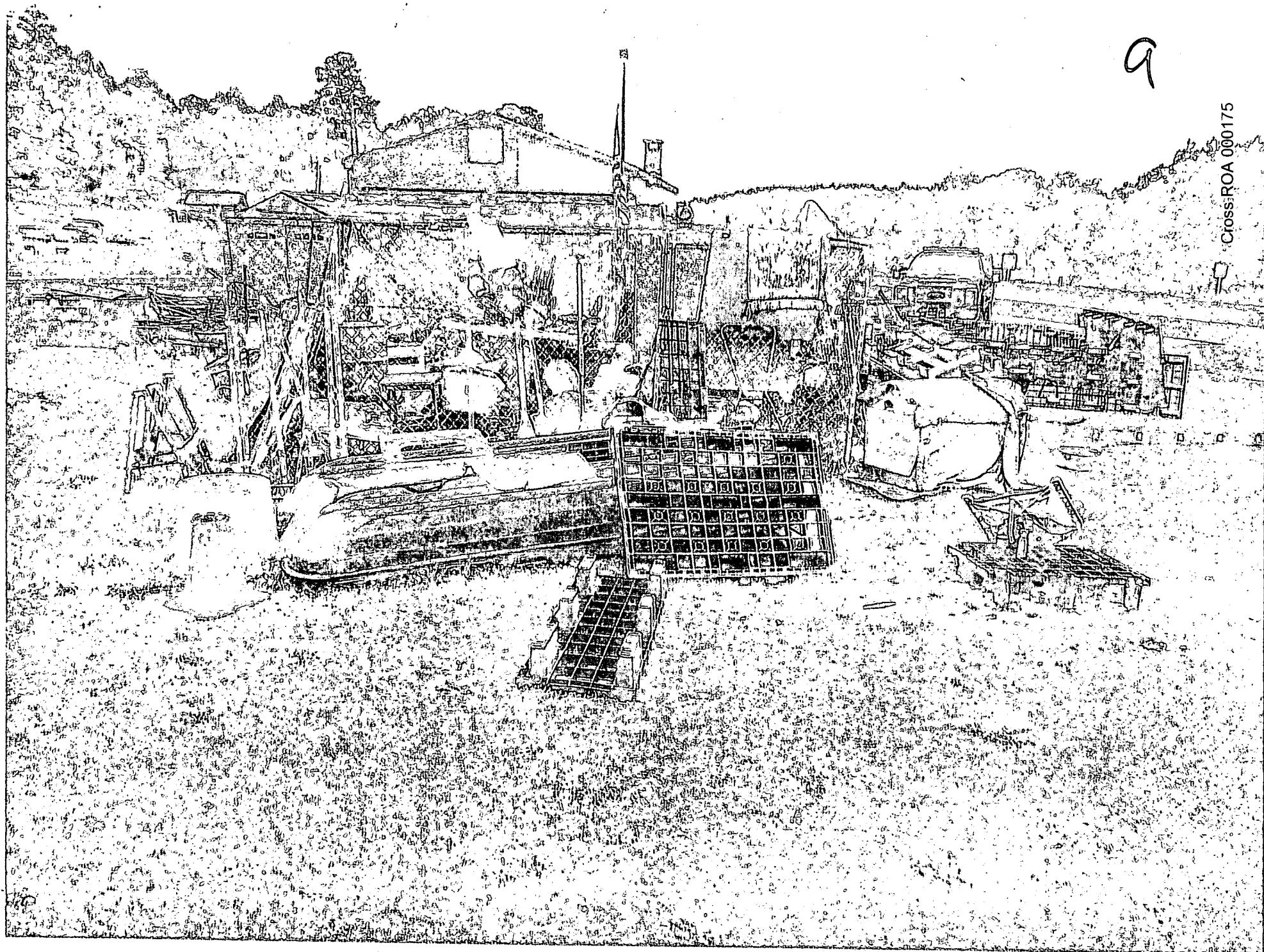


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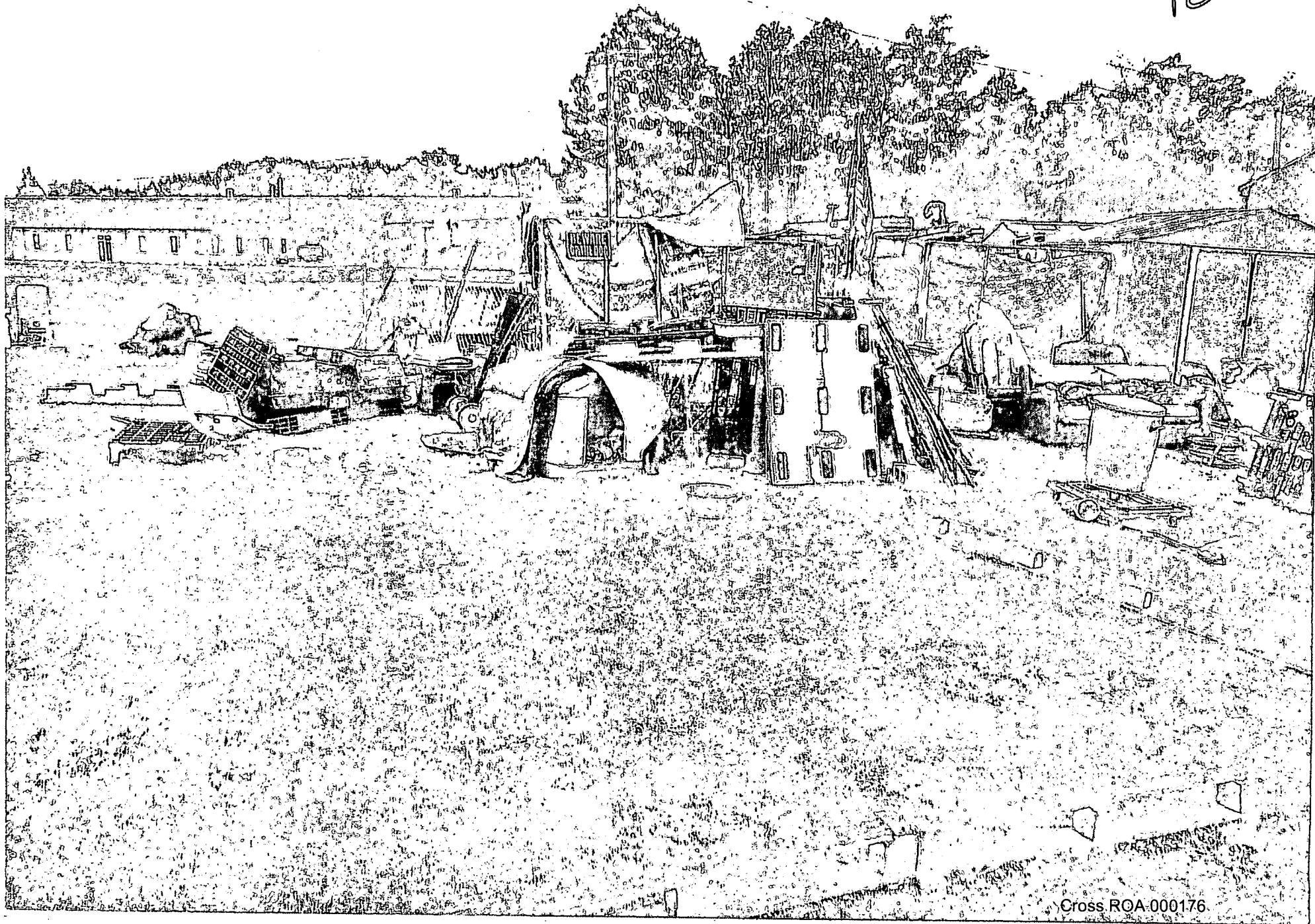


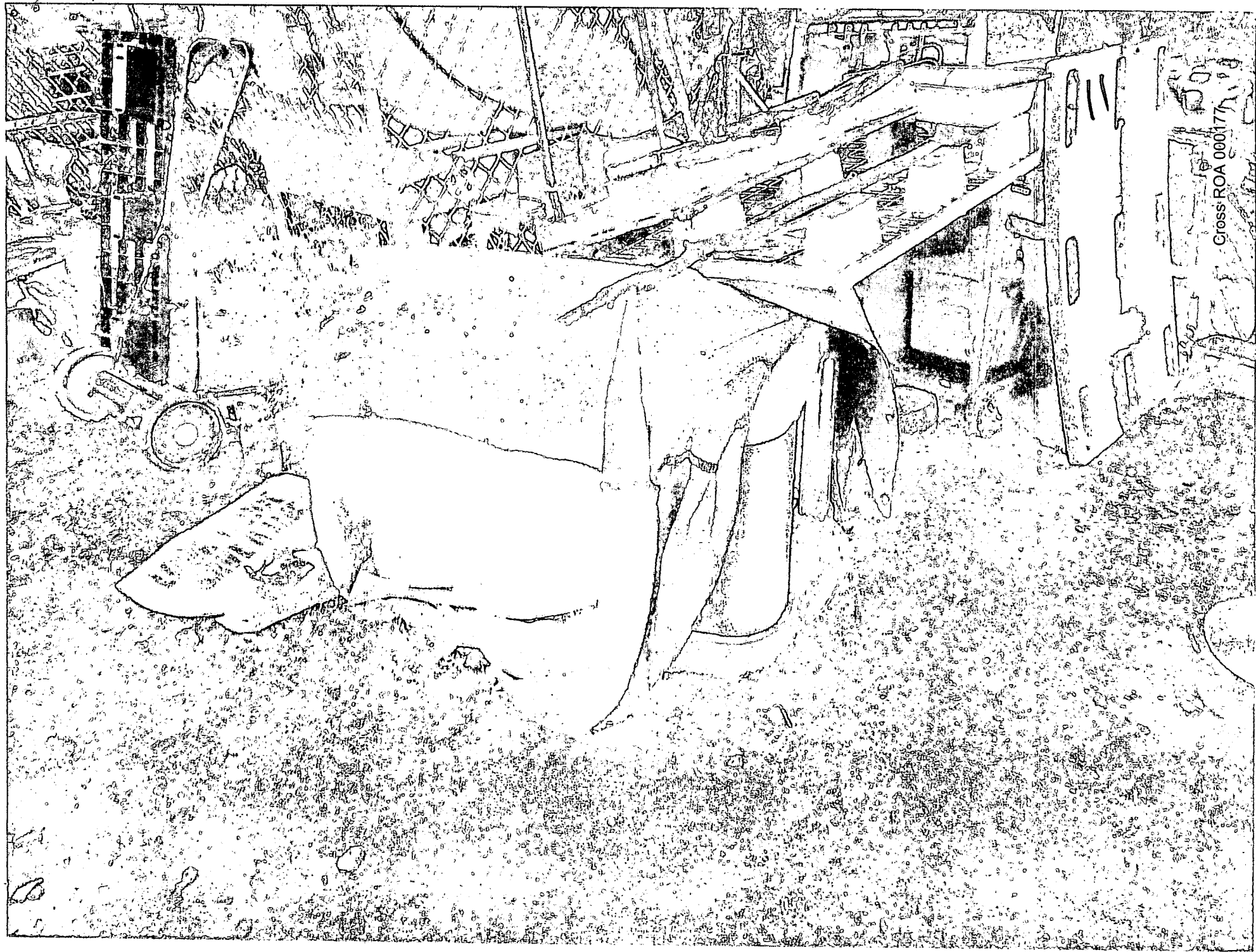
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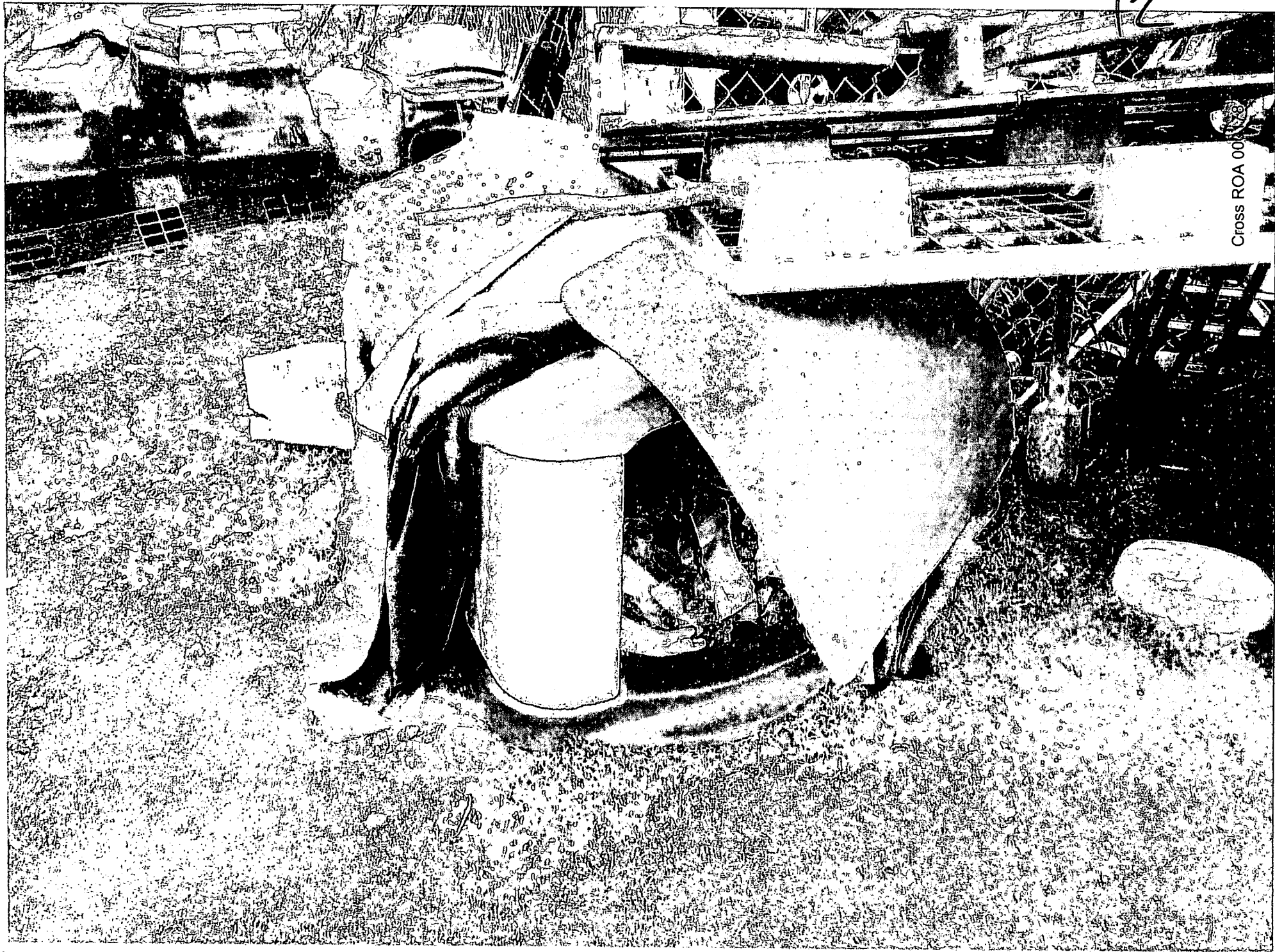


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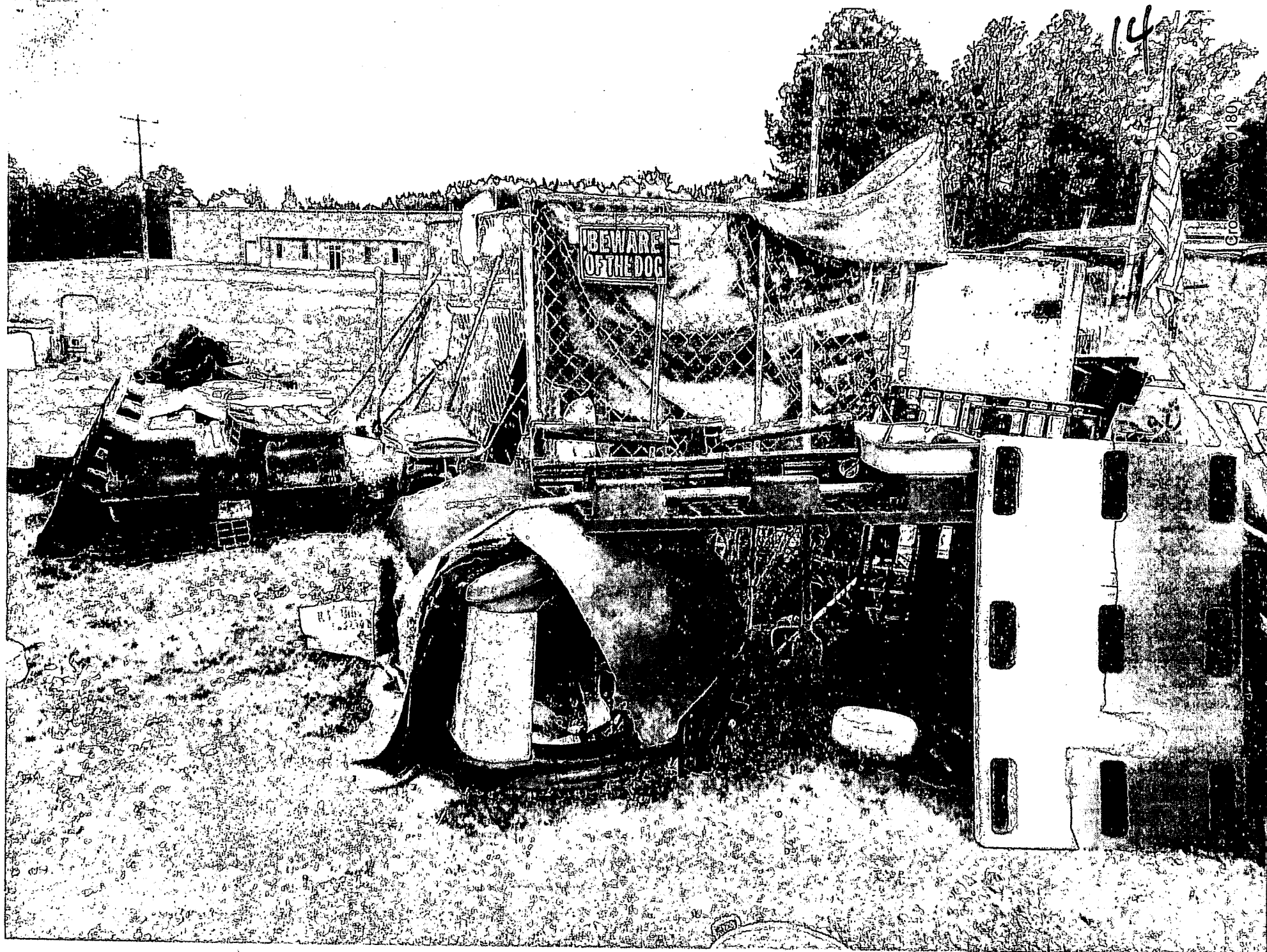


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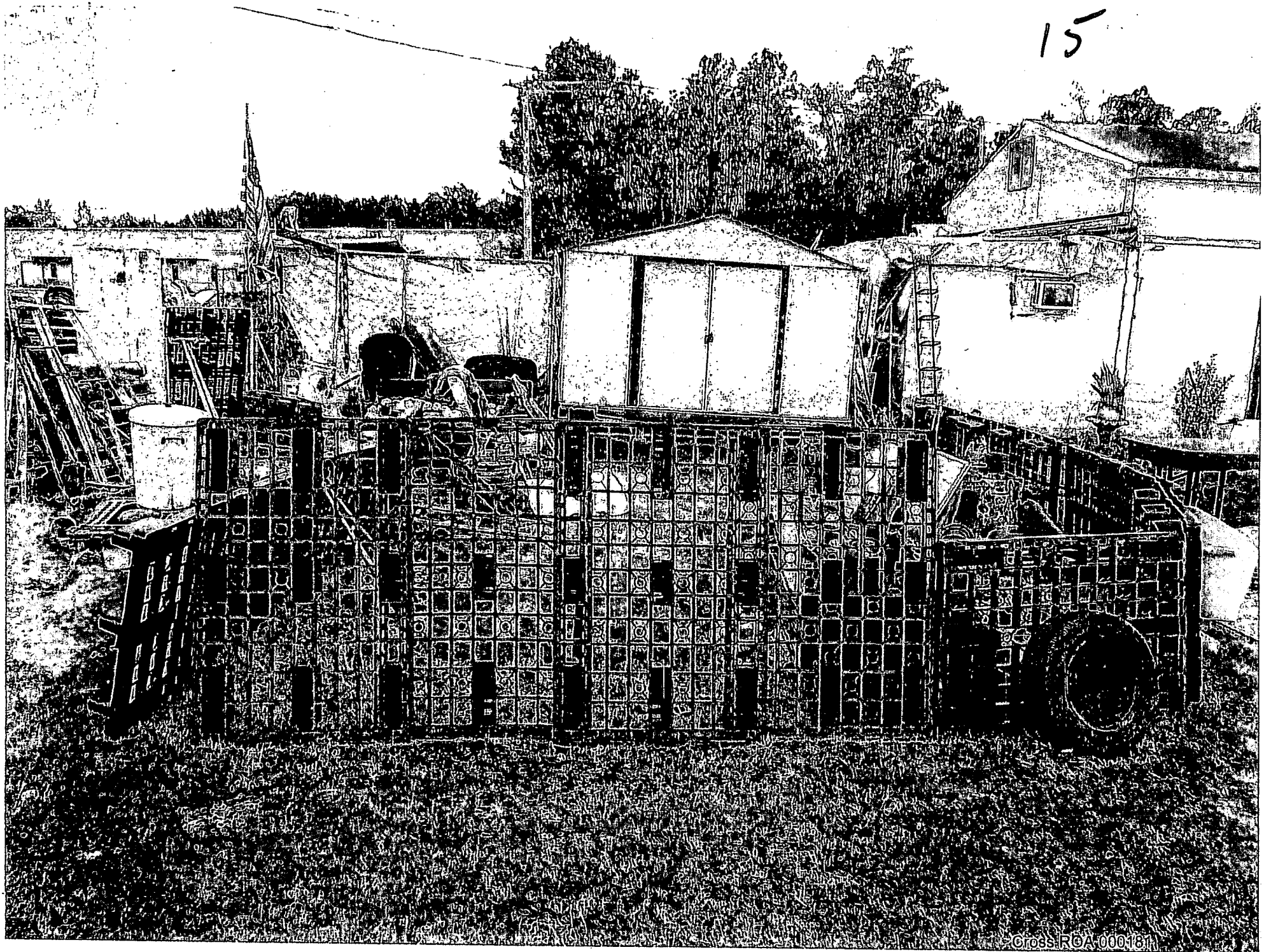


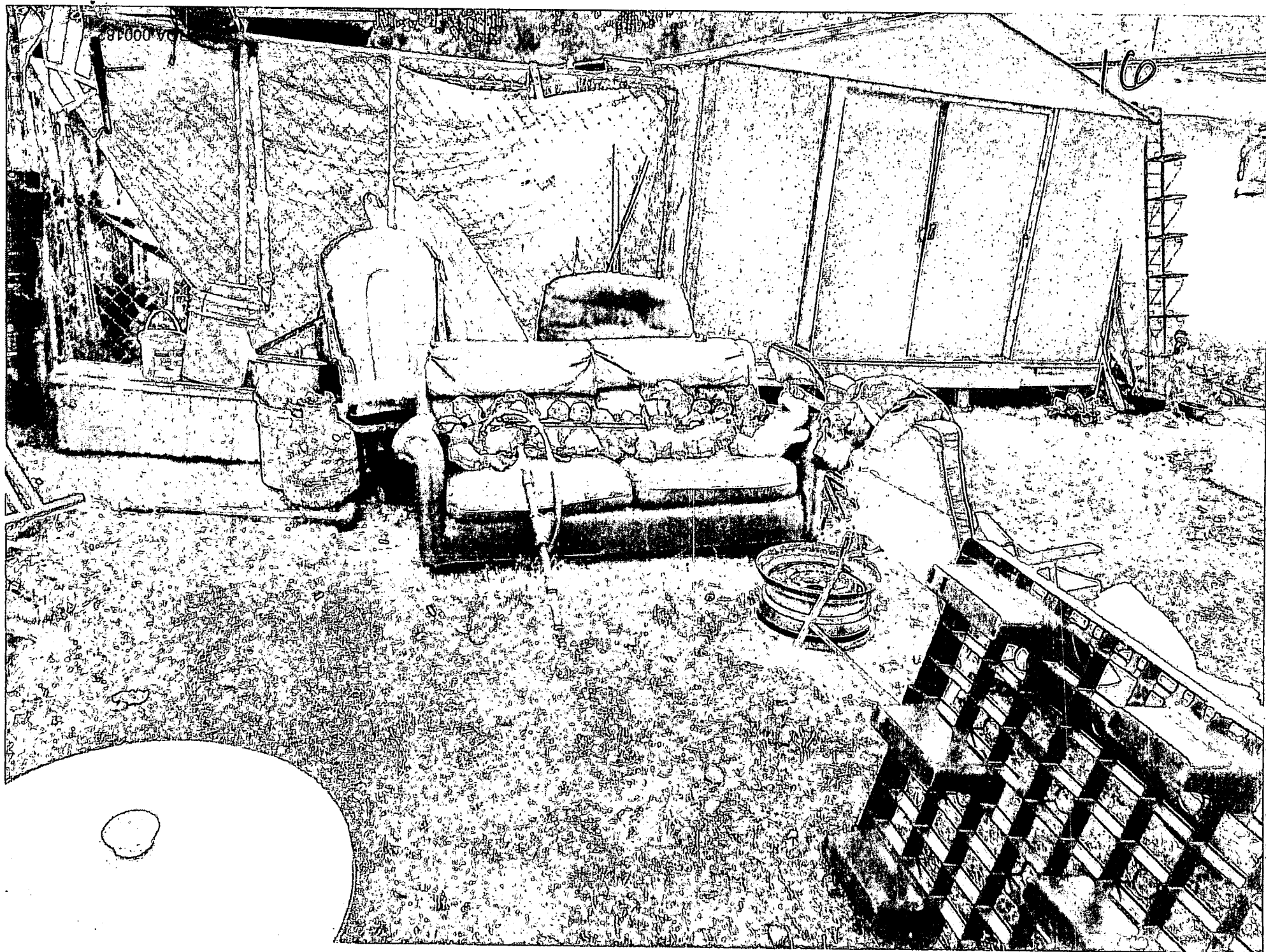
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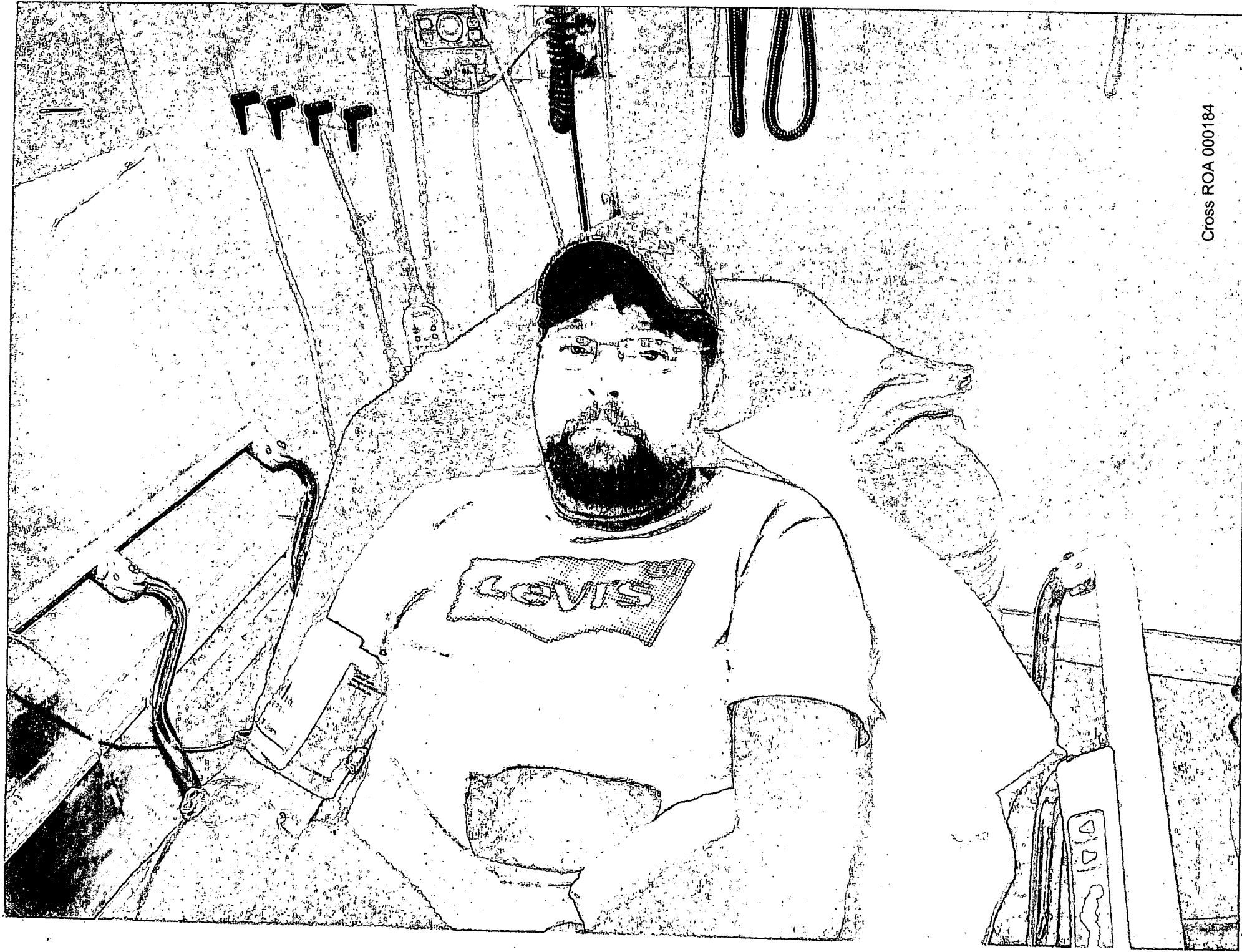


STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS
		TENTH (10 TH) JUDICIAL CIRCUIT

Steven P. Cross,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	STEVEN CROSS EXHIBITS
	)	
Gregory A. Weaver, Earl E. Weaver,	)	
Terrie Fallow and Jason Seagraves,	)	C/A No. 2016-CP-04-02464
	)	
Defendants.	)	
	)	

Photographs of Steven Cross in the hospital following dog attack.....	A
Medical Summary Notes of Dr. Lawson Freeman, MD.....	B
Medical Summary Notes of Dr. Donald Woodburn, MD.....	C
Medical Summary Notes (Pre & Post Op) of Dr. William Richmond, MD.....	D
Summary of Medical Charges.....	E
AnMed.....	F
Diagnostic Radiology.....	G
Dr. Richmond.....	H
ATI Physical Therapy.....	I

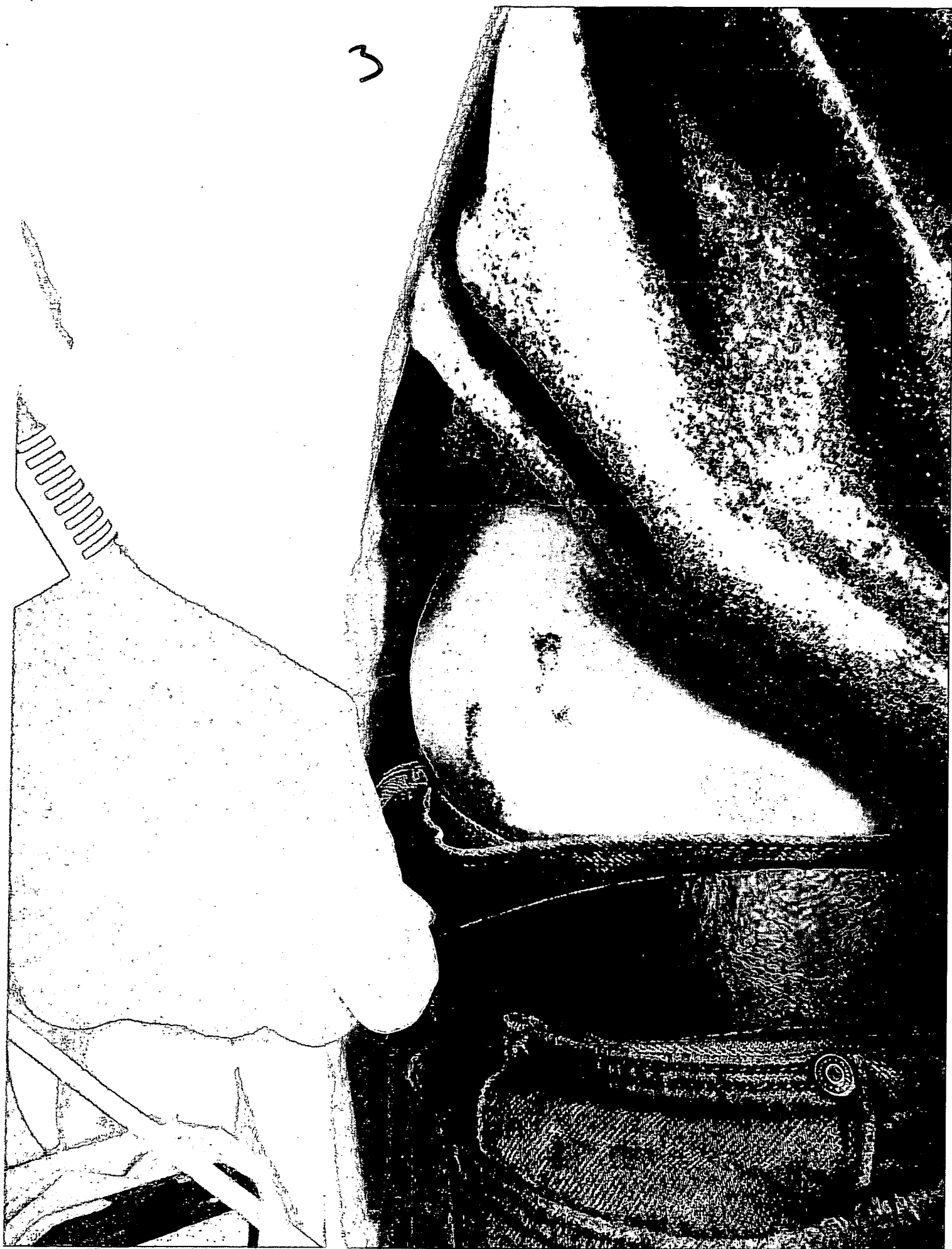
* The parties have stipulated to these matters coming into evidence. Further, the medical notes are being submitted as opposed to taking depositions of the medical doctors. Defendants do not contest the injuries sustained by Plaintiff as a result of the dog attack



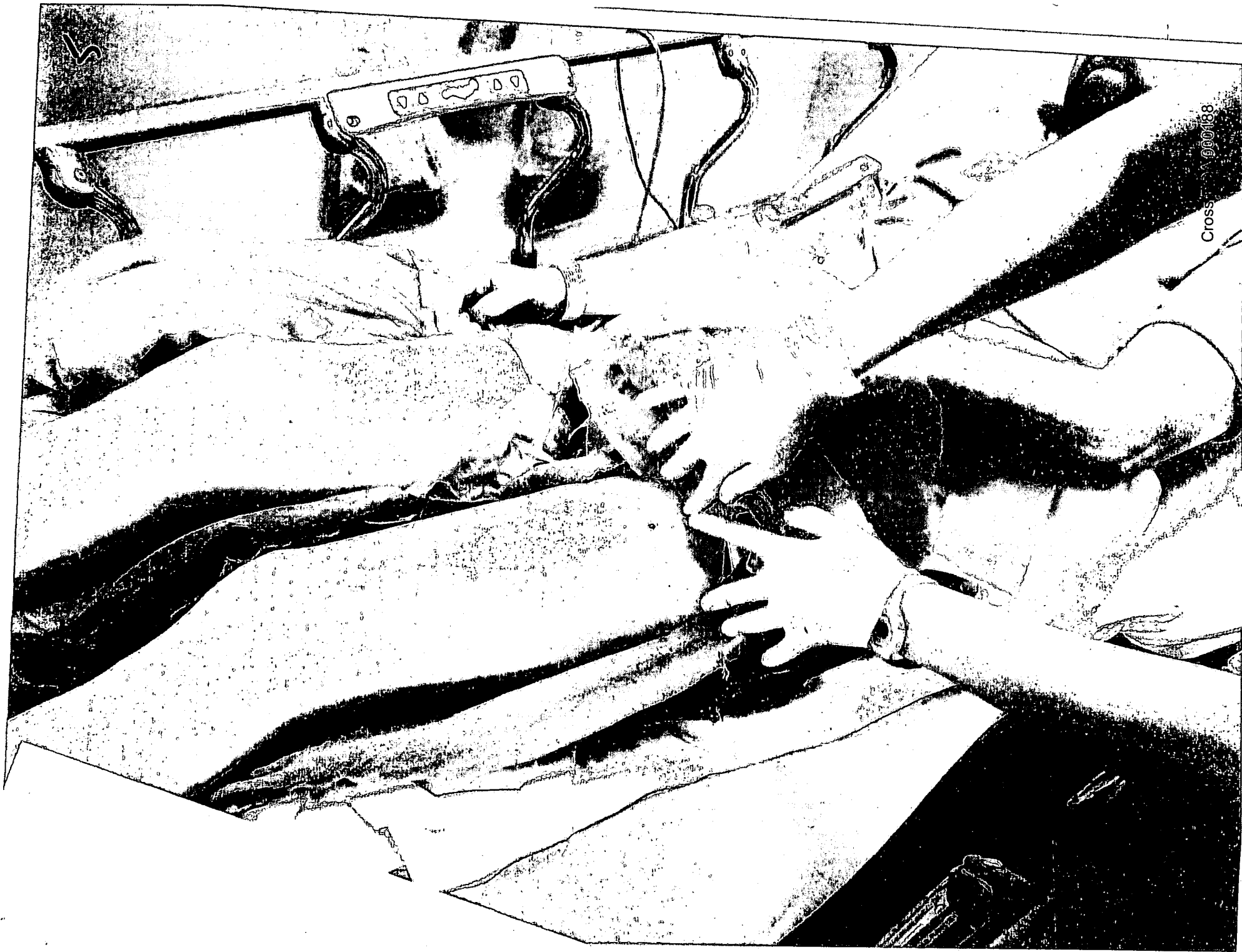


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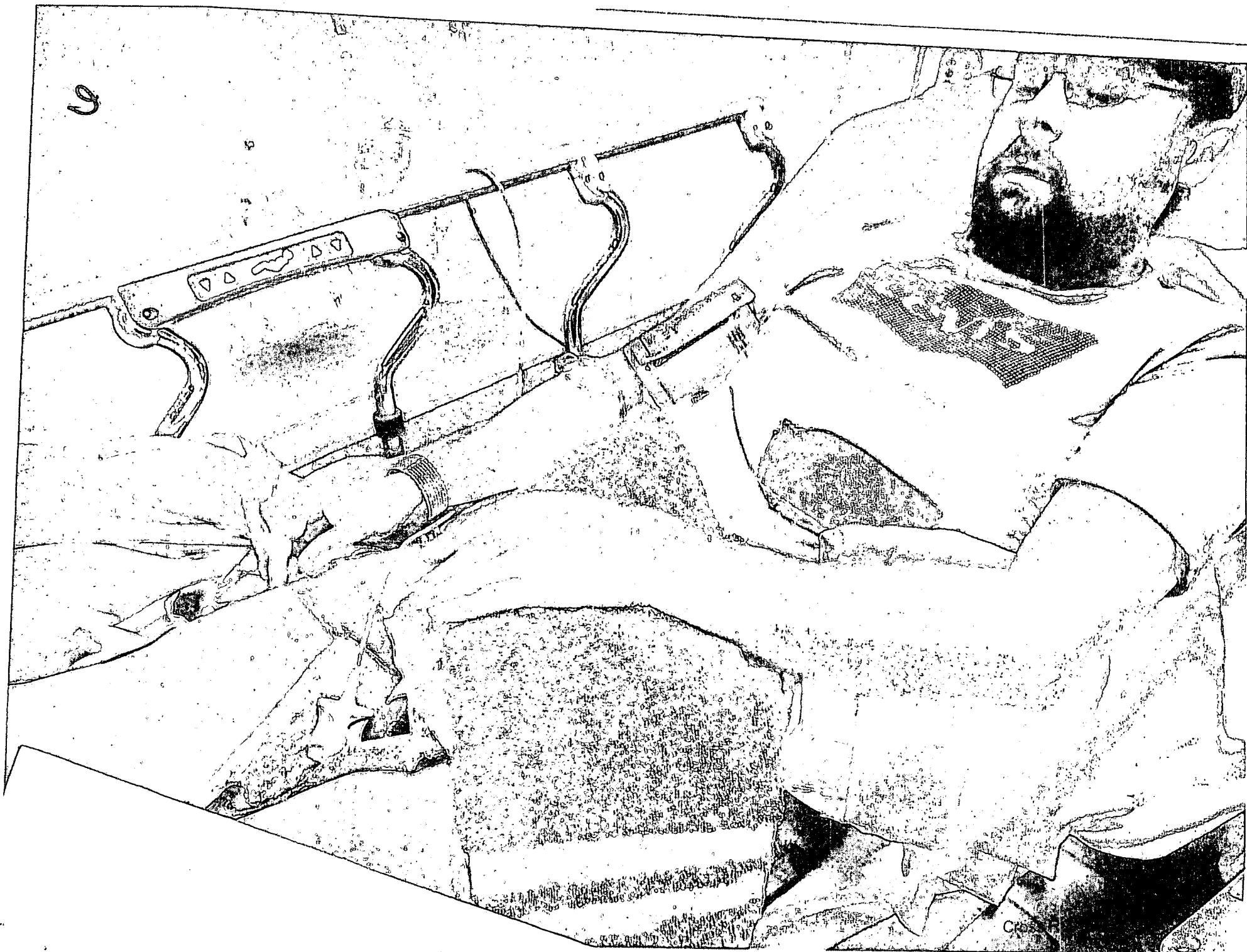
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Cross 660188









Cross ROA 000192

AnMed Health
Anderson, S.C.
Medical Records

CROSS, STEVEN PAUL
Isi Obadan, MD
000018736

DOB: [REDACTED]
[REDACTED]

HISTORY AND PHYSICAL

DATE OF ADMISSION: 04/19/2016 11:29

REQUESTING PHYSICIAN:
Lawson Freeman, MD.

PRIMARY CARE PHYSICIAN:
None.

CHIEF COMPLAINT:
Left wrist pain.

HISTORY OF PRESENT ILLNESS:

This is a 39-year-old man who works as a technician at Bosch, presenting to the emergency room with left wrist pain following a fall while he was being attacked by a dog. He reports that he was not at a function earlier today when a dog suddenly attacked him. He gave it no provocation, according to him. He was bitten on the left calf, as well as the proximal aspect of both his thighs anteriorly. He fell to his back and suffered immediate pain with the left wrist. He denies any other complaints at this time aside from pain. He also reports that prior to these events, he has been at his usual baseline state of health and has had no complaints. He specifically denied fever, chills, sweats, chest pain, abdominal pain.

In the emergency room, the notes report that he was given a rabies vaccine. It is not clear if he is up to date with his tetanus doses as well. Dr. Richmond was contacted from the emergency department, and he plans to take the patient for surgery tomorrow morning if he is okayed by Internal Medicine.

REVIEW OF SYSTEMS:

A 14 point review of systems was only significant for left wrist pain, as well as pain involving his thighs and left calf.

PAST MEDICAL HISTORY:
Migraines.

PAST SURGICAL HISTORY:
Wrist cystectomy.

ALLERGIES:
1. FREDNISONE.
2. CODEINE.

SOCIAL HISTORY:
Denies smoking, alcohol use or recreational drug use.

FAMILY HISTORY:
Noncontributory at this time.



[REDACTED]

MEDICATIONS:

The patient does not take any medication at home.

VITAL SIGNS:

Blood pressure 120/56 mmHg, heart rate 86 beats per minute, respiratory rate 19 cycles per minute, pulse oximetry 95% on room air and temperature 97.8 degrees Fahrenheit.

PHYSICAL EXAMINATION:

Caucasian man of slim build, resting calmly in bed. HEENT: Within normal limits. CNS: Intact. CVS: Heart sounds 1 and 2. No murmurs, gallops, rubs. LUNGS: Chest clear to auscultation bilaterally. No added sounds. ABDOMEN: Soft and nontender to palpation. No organomegaly. MUSCULOSKELETAL SYSTEM: Joints and muscles are within normal limits, aside from the left wrist, which shows an obvious swelling and is tender as well. SKIN: There are puncture wounds involving the anterior superior aspect of both his thighs. He also has puncture wounds that appear to be teeth marks involving his left calf. Mood is appropriate.

PERTINENT LABORATORY DATA:

Potassium 4.2, BUN and creatinine 24 and 1.1, respectively, GFR greater than 60. White count 9, hematocrit 45%, platelet count 214,000.

IMAGING STUDIES:

X-ray of the left wrist shows a left distal radial fracture which is displaced.

IMPRESSION:

1. Left distal radial fracture (displaced).
2. Dog bite involving the left and right thigh, as well as left calf.

PLAN:

1. Admit to 4 South and keep the patient on telemetry.
2. Dr. Richmond is following.
3. Check STAT labs, including EKG, urinalysis with culture and a chest x-ray.
4. Intravenous fluids. Keep n.p.o. after midnight. Patient may tolerate a regular diet for now.
5. Zofran, Norco and morphine for control of symptoms.
6. Check an Hb A1c and a thyroid function test.
7. Intravenous Zosyn given dog bite wounds.
8. Wound care.
9. This patient will be admitted to the services of Dr. Donald Woodburn.
10. If all his labs appear within normal limits, the patient would have been medically optimized to go for surgery.

Isi Obadan, MD

MT INITIALS: CK

40045762/1146497

Dictate Date: 04/19/2016 22:36:57

Transcribe Date: 04/19/2016 23:48:21



CC: Donald Woodburn, MD
William Richmond, MD
Lawson Freeman, MD
Primary Care Physician

Electronically Authenticated by:
Isi Obadan, M.D. On 04/20/2016 02:12 AM EDT



AnMed Health
Anderson, S.C.
Medical Records

CROSS, STEVEN PAUL
Donald Woodburn, MD
000018736

DOB: [REDACTED]

DISCHARGE SUMMARY

DATE OF ADMISSION: 04/19/2016 11:29

DATE OF DISCHARGE: 04/22/2016

FINAL DIAGNOSES:

1. Right wrist fracture.
2. Status post dog bite.

DISCHARGE MEDICATIONS:

See medication reconciliation form.

CONSULTATIONS:

Orthopedics.

PRINCIPAL PROCEDURE:

Open reduction, internal fixation, external fixator, wrist.

RADIOGRAPHIC REPORTS:

1. Right wrist x-rayed showed comminuted intra-articular fracture of the distal radius with dorsal displacement.
2. CT of the wrist dated 04/20 shows comminuted fracture through the distal left radius with mild displacement of fracture fragments. Mild displaced fracture of the ulna styloid process. External fixation in place.

HOSPITAL COURSE:

This is a 39-year-old, white male who works as a technician at Bosch who presented to the emergency room with left wrist pain following a fall while he was being attacked by a dog. He reported that the dog suddenly attacked him. He gave it no provocation, according to him. He was bitten on the left calf as well as the proximal area of both thighs and wrist anteriorly. He fell backwards and suffered immediate pain in the left wrist. He denied any other complaints. The patient presented and was seen by Orthopedics, Dr. Richmond.

Dr. Richmond saw the patient and his wife and showed a copy of the x-ray to them. The patient understands it is a severely comminuted injury.

I explained to him why surgery is medically necessary to restore length and overall alignment of the fracture fragments. Because of the severe comminution, the fracture pattern is not amenable to nonoperative treatment because these would not maintain the length or alignment.

The patient was seen and taken to the OR and external fixation was done. This patient will be referred elsewhere to complete an open reduction internal fixation of the fragments. At this time, patient will be discharged.

Total time: Less than 30 minutes.



[REDACTED]

Donald Woodburn, MD

MT INITIALS: JK

40071684/1163657

Dictate Date: 04/22/2016 12:10:37

Transcribe Date: 04/24/2016 16:27:52

Electronically Authenticated and Edited by:

Donald Woodburn, M.D. On 04/25/2016 06:58 AM EDT



AnMed Health
Anderson, S.C.
Medical Records

CROSS, STEVEN PAUL
William Richmond, MD
000018736

DOB: [REDACTED]

CONSULTATION NOTE

REQUEST FOR CONSULTATION TO: William Richmond, MD

DATE OF CONSULTATION: 04/20/2016

CHIEF COMPLAINT:
Left wrist pain.

DATE OF INJURY:
April 19, 2016.

MECHANISM:
Fall after attacked by a dog.

HISTORY OF PRESENT ILLNESS:
A 39-year-old, right-hand dominant male was attacked by a dog on the evening of April 19, 2016 resulting in a fall landing on his outstretched left upper extremity. He had immediate onset of pain with swelling and deformity of the left distal forearm and wrist area. Radiographs revealed a displaced very comminuted fracture with intra-articular extension of his left distal radius. Due to the significant comminution of the fracture pattern it is not amenable to nonoperative treatment, so the patient has been admitted the hospital for planned operative repair pending medical evaluation and clearance.

PAST MEDICAL HISTORY:
Migraine headaches.

PAST SURGICAL HISTORY:
Excision of a ganglion cyst from the right wrist.

MEDICATIONS:
None.

ALLERGIES:
1. PREDNISONE.
2. CODEINE.

SOCIAL HISTORY:
Patient denies tobacco, alcohol, or illegal street drug use. He works as a technician at Bosch and plays guitar.

FAMILY HISTORY:
No serious medical illnesses reported.

REVIEW OF SYSTEMS:
He has no other bone or joint complaints. He did sustain some dog bites to his left calf muscle and both of his thighs. Prior to his injury he has not had any recent changes in his health such as shortness of breath, chest pain, abdominal pain, nausea, vomiting diarrhea or dysuria. No recent history of



[REDACTED]

fever, chills or night sweats.

PHYSICAL EXAMINATION:

VITAL SIGNS: Temperature is 98.3, pulse 81, respiratory rate 20, blood pressure 129/99. **GENERAL APPEARANCE:** This is a well-developed, well-nourished male in no apparent distress. His speech is clear and concise. He is alert orient x3. **HEENT:** Head is atraumatic. Pupils are equal, round, reactive to light accommodation. Extraocular eye motions intact. Sclerae nonicteric. **NECK:** Supple and nontender. **CHEST:** Clear to auscultation bilaterally. **CARDIOVASCULAR:** Normal rate, regular rhythm with no murmurs, rubs, or gallops. **ABDOMEN:** Soft, nontender, with active bowel sounds. **EXTREMITIES:** The left upper extremity is in a splint. He has very limited motion of fingers secondary to pain. Sensation to light touch is intact with good capillary refill. Right upper extremity has no areas of swelling or deformities.

RADIOGRAPHS:

Three views of his left wrist show significant shortening of the left distal radius relative to the ulna. There is a displaced fracture of the ulnar styloid as well as displaced intra-articular fractures of the distal radial radius. There is intra-articular extension with displacement of the articular fracture fragments. There is also a nondisplaced longitudinal fracture extending from the distal radius and then extending proximally 4.5 cm from the joint surface. There appears to be either three or four separate articular cartilage fragments on the lateral view. There is loss of the normal volar tilt. He has a dorsal tilt to the articular surface. There does not appear to be any widening or displacement between the carpal bones.

LABORATORY DATA:

Urinalysis has 20 mg/dL of ketones but negative leukocyte esterase and no glucose in the urine. White blood cell count is 9.0, hemoglobin 15.5, hematocrit 45.8, platelets 214,000. Hemoglobin A1c is 5.7. INR 1.0. Sodium 138, potassium 4.2, glucose 108, BUN 24, creatinine 1.1.

IMPRESSION:

Closed displaced fracture of the lower and left radius with intra-articular extension and a severely displaced comminuted articular cartilage fragments.

PLAN:

I reviewed with the patient and his wife. I showed them a copy of his x-rays as well as a copy of another patient's x-rays that show no visible fractures for comparison. The patient understands he has a severely comminuted injury and I explained to him why surgery is medically necessary in order to restore length and overall alignment of fracture fragments. Because of the severe comminution the fracture pattern is amenable to nonoperative treatment because there would not be a way to maintain length and alignment of all the fracture fragments without surgery. I also reviewed with the patient and his wife the indications for surgery, the expected postoperative course and the potential risks. The risks include, but are not limited to infection, bleeding with injury to the radial artery and need for repair the radial artery, malunion, nonunion, symptomatic hardware, hardware failure, development of traumatic arthritis of the wrist which may require additional surgery in the future. We also discussed permanent numbness to the hand as well as reflex sympathetic dystrophy. The patient will need to work with a hand therapist after surgery to help regain motion and strength of the hand and he may have some permanent loss of wrist range of motion. If hardware is symptomatic later he may require



additional surgery to remove the hardware. The plan will be for open treatment with internal fixation using a plate and screw fixation to stabilize the fracture. If the fracture pattern appears to be more comminuted intraoperatively than was visible with current plain radiographs then we will proceed with external fixation of the fracture and referral to a hand surgeon for further definitive surgical treatment. This was all discussed with the patient and his wife. All questions were answered. They elected to proceed with the above plan. The patient will be n.p.o. except for medications after 2 a.m. with planned surgical treatment later in the morning of April 20, 2016.

William Richmond, MD

MT INITIALS: LV

40046187/1146815

Dictate Date: 04/20/2016 01:24:06

Transcribe Date: 04/21/2016 06:37:29

Electronically Authenticated by:

William B. Richmond II, MD On 04/23/2016 06:19 PM EDT



AnMed Health
Anderson, S.C.
Medical Records

CROSS, STEVEN PAUL
William Richmond, MD
000018736

DOB: [REDACTED]

PROCEDURE NOTE

DATE OF PROCEDURE: 04/21/2016

PREOPERATIVE DIAGNOSIS:

Closed displaced fracture lower end, left radius.

POSTOPERATIVE DIAGNOSIS:

Closed displaced fracture lower end, left radius.

PROCEDURE PERFORMED:

Manipulation and external fixation of left distal radius fracture.

SURGEON:

W. Bruce Richmond, MD

FIRST ASSISTANT:

Leslie Willcox, PAC.

INDICATIONS FOR SURGERY:

This is a 39-year-old, right-hand dominant male who sustained the above injury after being attacked and knocked down by a dog on the evening of April 19, 2016. He had severe comminution noted on plain radiographs was significant displacement so operative treatment was recommended with either open treatment with internal fixation, or external fixation. I reviewed with the patient and his wife preoperatively in the hospital the indications for surgery, the expected postop course, potential risks. They understand that if it is felt intraoperatively the fracture had too much comminution or displacement, then the plan will be for external fixation with a delayed internal fixation by a hand surgeon at a later date. All questions were answered and consent was obtained.

DETAILS OF PROCEDURE:

The patient underwent a regional nerve block and then received preoperative intravenous antibiotics in the holding area. He was taken to the operating room and placed in a supine position on the operating table and underwent induction of general anesthetic. The splint was removed from his arm. The patient was noted to have a fairly significant amount of swelling about the wrist. Mild deformity was also noted, but the skin was intact. Longitudinal traction was then performed and the fracture was manipulated. The majority of the deformity resolved with the manipulation and longitudinal traction. Intraoperative fluoroscopy showed continued displacement especially of the lunate facet fragment. There was also noted to be a coronal split within the fracture site. It appeared to have, at a minimum, three separate intra-articular fracture fragments, along with the shaft fragment, and there was a longitudinal fracture line which extended down into the radial diaphysis and shaft as well. Overall alignment of the fracture fragments was significantly improved. We were able to get him out to good radial length, neutral tilt on the lateral view which resolved the previous dorsal tilt and a good radial inclination was also noted. A decision was made, due to the



[REDACTED]

presence of multiple intra-articular displaced fracture fragments, to proceed with the external fixation. The left upper extremity was then prepped and draped in a sterile fashion. No tourniquets were used. A 2.5 cm incision was made over the dorsal radial aspect of the hand overlying the index finger metacarpal. A combination of sharp and blunt dissection was then made down to the index finger metacarpal and two bicortical pins were then placed from the Synthes external fixator device. Next, another 2.5 cm incision was made around the junction of the middle and distal third of the radius on the radial side of the radial shaft. Hemostasis was controlled with electrocautery. A combination of sharp and blunt dissection was then made down to the radial bone where two bicortical half-pins were placed into this. Pin placement was confirmed under fluoroscopy and was in good position. The fracture was then manipulated to maintain neutral alignment of the wrist in radial and ulnar deviation. There was good length, good radial inclination, and neutral tilt in lateral view. Intraoperative fluoroscopy showed overall satisfactory alignment of the fracture fragments, in light of the significant comminution that was present. There still was displacement between the scaphoid facet, lunate facets that we were unable to satisfactorily reduce with longitudinal traction, which was consistent with the severity of the fracture. The incisions for the pin placement were then closed with interrupted 3-0 nylon using horizontal and vertical mattress technique. There was good hemostasis the time of wound closure. The incisions were dressed with bacitracin ointment, Adaptic dressing, sterile dressing sponges, followed by 2-inch and then 3-inch Kling, then sterile cast padding and sterile Ace wrap. The patient was awakened, extubated and taken to the recovery room in stable condition. There were no known complications during the case. Estimated blood loss was 5 mL.

William Richmond, MD

MT INITIALS: NG

40058098/1154699

Dictate Date: 04/21/2016 08:26:39

Transcribe Date: 04/22/2016 13:05:38

Electronically Authenticated by:

William B. Richmond II, MD On 04/23/2016 06:19 PM EDT



STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
TENTH (10TH) JUDICIAL CIRCUIT

Steven P. Cross,)
)
Plaintiff,)
)
vs.)
)
Gregory A. Weaver, Earl E. Weaver,)
Terrie Fallow and Jason Seagraves,)
)
Defendants.)
)

STEVEN CROSS MEDICAL CHARGES

C/A No. 2016-CP-04-02464

<u>Date of Service</u>	<u>Provider</u>	<u>Charges</u>
April 19 – 27, 2016	AnMed	\$ 57,541.10
April 19 – 20, 2016	Diagnostic Radiology	283.00
April 27 – Dec. 1, 2016	Dr. Richmond	6,636.00
Aug. 1 – Sept. 23, 2016	ATI Physical Therapy	<u>4,699.00</u>
		\$ 68,876.10

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
TENTH (10TH) JUDICIAL CIRCUIT

John Cross,)
)
Plaintiff,)
)
vs.)
)
Gregory A. Weaver, Earl E. Weaver,)
Terrie Fallow and Jason Seagraves,)
)
Defendants.)
)

JOHN CROSS EXHIBITS

C/A No. 2016-CP-04-02468

Photographs of John Cross in the hospital following dog attack.....	A
Medical Summary Note of Dr. Larry Davidson, MD.....	B
Radiology Report.....	C
Summary of Medical Charges.....	D
AnMed.....	E
Diagnostic Radiology.....	F
Cornerstone Family Medicine.....	G

- * The parties have stipulated to these matters coming into evidence. Further, the medical notes are being submitted as opposed to taking depositions of the medical doctors. Defendants do not contest the injuries sustained by Plaintiff as a result of the dog attack.



2



Cross ROA 000211

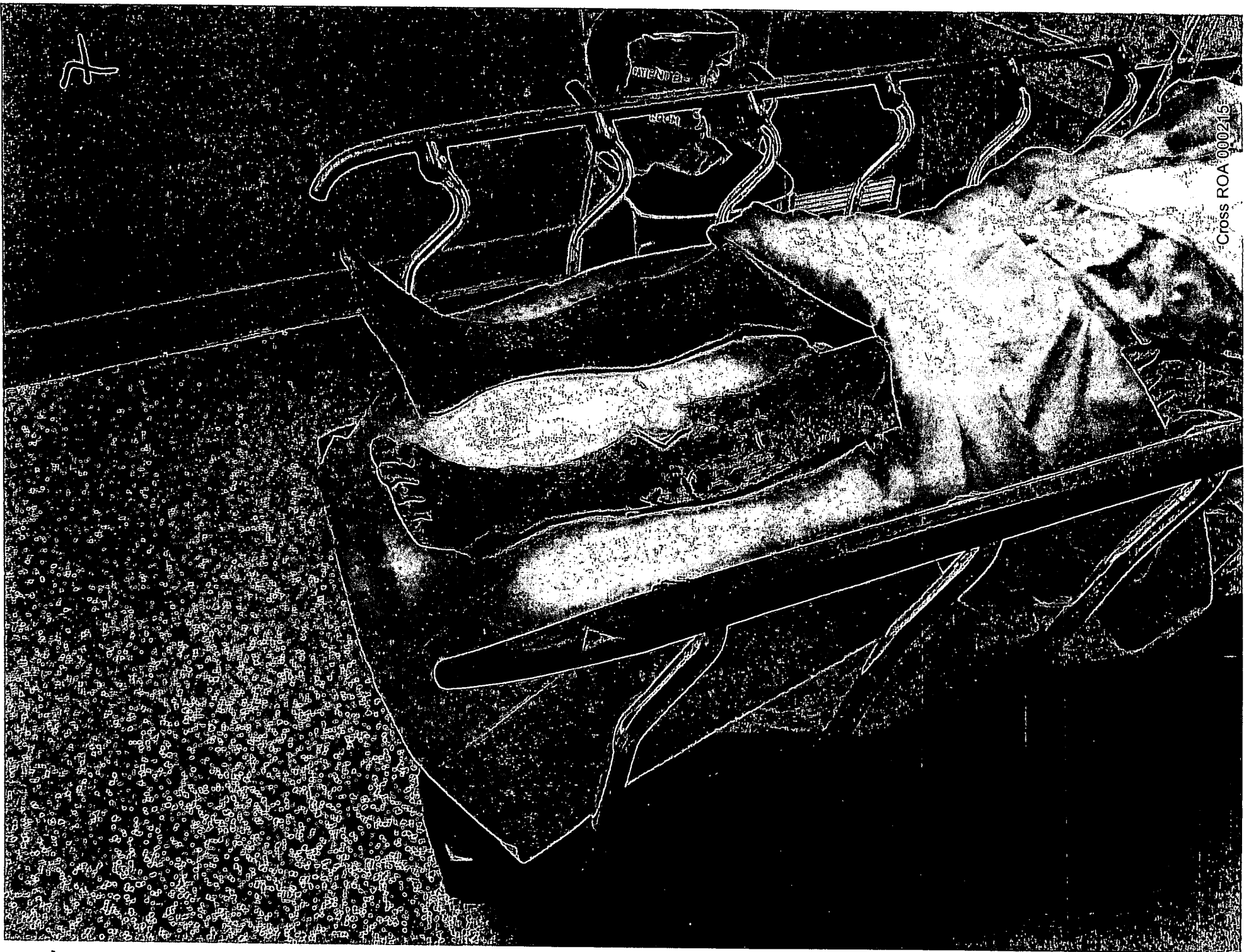
4



Cross, ROA 000213

6





Cross ROA 000215

AnMed Health
Anderson, S.C.
Medical Records

CROSS SR, JOHN WALTER
Larry S Davidson, MD
000024135

DOB: [REDACTED]

DISCHARGE SUMMARY

DATE OF ADMISSION: 04/19/2016 10:01

DATE OF DISCHARGE: 04/20/2016 10:49

NEUROSURGICAL DISCHARGE SUMMARY:

DISCHARGE MEDICATIONS:

Please see universal medication list.

ADMISSION DIAGNOSIS:

1. Subarachnoid hemorrhage, subdural hematoma.

DISCHARGE DIAGNOSIS:

1. Subarachnoid hemorrhage, subdural hematoma.

No procedures performed during stay.

BRIEF HOSPITAL HISTORY:

The patient is a 63-year-old male who was attacked by a German Shepherd yesterday where he had a brief loss of consciousness as well as head injury. Presented to the emergency department where he underwent CT scan of the head which showed a small bifrontal subarachnoid hemorrhage as well as a left parafalcine subdural hematoma. He did have a left lower extremity laceration which required suturing as well. Due to the findings the patient was admitted to 7 South for further observation and treatment. The patient was neurologically intact upon presentation to the emergency room and again just had a brief episode of loss of consciousness. After his first night stay the patient remained neurologically intact, his pupils equal, round, react like accommodation, extraocular movement were intact. The cranial nerves were intact, he was ambulating short distances well without difficulty and assistance. He did have a bandage on his left lower extremity but also had multiple other abrasions which were causing pain but no other significant difficulties. He had well controlled pain with pain medication up to this point. He had a repeat CT scan on 04/20/2016 which showed resolving bifrontal subarachnoid hemorrhage as well as stable left parafalcine subdural hematoma. At this point, due to the patient's neurologic status as he was neurologically intact as well as improved and stable CT scan on 04/20/2016 is felt ready for discharge to home.

DISCHARGE INSTRUCTIONS:

1. Patient instructed if he were to have any increased headaches or neurologic changes to contact our office and immediately present back to the emergency department.
2. The patient is to remain off of any anticoagulants including aspirin for the next 2-3 weeks.
3. Will plan to see the patient back in the outpatient setting in two weeks with repeat CT scan of the head for further evaluation.
4. We will start the patient on a 10 day course of antibiotics for the multiple abrasions as well as left lower extremity wound that he has from



[REDACTED]

- the attack.
5. Patient instructed to contact our office with any questions or concerns.

Dictated By: William T. Jeffcoat, PA

Larry S Davidson, MD

MT INITIALS: SH

40047578/1147827

Dictate Date: 04/20/2016 09:29:22

Transcribe Date: 04/22/2016 00:19:22

Electronically Authenticated by:

W. Travis Jeffcoat, PA On 04/22/2016 08:19 AM EDT

Electronically Authenticated by:

Larry S. Davidson; MD On 04/22/2016 08:20 AM EDT



CT HEAD WO

AnMed Health Main Campus
AnMed Health
800 North Fant Street
Anderson, SC 29621

RADIOLOGY REPORT

Pat. Name: CROSS, JOHN WALTER
Address: [REDACTED]
Address: ANDERSON, SC 29621
Unit/Room:
DOB: [REDACTED]
Sex: M

MRN: 000024135
Ord Phys.: HORN, KEVIN D
Service Date/Time: 04/19/2016 20:47:00^0
Order#: [REDACTED]
PROC: CT HEAD WO
Attend. Prov.: EMERGENCY, ROOM

Signs & Symptoms:

History:

CLINICAL HISTORY: Trauma

TECHNIQUE: Axial noncontrast images were obtained from the base of brain vertex.

FINDINGS: The posterior fossa structures are normal. The fourth ventricle is midline. The ventricular system is normal throughout. High in the frontal convexities is some linear hemorrhage in the sulci consistent with a small subarachnoid hemorrhage. There is a probable very tiny interhemispheric subdural hematoma is well. There is no mass effect or midline shift. No significant edematous changes are identified. The bony calvarium appears intact.

IMPRESSION:

1. Very minimal focal bifrontal subarachnoid hemorrhage high in the frontal convexities with a probable very tiny interhemispheric subdural hematoma. There is no mass effect or midline shift.

Fluoro Time Mins: 0

End of diagnostic report for accession: 6543507

Dictated By(*): BRUCE MALLORY BURNS on 4/19/2016 8:56 PM
Transcribed By: BRUCE MALLORY BURNS on 4/19/2016 8:56 PM
Finalized By: BRUCE MALLORY BURNS on 4/19/2016 8:54 PM
Technologist(s): DEBBIE CORDELL, LEE HAMILTON, ASHLEY SPRATT

Page 1 of 1



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CT HEAD WO

AnMed Health Main Campus
AnMed Health
800 North Fant Street
Anderson, SC 29621

RADIOLOGY REPORT

Pat. Name: CROSS, JOHN WALTER
Address: [REDACTED]
Address: ANDERSON, SC 29621
Unit/Room: [REDACTED]
DOB: [REDACTED]
Sex: M

MRN: 000024135
Ord Phys.: MINA, CHRISTIE
Service Date/Time: 04/20/2016 08:20:00^0
Order#: [REDACTED]
PROC: CT HEAD WO
Attend. Prov.:

Signs & Symptoms:

History:

History: Subdural hemorrhage

Technique: CT of the head was obtained utilizing 5 mm axial slices without contrast.

Findings: Today's CT is compared to a prior CT performed April 19, 2016.

As was seen on the prior CT, there is an acute left falcine subdural hemorrhage. In addition, there appears to be right frontal subarachnoid hemorrhage, best seen on sequence 3 images 25, 24 and 26. The hemorrhage in the left frontal lobe has resolved. The ventricles appear normal in size without distortion. The brainstem is intact. Orbits, sinuses and calvaria appear unremarkable.

Impression: This is an abnormal CT scan of the head without contrast demonstrating:

1. Improving acute right frontal subarachnoid hemorrhage.
2. Improving left frontal acute parafalcine subdural hemorrhage.
3. Resolution of the left frontal subarachnoid hemorrhage.

Procedure Radiation Dose: DLP 885.75 mGy.cm/Effective Dose 1.86 mSv

Fluoro Time Mins: 0

End of diagnostic report for accession: 6543535

Dictated By: SAIRAH BASHIR on 4/20/2016 9:14 AM
Transcribed By: JEANNIE SIMMONS on 4/20/2016 10:08 AM
Finalized By: SAIRAH BASHIR on 4/26/2016 6:03 PM
Technologist(s): TINA COTERAN

Page 1 of 1



[REDACTED]

[REDACTED]

[REDACTED]

4

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
TENTH (10TH) JUDICIAL CIRCUIT

John Cross,

Plaintiff,

vs.

Gregory A. Weaver, Earl E. Weaver,
Terrie Fallow and Jason Seagraves,

Defendants.

JOHN CROSS MEDICAL CHARGES

C/A No. 2016-CP-04-02468

<u>Date of Service</u>	<u>Provider</u>	<u>Charges</u>
April 19-21, 2016	AnMed	\$ 9,872.51
May 2, 2016	AnMed (follow up CT Scan)	1,870.00
April 19, 2016	Diagnostic Radiology	324.00
May 4 & 11, 2016	Cornerstone Family Medicine	<u>183.00</u>
		\$ 12,249.51

RECEIVED

JUL 22 2019

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2018-001824
Trial Court Case Nos. 2016-CP-04-02464 and 2016-CP-04-02468

John Cross, ... Appellant,

v.

Gregory A. Weaver, Earl E. Weaver, Terrie Fallow and Jason Seagraves, ... Respondents,

And

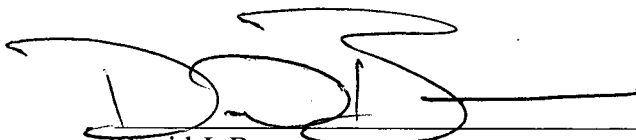
Steven P. Cross, ... Appellant,

v.

Gregory A. Weaver, Earl E. Weaver, Terrie Fallow and Jason Seagraves, ... Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal complies with Rule 210, SCACR.



David J. Brousseau
McIntosh, Sherard, Sullivan & Brousseau
Post Office Box 197
Anderson, South Carolina 29622
(864) 225-0001 | 225-0004 (fax)
Attorney for Appellants

July 3, 2019