

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

Appellate Case No. 2018-000894
Case No. 2017-CP-40-0329

RECEIVED
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SC Court of Appeals

Keith L. Montgomery, ...

Respondent,

v.

Richland County, ...

Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Keith L. Montgomery,

Plaintiff,

v.

Richland County,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case No. 2017-CP-40-0329

ORDER

This matter comes before the Court by way of Rule 50(b) and 59, SCRCP motions filed by Defendant for Judgment Notwithstanding the Verdict (JNOV), New Trial Absolute, New Trial pursuant to the Thirteenth Juror Doctrine, and *Nisi Remittitur*. A jury trial was held April 4-5, 2018. A verdict was returned in favor of Plaintiff in the amount of \$48,000.00. Defendant's post-trial motions were filed on April 16, 2018.

I. Judgment Notwithstanding Verdict

Defendant contends he is entitled to JNOV because there was no evidence to support a finding that Johnnie Taylor, the employee of Defendant, acts or omissions rose to the level of an intentional conscious failure or that he failed to exercise slight care. Defendant further contends Plaintiff's trial testimony is neither indicative nor does it infer evidence of gross negligent conduct. In deciding a motion for JNOV, the trial judge is concerned with the existence of evidence, not its weight. *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 585 S.E.2d 272 (2003). "In ruling on a motion for JNOV, the trial judge cannot disturb the factual findings of a jury unless a review of the record discloses no evidence which reasonably supports them. In making this determination, the judge must view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the nonmoving party." *Burns v. Universal Health Servs., Inc.*, 361 S.C. 221, 231-32, 603 S.E.2d 605, 611 (Ct. App. 2004). The verdict will be upheld if there is any evidence to sustain the factual findings implicit in the jury's verdict. *Id.* There was evidence to support the jury's verdict in favor of Plaintiff on the causes of action. Accordingly, Defendant's Motion for Judgment Notwithstanding Verdict is denied.

II. New Trial Absolute

Defendant moves for a new trial absolute due to the Court precluding the testimony and evidence concerning Plaintiff's previous detention center incarcerations and the criminal offenses in which Plaintiff was charged during his retrospective bookings. Defendant contends the Court should have permitted Defendant to show that the testimony elicited by Plaintiff's counsel was untrue by questioning Plaintiff's counsel as to the nature of his previous bookings at Alvin S. Glenn Detention Center. This issue was thoroughly discussed in court. Defendant certainly asked questions relating to the dates Plaintiff was booked at Alvin S. Glenn Detention Center. What was not permissible however, was to discuss the specific charges because the admission of those charges did not comport with the Rules of Evidence relating to impeachment. See *Rule 609, SCRE*. Additionally, Defendant contends that the verdict is grossly excessive based on the nature of the evidence of damages presented and that there was a lack of evidence presented throughout the trial to support the jury's verdict. Plaintiff's medical expenses as well as his testimony was evidence from which the jury could determine the damages for personal injury.

In order for the Court to grant a new trial absolute, "compelling reasons, must be given to justify invading the jury's province." *Chapman v. Upstate RV & Marine*, 364 S.C. 82, 89, 610 S.E.2d 852, 856 (Ct. App. 2005). Defendant has not provided any compelling reasons to justify invading the jury's province for a new trial absolute. Accordingly, Defendant is not entitled to a new trial absolute.

III. Thirteenth Juror Doctrine

Defendant moves for a new trial absolute pursuant to the Thirteenth Juror doctrine on the grounds that the evidence does not support nor justify the verdict. "The thirteenth juror doctrine is a vehicle by which the trial court may grant a new trial absolute when he finds that the evidence does not justify the verdict. This ruling has also been termed granting a new trial upon the facts. The effect is the same as if the jury failed to reach a verdict. The judge as the thirteenth juror "hangs" the jury." *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990). There were clearly factual issues the jury considered and resolved those in favor of Plaintiff. The evidence supports the verdict. Accordingly, Defendant's motion for a new trial absolute based upon the Thirteenth Juror Doctrine is denied.

IV. *Nisi Remittitur*

The consideration for a motion for a new trial nisi remittitur requires the trial judge to consider the adequacy of the verdict in light of the evidence presented. *Proctor v. Dep't of Health & Envtl. Control*, 368 S.C. 279, 628 S.E.2d 496 (Ct. App. 2006). The jury returned a verdict in favor of Plaintiff. In light of the factual issues presented, the jury weighed the evidence in favor of Plaintiff. The verdict was not reached as a result of caprice, passion, prejudice, partiality, or improper motives. The jury was properly charged, carefully considered the evidence, and returned a reasonable verdict. Accordingly, Defendant is not entitled to a *nisi remittitur*.

ORDER

After careful consideration of the record in this case and the submissions of the parties, Defendant's motions for Judgment Notwithstanding the Verdict (JNOV), New Trial Absolute, New Trial pursuant to the Thirteenth Juror Doctrine, and *Nisi Remittitur* are **DENIED**. Pursuant to Rule 59(f), oral argument is not necessary.



Richland Common Pleas

Case Caption: Keith L Montgomery vs Richland County , defendant, et al
Case Number: 2017CP4000329
Type: Order/Other

IT IS SO ORDERED!

s/ Alison Renee Lee

Electronically signed on 2018-04-17 16:27:32 page 4 of 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2017 CP 40 0329**Keith L. MontgomeryRichland County

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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

Verdict for Plaintiff \$48,000. Post trial motions to be filed within 10 days.

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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.

Circuit Court Judge Al Shree Lee Judge Code _____ Date 4/5/2018

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:

Mary Miles
ATTORNEY(S) FOR THE PLAINTIFF(S)

Robert Garfield
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Sherry Johnson

Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Keith L. Montgomery

Plaintiff,

v.

Richland County,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No. 2017-CP-40- 00329

VERDICT

WE, THE JURY, UNANIMOUSLY FIND FOR:

☒ **PLAINTIFF**

Forty - Eight thousands dollars (\$ 48,000 ,
Actual damages

☐ **DEFENDANT.**

Helen S. Johnson
Foreperson

Date: April 5, 2018

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

KEITH L. MONTGOMERY,

Plaintiff,

Vs.

RICHLAND COUNTY and ALVIN S.
GLENN DETENTION CENTER,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2014CP400

COMPLAINT

(Jury Trial Demanded)

(S.C. Tort Claim Act)

DOCKET NO.:

COMES NOW Keith L. Montgomery, Plaintiff in the above-styled and numbered cause, by and through his attorney, Mary P. Miles, Esquire, and files his Summons and Complaint against County of Richland and Defendant Alvin S. Glenn Detention Center thereof would show unto the Court the following matters and facts:

PARTIES AND JURISDICTION

1. The Plaintiff reiterates each and every allegation set forth above as fully and completely as if set forth verbatim herein.
2. Plaintiff was an inmate located in Alvin S. Glenn Detention Center in the County of Richland, and the State of South Carolina, and at all times during the occurrences described below, was an inmate at Alvin S. Glenn Detention Center.
3. At all times mentioned Defendant County of Richland is a county in the State of South Carolina and during business under the laws of South Carolina.
4. At all times mentioned Defendant Alvin S. Glenn Detention Center is a prison located at 201 John Mark Dial Dr, Columbia, South Carolina 29209 and organized under the laws of the

State of South Carolina. The Alvin S. Glenn Detention Center is an essential part of the Criminal Justice System in Richland County, South Carolina.

5. At all times mentioned, Defendant County of Richland is the owner of the tractor trailer and the employer of the supervisor that caused the Plaintiff's injury on March 26, 2013.

6. This action arises under the State of South Carolina Tort Claims Act Section 15-78-40. This Court is vested with jurisdiction and venue in the County of Richland and the State of South Carolina pursuant to the Act.

STATEMENT OF THE CASE

7. The Plaintiff reiterates each and every allegation set forth above as fully and completely as if set forth verbatim herein.

8. That on March 26, 2013 Plaintiff Keith Montgomery was a vulnerable inmate at Alvin S. Glenn Detention Center in the County of Richland, State of South Carolina.

9. That, upon information and belief, all of the Defendants herein are governmental entities, political subdivisions or agents for the State of South Carolina, County of Richland, as defined in the S.C. Tort Claims Act §15-78-10, et seq. and are subject to liability and suit pursuant to the S.C. Tort Claims Act.

10. That at all times mentioned herein, Plaintiff Keith Montgomery was an inmate at Alvin S. Glenn Correction Center on March 26, 2013.

11. That on January 17, 2013, Plaintiff was arrested and charged with a civil contempt order for non-child support and he was placed in the jail at the Alvin S. Glenn Detention Center.

12. That on March 26, 2013, the Plaintiff was assisted a Supervisor, Mr. Taylor, at the Alvin S.

Detention Center to load a lawn mower onto a 18 wheeler tractor trailer when the steel sliding door on the tractor trailer came down on Plaintiff's back as he stood on the exterior of the 18 wheeler tractor trailer.

13. That the Supervisor, Mr. Taylor, got into the driver side of the 18 wheeler tractor trailer while he was talking on his mobile phone.

14. That Mr. Taylor cranked the tractor trailer up steel sliding door came down while Plaintiff was standing on the 18 wheeler tractor trailer under the steel sliding door.

15. That Plaintiff is informed and believes that Mr. Taylor was distracted with his mobile phone conversation that he did not take precautions to look where the inmates were before he caused the steel sliding door on the 18 wheeler tractor trailer to come crashing down on Plaintiff's back.

16. That on March 26, 2013, Plaintiff suffered severe injuries to his back as the result of the collision of the steel sliding door on Plaintiff's back.

17. That Plaintiff was taken to medical at the infirmary at Alvin S. Glenn Detention Center with complaints of headache and back pains.

18. Plaintiff made numerous requests for continuing medical attention to no avail up to his release from the Alvin S. Glenn Detention Center on April 17, 2013.

A FIRST CAUSE OF ACTION

(Negligence under South Carolina Tort Claims Act)

19. The Plaintiff reiterates each and every allegation set forth above as fully and completely as if set forth verbatim herein.

20. That Defendants by virtue of Chapter 78, Title 15 of the South Carolina Code of laws are responsible for the conduct alleged above and as set forth more fully below.

21. That as the resulting harm to Plaintiff as well as the conduct of its agents, servants and/or employees acting with the course of their employment is neglect, grossly negligent, willful and reckless.

22. That Defendants hired Supervisor Taylor and he is the agent of Defendants.

23. That Mr. Taylor caused a steel door on the 18 wheeler trailer truck to come down and crashed onto Plaintiff's back on March 26, 2013.

24. That Plaintiff is informed and believes that Supervisor Taylor was distracted by his conversation on his mobile phone and neglected to watch out for the safety of Plaintiff prior to Mr. Taylor cranking up the 18 wheeler tractor trailer.

25. That Plaintiff was performing his assignment to assist with the loading of the lawn mow unto the 18 wheeler tractor trailer.

26. That Supervisor Taylor was aware at all times that Plaintiff was an inmate assigned to assist Supervisor Taylor with the loading of the lawn mow unto the 18 wheeler tractor trailer.

27. That the Plaintiff is informed and believes that at the time referred to herein, the Defendants were negligent, careless, wanton, reckless or grossly negligent, in at least in of the following ways:

- a. The failure to hire adequate and proper personnel'
- b. The failure to properly and adequately train employees and personnel;
- c. The failure of Defendants' employee to take steps to protect inmates assigned;
- d. In failing to maintain a proper lookout;

- e. Not controlling the 18 wheeler tractor trailer's steel door;
- f. Not maintaining the vehicle under proper control;
- g. Failing to exhibit the degree of care that a reasonably prudent person would have exhibited under the prevailing circumstances; and/or
- h. Failing to yield the Right-a-way of a pedestrian.

Any and all of which were in violation of the laws of South Carolina

28. That the Defendants at all time material herein was negligent, careless, willful, wanton, grossly negligent and reckless in providing and entrusting the operation and control of its motor vehicle.

29. That Defendant's employee was careless, negligent, willful, wanton, grossly negligent and/or reckless in the operation of his motor vehicle.

30. That as a direct and proximate result of the acts and the omissions of the Defendants, the Plaintiff suffered personal injuries, and has been caused to endure unnecessary physical pain and suffering, mental anguish and emotional distress, and forced to incur medical, hospital and therapy expenses, and lost wages. The Plaintiff will continue to experience pain and suffering in the future.

31. That as a result of said injuries the Plaintiff has received and in the future will continue to receive medical treatment from health care providers.

32. That the Plaintiff is informed and believes that he is entitled to recover compensation and all other damages from the Defendants.

A SECOND CAUSE OF ACTION

(Deliberate Indifference)

33. The Plaintiff reiterates each and every allegation set forth above as fully and completely as if set forth verbatim herein.

34. That Plaintiff was released and discharged still in pain with some pain medication from Alvin S. Glenn Detention Center on Wednesday, April 17, 2013.

35. That Plaintiff was in confusion and had a contusion but Defendants provided Plaintiff with no proper x-rays or MRI to locate the extent of Plaintiff's injuries.

36. That Plaintiff is informed and believes that Defendants caused Plaintiff's physical and mental condition to worsen due to the Defendants' deliberate indifference to Plaintiff's medical care while he was incarcerated at Alvin S. Glenn Detention Center.

37. That Plaintiff continued to complain to Defendants about headaches, shoulders, back, neck, and pains with no avail before his release and after his release from Alvin S. Glenn Detention.

38. That Plaintiff is informed and believes that due to the neglect of Defendants his recovery has been prolonged from the accident on March 26, 2013

39. That Plaintiff is informed and believes that Defendants owed Plaintiff a duty to provide a safe place and to provide appropriate medical care to inmates in the detention center.

40. That Plaintiff is informed and believes that as the result of Defendants' deliberate indifference Plaintiff has permanent injuries.

FOR A THIRD CAUSE OF ACTION

(Negligence and Damages)

41. The Plaintiff reiterates each and every allegation set forth above as fully and completely as if set forth verbatim herein.

42. The Defendants were the owner of the 18 wheeler tractor trailer and the employer of the driver of the 18 wheeler tractor trailer that caused the steel door to collide with Plaintiff's back on March 26, 2013.

43. The Plaintiff is informed and believes that Defendants' driver was aware of or should have been aware of a dangerous condition and did not take any action to minimize or avoid danger to Plaintiff which constitutes clear and convincing evidence of negligence, gross negligence, recklessness, willfulness, and wantonness, including not limited to in the following particulars:

a. Defendants' employee caused the steel door to drop down on Plaintiff with such severe force where Plaintiff was standing on the exterior of the 18 wheeler tractor trailer that injured Plaintiff.

b. As a result of Defendants' employee failure to look before he cranked the 18 wheeler tractor trailer, Plaintiff was injured.

c. That Defendants' employee failed to provide Plaintiff with adequate medical care after the accident on March 26, 2013.

d. Plaintiff is informed and believes that he had to seek medical treatments and doctors' care as the result of Defendants actions and omissions that caused Plaintiff's prolonged recovery.

45. That the Plaintiff is informed and believes that at the time referred to herein, the Defendants conduct had a severe impact that caused Plaintiff's injuries.

46. That Defendants were negligent, careless, wanton, reckless or grossly negligent, in at least one of the following ways:

m. In other such particulars as the evidence may show.

46. That as a direct and proximate result of the acts and the omissions of the Defendants of Richland County, Plaintiff suffered personal injuries, and have been caused to endure unnecessary physical pain and suffering, mental anguish and emotional distress, and forced to incur medical, hospital and therapy expenses, and lost wages. The Plaintiff will continue to experience pain and suffering in the future.

47. That as a result of said injuries Plaintiff has received and in the future will continue to receive medical treatment from health care providers.

48. That the Plaintiff is informed and believes that he is entitled to recover compensation and punitive damages from the Defendants.

FOR A FOURTH CAUSE OF ACTION
(Negligence- Infliction of Emotional Distress)

49. Plaintiff is informed and believes that it was reasonably foreseeable to the Defendants that the Plaintiff would suffer emotional distress.

50. The Plaintiff's injuries and omission of medical care and comfort to rest from his pains to his head, neck, and back was foreseeable to cause Plaintiff's emotional distress from the accident and lack of care from Defendants.

51. The seriousness of the Plaintiff's injuries caused Plaintiff's emotional distress.

52. Plaintiff's physical injury resulting from the accident on March 26, 2013 and lack of care were reasonably foreseeable that the Plaintiff would suffer emotional distress.

53. Plaintiff is informed and believes that he is entitled to damages for emotional distress as the result of Defendants' actions or omission of proper actions.
54. The Defendants' negligence, gross negligence, recklessness, willfulness, and wantonness created Plaintiff's physical injuries and mental distress.
55. The Plaintiff has suffered permanent impairment of health, mental, and bodily efficiency.
56. That at all times since the accident Plaintiff has suffered and will continue to suffer great pain and mental anguish.
57. Plaintiff is informed and believes that he should be compensated for such other and further particulars as may be found through discovery or trial.

WHEREFORE, Plaintiff demand judgment against Defendants County of Richland and Alvin S. Glenn Detention Center for actual and punitive damages to be determined by the Court as will fully compensate Plaintiff for his injuries and damages, for the costs of this action, and for such other relief as this Court deems just and equitable.

Plaintiff requests judgment against Defendant:

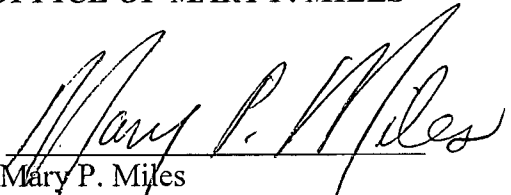
1. In the amount of \$300,000, as damages;
2. Awarding Plaintiff the costs of this action;
3. Awarding Plaintiff future medical expenses;
4. Awarding compensation for Plaintiff's lack of enjoyment of life;
5. Awarding punitive compensation for Plaintiff; and
6. Granting Plaintiff such other and further relief as the Court deems just and proper.

(Signature Block on Next Page)

Respectfully Submitted,

LAW OFFICE OF MARY P. MILES

By:



Mary P. Miles
440 Knox Abbott Drive, Ste. 360
Cayce, South Carolina 29033
803-939-1177 Office
803-939-1000 Fax
Attorney for Plaintiff
Bar No. 14331

October 9, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Keith L. Montgomery,)

Plaintiff,)

v.)

Richland County and Alvin S. Glenn)
Detention Center,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 14-CP-40620

17-0329

ANSWER ON BEHALF OF DEFENDANTS
RICHLAND COUNTY AND ALVIN S.
GLENN DETENTION CENTER

(Jury Trial Demanded)

The Defendants Richland County and Alvin S. Glenn Detention Center hereby answer
the Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. The Plaintiff's Complaint fails to state facts sufficient to constitute a cause of
action against the Defendants, and therefore, the Defendants must be dismissed pursuant to Rule
12(b)(6), SCRPC.

FOR A SECOND DEFENSE

2. The Defendants deny each and every allegation of the Plaintiff's Complaint not
hereinafter specifically admitted, qualified, or explained.

3. As to Paragraph 1 of the Plaintiff's Complaint, the Defendants reiterate and
reallege each and every paragraph and affirmative defense as if set forth herein verbatim.

4. As to Paragraph 2 of the Plaintiff's Complaint, the Defendants admit only that at
the time of the events complained of in the Plaintiff's Complaint, the Plaintiff was a detainee
being held at the Alvin S. Glenn Detention Center.

JTB
#1

SCANNED

RICHLAND COUNTY
FILED
2017 JAN 19 AM 10:12
JEANETTE W. MCBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED
2017 NOV 26 PM 12:17
JEANETTE W. MCBRIDE
C.C.P. & G.S.

5. As to Paragraphs 3 and 4 of the Plaintiff's Complaint, the Defendants admit only that Richland County is a political subdivision of the State of South Carolina in accordance with the laws of the State of South Carolina, including the terms and limitations of the South Carolina Tort Claims Act, S.C. Code Ann. §§ 15-78-10 *et. seq.*, and would crave reference thereto. The Defendants would further admit that the Alvin S. Glenn Detention Center exists as a department of Richland County, but is not itself a separate legal entity.

6. As to Paragraph 5 of the Plaintiff's Complaint, the Defendants deny same as stated and demand strict proof thereof.

7. As to Paragraph 6 of the Plaintiff's Complaint, the Defendants would allege that such allegations are jurisdictional in nature and therefore do not require a response from the Defendants.

8. As to Paragraph 7 of the Plaintiff's Complaint, the Defendants reiterate and reallege each and every paragraph and affirmative defense as if set forth herein verbatim.

9. As to Paragraph 8 of the Plaintiff's Complaint, the Defendants would admit only that the Plaintiff was a detainee being held at the Alvin S. Glenn Detention Center on March 26, 2013. As to the remaining allegations contained in Paragraph 8, the Defendants deny same and demand strict proof thereof.

10. As to Paragraph 9 of the Plaintiff's Complaint, the Defendants admit only that Richland County is a political subdivision of the State of South Carolina in accordance with the laws of the State of South Carolina, including the terms and limitations of the South Carolina Tort Claims Act, S.C. Code Ann. §§ 15-78-10 *et. seq.*, and that the Alvin S. Glenn Detention Center exists as a department of Richland County, but is not itself a separate legal entity.

JTB
#2

11. As to Paragraph 10 of the Plaintiff's Complaint, the Defendants would admit that the Plaintiff was a detainee being held at the Alvin S. Glenn Detention Center on March 26, 2013

12. As to Paragraph 11 of the Plaintiff's Complaint, the Defendants would admit only that on or about January 17, 2013, the Plaintiff was lawfully booked into the Alvin S. Glenn Detention Center pursuant to a Family Court Rule to Show Cause Order for failure to pay child support.

13. As to Paragraphs 12, 13, 14, 15, and 16 of the Plaintiff's Complaint, the Defendants deny same as stated and demand strict proof thereof.

14. As to Paragraph 17 of the Plaintiff's Complaint, the Defendants crave reference to the medical records as the best evidence of any medical treatment provided to the Plaintiff. Any allegations contrary to these records are expressly denied.

15. As to Paragraph 18 of the Plaintiff's Complaint, the Defendants deny same as stated and demand strict proof thereof.

16. As to Paragraph 19 of the Plaintiff's Complaint, the Defendants reiterate and reallege each and every paragraph and affirmative defense as if set forth herein verbatim.

17. As to Paragraphs 20 and 21 of the Plaintiff's Complaint, the Defendants would allege that such allegations attempt to establish legal conclusions, which require no response on the part of the Defendants. In so far as these allegations attempt to establish liability on the part of the Defendants, the Defendants deny same and demand strict proof thereof.

18. As to Paragraph 22 of the Plaintiff's Complaint, the Defendants would admit only that Johnnie Taylor was an employee of Richland County and worked at the Alvin S. Glenn Detention Center on March 26, 2013.

JTB
#3

19. As to Paragraphs 23 and 24 of the Plaintiff's Complaint, the Defendants deny same as stated and demand strict proof thereof.

20. As to Paragraphs 25 and 26 of the Plaintiff's Complaint, the Defendants would admit only that the Plaintiff performed tasks as an inmate worker during the time that he was being held at the Alvin S. Glenn Detention Center. In so far as these allegations attempt to establish liability on the part of the Defendants, the Defendants deny same and demand strict proof thereof.

21. As to Paragraph 27 of the Plaintiff's Complaint, including all of its subparts, the Defendants deny same as stated and demand strict proof thereof.

22. As to Paragraphs 28, 29, and 30 of the Plaintiff's Complaint, the Defendants deny same as stated and demand strict proof thereof.

23. As to Paragraph 31 of the Plaintiff's Complaint, the Defendants crave reference to the medical records as the best evidence of any medical treatment received by the Plaintiff. Any allegations contrary to these records are expressly denied.

24. As to Paragraph 32 of the Plaintiff's Complaint, the Defendants deny same and demand strict proof thereof.

25. As to Paragraph 33 of the Plaintiff's Complaint, the Defendants reiterate and reallege each and every paragraph and affirmative defense as if set forth herein verbatim.

26. As to Paragraph 34 of the Plaintiff's Complaint, the Defendants would admit only that on or about April 17, 2013, the Plaintiff was released from the custody of the Alvin S. Glenn Detention Center.

27. As to Paragraphs 35, 36, 37, and 38 of the Plaintiff's Complaint, the Defendants deny same as stated and demand strict proof thereof.

28. As to Paragraph 39 of the Plaintiff's Complaint, the Defendants would allege that such allegations attempt to establish legal conclusions, which require no response on the part of the Defendants. In so far as these allegations attempt to establish liability on the part of the Defendants, the Defendants deny same and demand strict proof thereof.

29. As to Paragraph 40 of the Plaintiff's Complaint, the Defendants deny same and demand strict proof thereof.

30. As to Paragraph 41 of the Plaintiff's Complaint, the Defendants reiterate and reallege each and every paragraph and affirmative defense as if set forth herein verbatim.

31. As to Paragraph 42 of the Plaintiff's Complaint, the Defendants deny same as stated and demand strict proof thereof.

32. As to Paragraph 43 of the Plaintiff's Complaint, including all of its subparts, the Defendants deny same as stated and demand strict proof thereof.

33. The Defendants assert that there is no Paragraph 44 in the Plaintiff's Complaint.

34. As to Paragraph 45 of the Plaintiff's Complaint, the Defendants deny same and demand strict proof thereof.

35. As to the first Paragraph 46 of the Plaintiff's Complaint, including all of its subparts, the Defendants deny same and demand strict proof thereof.

36. As to the second Paragraph 46 of the Plaintiff's Complaint, the Defendants lack sufficient information upon which to form a belief as to the truth and veracity of same and, therefore, deny same and demand strict proof thereof.

37. As to Paragraph 47 of the Plaintiff's Complaint, the Defendants crave reference to the medical records as the best evidence of any medical treatment received by the Plaintiff. Any allegations contrary to these records are expressly denied.

JTB
#5

38. As to Paragraph 48 of the Plaintiff's Complaint, the Defendants deny same and demand strict proof thereof.

39. As to Paragraphs 49, 50, 51, and 52 of the Plaintiff's Complaint, the Defendants would allege that such allegations attempt to establish legal conclusions, which require no response on the part of the Defendants. In so far as these allegations attempt to establish liability on the part of the Defendants, the Defendants deny same and demand strict proof thereof.

40. As to the first Paragraph 53 and 54 of the Plaintiff's Complaint, including all of its subparts, the Defendants deny same and demand strict proof thereof.

41. As to the second Paragraph 55 and 56 of the Plaintiff's Complaint, the Defendants lack sufficient information upon which to form a belief as to the truth and veracity of same and, therefore, deny same and demand strict proof thereof.

42. As to Paragraph 57 of the Plaintiff's Complaint, the Defendants deny same and demand strict proof thereof.

43. As to the unnumbered Paragraph of the Plaintiff's Complaint beginning "WHEREFORE," including all of its subparagraphs, the Defendants would deny same and demand strict proof thereof. The Defendants deny that the Plaintiff is entitled to the relief requested, or any other relief, from the Defendants.

FOR A THIRD DEFENSE

44. The Defendants would allege that such claims brought by the Plaintiff are governed by the terms and conditions (including immunities and statutory limitations) applicable to claims against governmental entities and therefore would plead the South Carolina Tort Claims Act, Section 15-78-10 *et seq.* of the Code of Laws, as a bar to this action.

JTB
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FOR A FOURTH DEFENSE

45. The Defendants are immune from suit pursuant to the South Carolina Tort Claims Act, South Carolina Code Ann. Section 15-78-10 *et seq.*, specifically S.C. Code Ann. § 15-78-60(4), (5), (6), (14), (15), and (20).

FOR A FIFTH DEFENSE

46. The Defendant would allege that any and all claims for punitive damages are barred by the common law of the State of South Carolina and the terms, conditions, and limitations of the South Carolina Tort Claims Act, §§ 15-78-10 *et seq.*, of the Code of Laws of the State of South Carolina.

FOR A SIXTH DEFENSE

47. The Defendants, upon information and belief, alleges that any injuries or damages allegedly suffered by the Plaintiff, without admitting same to be true, were due to and caused entirely by the negligence of Plaintiff, or the negligence of Plaintiff, which is more than the negligence of the Defendants, if any, and that such is a complete bar to the Plaintiff's recovery herein. Further, the Defendants, upon information and belief, allege that if the negligence of Plaintiff was less than the negligence of the Defendants, if any, that such negligence should be compared to that negligence of the Defendants, so as to apportion the relative fault as to each party.

FOR A SEVENTH DEFENSE

48. To the extent that this action is barred by the exclusivity provision of the South Carolina Workers' Compensation Statute, S.C. Code Ann. § 42-1-540, this action must be dismissed.

JTB
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FOR AN EIGHTH DEFENSE

49. The Defendants would allege, upon information and belief, that any injury or damages alleged in the Plaintiff's Complaint, without admitting same to be true, were due to, occasioned by, or caused by intervening acts of omission or commission on the part of someone other than the Defendants, without which acts and/or omissions the Plaintiff would not have sustained any injuries or damages as set forth in the Plaintiff's Complaint, all of which the Defendants plead as a bar to this action.

FOR A NINTH DEFENSE

50. The Defendants would allege, upon information and belief, that during the performance or nonperformance of its employees' duties, its employees were not guilty of corruption, bad faith, or malicious motives. Moreover, at all times referenced in the Plaintiff's Complaint, the Defendant's employees were exercising their discretionary authority as public employees and officers and were acting in good faith, and therefore, the Defendants are immune from suit.

FOR A TENTH DEFENSE

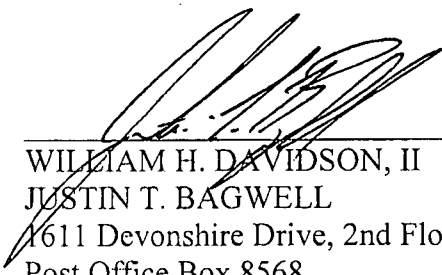
51. The Plaintiff has failed to properly mitigate his damages, if any, and therefore, one or more of the Plaintiff's claims are barred in whole or in part by such failure.

JTB
#8

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WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendants Richland County and Alvin S. Glenn Detention pray that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

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*Attorneys for Defendants Richland County
and Alvin S. Glenn Detention Center*

Columbia, South Carolina
November 21, 2014

JTB
#9

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No. 17-CP-40-0329
	)	
Keith L. Montgomery,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Richland County,	)	
	)	
Defendant.	)	
_____	)	

**NOTICE OF MOTION AND MOTION FOR JUDGMENT
NOTWITHSTANDING VERDICT, OR ALTERNATIVELY, MOTION
FOR NEW TRIAL ABSOLUTE, OR ALTERNATIVELY, MOTION FOR
NEW TRIAL NISI REMITTITUR ON BEHALF OF DEFENDANT**

TO: THE HONORABLE ALISON R. LEE

MARY P. MILES, ESQ., COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for the Defendant, Richland County, hereby moves before the Honorable Alison R. Lee at the Richland County Judicial Center, Columbia, South Carolina, at such time and place as may be set by the Court, for an order, pursuant to Rule 50, SCRCP, granting a judgment notwithstanding the verdict. In the alternative, the Defendant respectfully requests, pursuant to Rule 59, SCRCP, that the Court grant the Defendant a new trial absolute, or alternatively, a new trial nisi remittitur.

The Defendant's motion is based upon the following grounds:

1. The Defendant is entitled to judgment notwithstanding the verdict because there was no evidence to support a finding that Johnnie Taylor, the employee of the

Defendant, acted with gross negligence at the relevant times. In Plaintiff's trial testimony, he described that an "accident" took place involving Taylor driving a light duty truck with a flatbed trailer in tow. At such time, a portion of the trailer impacted with an open door to a storage shed, thus causing the shed door to abruptly swing inward and injure Plaintiff. There was no additional testimony describing the mechanics of the "accident."¹ Such testimony is neither indicative nor does it infer evidence of gross negligent conduct. See, *Bass v. South Carolina Dept. of Social Services*, 414 S.C. 558, 780 S.E.2d 252, 258-259 (2015) (citations omitted)("Gross negligence is the intentional conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do."); see, also, *Etheredge v. Richland Sch. Dist. One*, 341 S.C. 307, 310, 534 S.E.2d 275, 277 (2000) ("(Gross negligence) is the failure to exercise slight care.") The Defendant submits that, if the issue at trial had been ordinary negligence, the evidence presented at trial might yield more than one inference as to whether Taylor acted in such manner. However, there is no evidence for which to support the contention that Taylor's acts or omissions rose to the level of an **intentional conscious** failure or that he failed **to exercise slight care**.

2. The Defendant moves for a new trial absolute due to the Court's precluding testimony and evidence concerning Plaintiff's previous detention center incarcerations, and specifically, the criminal offenses in which Plaintiff was charged during his respective bookings. By way of explanation and in accordance with SCRE 608(c), Plaintiff was cross-examined as to his previous bookings at the detention center to impeach him as to potential

¹ Otherwise, Plaintiff testified that he observed Taylor speaking on his hand-held radio while in the truck at some point before and/or after the impact; but failed to see Taylor or the truck at the time of impact. In conformity with the evidence, Plaintiff's back was turned in the other direction and/or whose view was obstructed by the door itself and therefore was not in position to see whether the Defendant's employee was actually on the radio at the time of the impact.

bias, prejudice, or motive to misrepresent the facts. Plaintiff's counsel never objected to this line of questioning. Subsequently and during redirect examination, Plaintiff was asked by his counsel whether his prior bookings at the Alvin S. Glenn Detention Center related solely to child support or family court contempt matters. Plaintiff responded in the affirmative. The Defendant submits that such questioning by counsel clearly opened the door to the introduction of evidence rebutting the contention that Plaintiff's detention history exclusively involved child support-related matters. The undersigned was thereafter denied re-examination that would have challenged the Plaintiff's truthfulness. Consequently, this Court should have permitted Defendant to show that the testimony elicited by Plaintiff's counsel was untrue by questioning Plaintiff as to the nature of his previous bookings (*i.e.*, identifying various felonies or misdemeanors) at the Alvin S. Glenn Detention Center.

3. The Defendant moves for a new trial absolute based upon the Thirteenth Juror doctrine. "Under the 'thirteenth juror' doctrine, a trial judge may grant a new trial absolute when he finds the evidence does not justify the verdict. This ruling has also been termed a granting of a new trial upon the facts." *See, Vinson v. Hartley*, 324 S.C. 389, 477 S.E.2d 715, 722 (Ct. App. 1996). "[T]he trial judge is the thirteenth juror, possessing the veto power to the Nth degree." *Id.* "The trial judge, sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated on the basis of the facts in the case." *Id.* As discussed above, the Defendant submits that the evidence presented in this case does not support nor justify the jury's verdict. Plaintiff did not present evidence to support a verdict of \$48,000 in actual damages. As a result, a new trial absolute should be granted.

4. The Defendant is entitled to a new trial absolute because the verdict is grossly excessive based on the nature of the evidence of damages presented. Plaintiff presented evidence of \$7,414.28 in medical bills. There was clearly a lack of evidence

throughout trial to support the jury's verdict, the verdict was clearly based on caprice, passion, prejudice, partiality, or other improper motives.

5. Assuming *arguendo* that the verdict was not the result of passion, caprice, prejudice, or matters outside the evidence, it was at least excessive and the Defendant submits that it is entitled to a remittitur. The undue liberality of the verdict -- over sixfold the amount of medical bills admitted in evidence -- is patently obvious in light of the subjective nature of testimony describing in moderated terms his pain and suffering and loss of enjoyment of life arising from the alleged impact with the door.

Respectfully submitted,

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Counsel for the Defendant

Columbia, South Carolina

April 16, 2018

ORAL ARGUMENT REQUESTED

1 State of South Carolina Court of Common Pleas
2 County of Richland Fifth Judicial Circuit
3
4 Keith L. Montgomery,) Transcript of Record
5 Plaintiff,)
6 vs.) 2017-CP-40-00329
7 Chance Poole,)
8 Defendant.)

9
10 April 4th - 5th, 2018
11 Columbia, South Carolina
12

13 B E F O R E:

14 The Honorable Alison R. Lee, Judge
15

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

17 Mary P. Miles, Esquire

18 On behalf of the Plaintiff
19

20 Robert D. Garfield, Esquire

21 On behalf of the Defendant
22

23 Stacy S. Johnson
24 Circuit Court Reporter
25

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1 (The following proceedings were held April 4, 2018,
2 beginning at 9:39 AM.)

3 **BAILIFF:** All rise. Court come to order.

4 **THE COURT:** Good morning, everyone. Be seated.

5 **MS. MILES:** Good morning, Your Honor. May I
6 approach?

7 **THE COURT:** Yes. I don't have any voir dire or any
8 requests to charge or any information. My law clerk is on
9 vacation this week, so.

10 **MR. GARFIELD:** We'll take care of that, Your Honor.
11 We filed these this morning just to make sure it's in the
12 court record and I've got copies for Your Honor and
13 opposing counsel.

14 **THE COURT:** Thank you.

15 **MR. GARFIELD:** And good morning by the way.

16 **THE COURT:** Good morning. You've got voir dire? Oh,
17 I've got a copy. Okay. Witness list?

18 **MR. GARFIELD:** The witnesses, what I did was in an
19 abundance of precaution, Judge, I just put down all of the
20 witnesses that were identified in both parties' responses
21 to discovery. With me here today, and just so the Court
22 will know, is Michael Smith. He's the facility services
23 manager at the detention center. We may put him up as a
24 witness if the need arises.

25 **THE COURT:** I'm sorry, what was that again?

1 **MR. GARFIELD:** It's Michael Smith.

2 **THE COURT:** Okay.

3 **MR. GARFIELD:** And he was identified in discovery as
4 well. And my client representative today is Lauren Hogan.
5 She's the assistant county attorney. She's not a witness,
6 but she'll be with me at counsel table.

7 **THE COURT:** Okay. And just for the record, this is
8 Docket Number 2017-CP-40-00329. Keith L. Montgomery versus
9 Richland County and Alvin S. Glenn Detention Center. The
10 Plaintiff is represented by Mary Miles. The Defendant is
11 represented by Robert Garfield.

12 Is Officer Taylor going to testify?

13 **MR. GARFIELD:** No, we cannot anticipate so, Your
14 Honor.

15 **THE COURT:** Is there anything that we need to take up
16 before we bring the jury in?

17 **MR. GARFIELD:** Your Honor, there's one probable
18 housekeeping matter that may assist the Court before the
19 jury comes in and then other than that we have a pending
20 motion, motion to amend, and also a motion in limine, but
21 that doesn't necessarily need to -- I don't know how the
22 Court wants to proceed with those in light of the jury
23 coming in.

24 The housekeeping matter I think might assist
25 everybody. The complaint in this case was brought against

1 two party defendants, one being Richland County and the
2 other Alvin S. Glenn Detention Center. As we raised in
3 our answer, and the Court I'm sure is aware, that Alvin S.
4 Glenn Detention Center is not a legal entity. The
5 appropriate party defendant in this case based under the
6 Tort Claims Act would be Richland County, as a Government.

7 Instead of Your Honor referring throughout the trial,
8 and perhaps all of us referring to the Defendants, it's
9 really the Defendant, because it's undisputed in this case
10 that it was a Richland County employee, Johnny Taylor, who
11 was involved in relevant events and he was acting within
12 the scope of his duties and, therefore, the County should
13 be the Defendant. I didn't know if I could get a consensus
14 on that before we proceed and also not to confuse the jury
15 as well.

16 **THE COURT:** Ms. Miles?

17 **MS. MILES:** I have no objection. It's just for
18 clarity because I was under the impression that Alvin Glenn
19 had gone under -- as an entity by itself, so now you're
20 saying that it's the County itself? I'm confused a little.

21 **MR. GARFIELD:** Well, yes, ma'am. For clarification,
22 Richland County owns and operates all -- you know, not
23 only do they operate the -- what used to be the Richland
24 County Detention Center and is now the Alvin S. Glenn
25 Detention Center, but they fund it, they own it, they

1 operate it, and all of its employees come under the
2 County. The detention center, similar as the Richland
3 County Sheriff's Department, does not exist as a legal
4 entity. That would have been Richland County or the
5 Richland County Sheriff in his official capacity, just by
6 analogy. But to say that Alvin S. Glenn Detention Center,
7 if there was a verdict against it as a Defendant, it
8 wouldn't be recoverable because it's just not simply a
9 legal entity. We would move for that at least at the
10 directed verdict stage and ask the Court to take judicial
11 notice that the County would be the appropriate sole party
12 defendant given the acts or omissions that are alleged here
13 based on a county employee that's Johnny Taylor or county
14 employees that were under the guise of the County.

15 **MS. MILES:** I put recovery in a different perspective,
16 so -- or damages in a different perspective, so I have no
17 recourse at this time.

18 **THE COURT:** Well, and as I understand it, since it's
19 not a separate legal entity for purposes of being able to
20 satisfy any judgment in the event that there is one, it
21 would be the County function, so.

22 **MS. MILES:** Yes, Your Honor.

23 **THE COURT:** So, I guess, you can still talk about the
24 detention center --

25 **MS. MILES:** Yes.

1 **THE COURT:** -- but the legal entity is Richland
2 County.

3 **MS. MILES:** Richland County. Yes, Your Honor.

4 **MR. GARFIELD:** Thank you, Your Honor.

5 **THE COURT:** Anything else we need to talk about before
6 we -- well, we have motions in limine. Let's go ahead and
7 take those up because once the jury comes up I'd like to
8 begin the voir dire.

9 **MR. GARFIELD:** Yes, ma'am. Thank you.

10 May it please the Court? Our first motion in limine
11 -- or actually this should be our only motion in limine,
12 and this particular instance centers on the medical bills
13 that we understand or anticipate the Plaintiff putting
14 up in this case. And I don't have any medical bills
15 premarked. I do have an attachment to an e-mail that
16 Ms. Miles sent me last week and if she would like at any
17 time to supplement to provide for perhaps identification
18 exhibits, I'd gladly go ahead and use that instead of what
19 I have, but I'm just gonna hand up, Your Honor, these are
20 the anticipated medical bills.

21 The facts that gave rise to the suit was on March 24,
22 2013, in which the Plaintiff was an inmate trustee at the
23 Alvin S. Glenn Detention Center. He was on a work detail
24 and he assisted apparently with loading lawnmowers on a
25 flatbed to take to public works for repair and this lawsuit

1 is about his claiming that he was hurt when a door on a
2 storage unit struck him and he received injuries. He was,
3 again, as I said, an inmate trustee. I understand that he
4 was in there for administrative matters on this instance
5 for nonsupport, but when he was released he went to private
6 medical carriers.

7 And as Your Honor can see, this is really just sort
8 of my notes on this because I was trying to make heads or
9 tails, and I can just provide this for the Court so we can
10 all be on the same page. And I'm just showing Ms. Miles
11 just kind of a write-up of the different entities that --
12 that he went to. And this is just my handwritten notes
13 and if I'm incorrect about any of this Ms. Miles I'm sure
14 will correct me.

15 The first profession he went to was -- I'm not going
16 to even disrespect an attempt to --

17 **MS. MILES:** It's Dr. Z.

18 **MR. GARFIELD:** Dr. -- well, it's -- we call him Dr. Z
19 -- or the Plaintiff calls him Dr. Z. I don't want to chop
20 up his name. It may be Dr. Zgleszewski. And the Plaintiff
21 went to Dr. Z for it looked like three office visits and
22 perhaps three, four, five times he received services, and
23 that would have been between May and June of 2013. So
24 we're talking about the first stint in which he sought
25 medical treatment and care would have been in the immediate

1 aftermath of being released and the allegations in this
2 case and you will see that the last time that he obtained
3 any kind of services from Dr. Z was in June of 2013.

4 Your Honor, inexplicably there is a nine-month gap
5 between June of 2013 and March of 2014 in which he sought
6 any other kind of care or treatment with respect to the
7 issues that he claims in this case. And Your Honor can see
8 that -- and I'm kind of gonna skip around, but I'm going
9 chronologically. He went for an imaging study, had an MRI
10 conducted in March of 2014. March 11th. He went back to
11 Dr. Z it looked like sometime in April of 2014, and then
12 we're talking about a series of doctor's visits with
13 another doctor named Dr. Buncher that went on from August
14 of 2014 to October of 2014.

15 Our motion in limine, Your Honor, is that we would
16 respectfully move to strike or preclude evidence or
17 testimony concerning certain medical bills. Now I do see
18 in my familiarization with these kind of cases, if he
19 wants to take his medical bills and testify on the stand
20 that these are my bills and they were reasonable and
21 necessary bills that were incurred as a result of these
22 events, clearly he could say that the ones in May and
23 June of 2013 for these soft tissue-related injuries, that
24 he could testify to, but once we start talking about
25 getting into 2014, there were additional services in

1 April of 2014 that in his deposition he was unable to
2 explain why there was a nine-month gap in doing so.
3 There's no evidence or testimony from any medical
4 professional that he had to go back and receive additional
5 or supplemental medical treatments as a result of this.
6 We understand he's not gonna put any doctors up, no expert
7 testimony.

8 And just by way of example, you can see this imaging
9 study and you can -- and this is directly from Ms. Miles's
10 bill, on March 11th of 2014, he had two MRIs, a lumbar
11 spine and a thoracic spine MRI. Now, once again, this
12 was a year after the events in question and then, again,
13 I just frankly don't understand why he'd have a second
14 lumbar spine in August of 2014. Now there may very well
15 be medically-related explanations for this, but for --
16 Your Honor will charge the jury that the jury could only
17 weigh and consider those bills that are considered
18 reasonable and necessary without any expert testimony or
19 medical testimony to say that these bills are directly
20 related to these events -- or the treatment was related to
21 the complaints in these events and the bills themselves
22 were reasonable and necessary. I don't believe that he's
23 entitled to get that in. I think under 403 he would --
24 at a minimum he would have to have some type of expert
25 testimony. It would confuse the issues for the jury. It

1 would certainly constitute legal prejudice for him to go
2 outside of his lane and just say that these are all my
3 bills attached. Again, there's a nine or ten-month gulf
4 and without any type of expert testimony beyond stating
5 that it was to a reasonable degree of medical certainty
6 most probably, which he does not have.

7 I think I just burned -- just so I could put this in
8 context, this is Judge Anderson's request to charge, and
9 certainly Your Honor's charge will take precedence over
10 this, but this does provide a little context and what
11 the argument is and this just states in personal injury
12 actions the general rule is that the plaintiff must
13 recover for the necessary and reasonable expenses caused
14 by the injury, such as the amounts necessarily incurred
15 for medicine and medical services, hospital expense care
16 and nursing. A person who suffers personal injury because
17 of the negligence of another is entitled to recover the
18 reasonable value of medical care and expenses incurred
19 for the treatment of the injuries to the time of trial.
20 And then this continues on my highlighted portion, the
21 plaintiff can only recover such sums as you determine
22 from the evidence to be both reasonable and necessary.
23 You must find only such sum which is reasonable and
24 necessary.

25 I think it's insufficient for him as a layman to

1 testify that these bills that would have been incurred
2 a year after the events took place was reasonable and
3 necessary. That needs to come from some type of medical
4 professional. Once again, if he wants to say these were
5 my bills, that's one thing, but I think he needs to go
6 ahead and satisfy that extra step, I think that's clearly
7 within the law, and for him to do so would really run
8 afoul of Your Honor's anticipated charge at the appropriate
9 time. We'd ask for the bills -- anything other than the
10 Dr. Z bills in May and June of 2013, which I think total
11 -- this was my poor math, \$7,480.88, that we would say
12 that at least it would be an issue of fact of whether
13 those were reasonable and necessary and we would exclude
14 all other bills that's been provided to us to date.

15 **THE COURT:** Ms. Miles.

16 **MS. MILES:** Your Honor, if I may, I'd like to
17 approach. These are the same documents, but I just
18 separated them.

19 **MR. GARFIELD:** Yes, ma'am.

20 **MS. MILES:** May I approach, Your Honor?

21 Your Honor, I think that the charge supports actually
22 our position in which that Mr. Montgomery can testify to
23 the fact of his injuries, as well as to the fact of why
24 he was able -- was not able to go back to the doctor for
25 a certain period of time. And also when it says here

1 elements of actual damages, it says recover the reasonable
2 value of medical care. He can testify to that as well as
3 to say that his expenses was so as we will introduce into
4 evidence.

5 Your Honor, this does not preclude him from being able
6 to testify to both reasonableness and necessary because he
7 will be able to testify to what actually was wrong with
8 him, his symptoms and his complaints, all the things that
9 was going on. It did not say in terms that accordingly a
10 plaintiff may recover amounts incurred for past and future
11 medical care, including hospital, physician and nursing
12 care cost, medicine and so forth. There's nothing in this
13 charge that says that a doctor -- that only a doctor would
14 be able to testify to whether or not Mr. Montgomery's
15 medical care was reasonable or whether it was necessary.
16 There's nothing in -- anywhere that would say that. And
17 if we go to -- well, depending on Rule 403, they're saying
18 exclusion of relevant elements on the grounds of prejudice,
19 confusion or waste of time. None of that is in play. They
20 had all of this information in discovery, they had all of
21 the information after the discovery. There's never been
22 any question about whether or not these medical bills was
23 necessary or reasonable.

24 So, Your Honor, we hope that this Court would deny
25 that motion to exclude all of the medical records -- I

1 mean, medical bills. We know we can't get the records
2 in, but the bills are sufficient.

3 **MR. GARFIELD:** Judge, just one thought here, and just
4 briefly. Clearly he can testify these were my bills. I
5 understand that. But what evidence and what testimony
6 would the jury be able to reasonably rely upon for them
7 -- for which they might make a determination as to whether
8 the bills were reasonable or necessary? Clearly they
9 could say these were your bills, sir, these were your
10 bills incurred, but the law requires an extra step. The
11 jury can only find -- or the jury can only relate those
12 bills back to the injury and render a verdict for the
13 Plaintiff based on those bills only if they find they
14 were reasonable and necessary.

15 If I go in to a doctor and I get -- if I get in a
16 car wreck and go to the doctor and incur medical bills, I
17 can say those are my medical bills, but for me to go to
18 several practitioners, particularly in this instance in
19 which there was a significant gap and he returned back to
20 not only the same practitioner, but other practitioners
21 with more imaging tests and multiple imaging tests at
22 different times, the burden is on him to show that those
23 bills incurred would be reasonable and necessary, and
24 that's not for the patient to do. That should be from a
25 professional opinion and unless we have something like

1 this he's unable -- he can't put in the medical records
2 because that would be hearsay, of course, but he could
3 talk about these were my bills. The jury can't hang
4 their hat on any information. It would clearly be
5 undue prejudice for him to just go say that these were
6 reasonable and necessary. He's not a doctor. He needs
7 expert testimony.

8 **THE COURT:** And I think that's -- it's not so much
9 about whether they're reasonable and necessary, as to
10 whether or not there has to be some expert testimony that
11 would tie the treatment that he sought on these dates to
12 the incident that occurred at the Alvin S. Glenn Detention
13 Center. I understand that there may be some immediate
14 connection with the time period in 2013, but I think what
15 you're saying is that anything in 2014, particularly as
16 relates to the MRIs, there has to be some expert testimony
17 that says these -- that the treatment that he received
18 and my sending him to have these MRIs was for physical
19 problems and issues related to or connected with the
20 incident that occurred in 2013, and I think that's -- to
21 me that's the crux of the matter, is whether or not there
22 has to be some type of expert testimony that says that
23 after a nine-month delay or a gap in time, you know, that
24 the treatment that he received in 2014 would be related to
25 the incident that occurred. So it's the causation and

1 causal connection issue and whether or not he needs expert
2 testimony in order to connect that. And I'll be happy to
3 hear what he has to say. I don't know, you know, what
4 reasons he's gonna give for not seeing any physician for
5 nine months and I don't know what he's gonna say about why
6 he went back, but in terms of -- he can't testify as to
7 what the doctor told him --

8 **MS. MILES:** Yes, Your Honor.

9 **THE COURT:** -- and so the question is whether there
10 will be a sufficient causal connection or expert testimony
11 because it's not within his lay knowledge, I'll put it
12 that way. It's not within his lay knowledge to be able
13 to say I needed to have these MRIs done. I think he can
14 certainly testify as to what was going on and based upon
15 that testimony, you know, we can figure out -- I mean, I'm
16 sure Mr. Garfield will object, but at that particular point
17 we can determine whether or not it's relevant and whether
18 further expert testimony would be necessary.

19 I'm inclined -- because what it looks like, it looks
20 like he had some physical therapy after -- that he went
21 back for some MRIs in March of 2014 and then there appears
22 to be a gap in time before he goes back for another MRI in
23 August of 2014 and at the same time he's doing that in
24 August he's also going to what looks like physical therapy.
25 So I think there has to be some causal connection from the

1 physician's point of view that these injuries and the
2 continued treatment for these injuries over a year later
3 would be related to what occurred in March of 2013.

4 **MS. MILES:** Your Honor, Mr. Montgomery will be able
5 to testify to what went on that caused the delay in
6 reference to him going back. He was getting
7 over-the-counter medication and he had some medication
8 from Dr. Z that he was continuing to take. He didn't have
9 insurance, he didn't have any money, he didn't have a job,
10 and so there was a long period of time that he could not
11 get professional help without my intervening. So that's
12 the reason why he -- this is the long period of time that
13 he did not get professional help.

14 Now as far as the MRI is concerned, the MRI was
15 requested by Dr. Z because of what was going on with him.
16 It did not take place because then he didn't have the
17 money. So, therefore, again, without my intervening in
18 terms of finding someone, which is Key Health Medical
19 Solutions, he was not able to get the MRI. So, you know,
20 Palmetto Imaging is not going to give you an MRI, you can
21 see how much they cost, without having someone -- or money
22 upfront. So it wasn't as though that he didn't try, and
23 he will testify to that, but he had no means of income or
24 funds.

25 **THE COURT:** And the question is really, and I

1 understand what you're indicating about the lapse in time
2 because of finances, but there's also the issue, I guess,
3 with the timing -- with testimony from a medical provider
4 that says yes, I referred him to have these MRIs done
5 because of this particular incident, and I'm not so sure
6 that Mr. Montgomery can testify to that particular point.
7 And that's the only -- that's what concerns me. Because
8 if he says I was told -- I was told to go get an MRI,
9 that's obviously hearsay --

10 **MS. MILES:** Right.

11 **THE COURT:** -- even though it's in medical treatment,
12 but it also doesn't provide that causal connection showing
13 that these were necessary because of the incident that
14 occurred in March of 2013.

15 **MS. MILES:** I understand.

16 **MR. GARFIELD:** I'm sorry. You were about to make a
17 point, Your Honor.

18 **THE COURT:** No, go ahead.

19 **MR. GARFIELD:** Might I suggest instead of this, the
20 inquiry for the Court being made in the presence of the
21 jury, either this inquiry be made outside the presence at
22 the appropriate time or a proffer or something so that
23 I'm not objecting basically to everything he's saying and
24 the Court can go ahead and glean from his testimony, you
25 know, what the facts may actually present just at the

1 appropriate time? And also for him to take the position
2 well, my attorney told me this, that could run afoul of
3 attorney/client considerations and if he says I didn't
4 have the money, that could get into collateral source and
5 it could really confuse things, so I would just suggest
6 that it be done in that manner.

7 **THE COURT:** When we get to that part of his testimony,
8 I'll be happy to take it up in-camera and hear at that
9 particular point to see where we are.

10 **MS. MILES:** Yes, Your Honor.

11 **THE COURT:** Anything else we need to take up?

12 **MR. GARFIELD:** Other than the motion to amend, no,
13 Your Honor.

14 **THE COURT:** Yes, on the motion to amend.

15 **MR. GARFIELD:** Yes, ma'am. We had a -- we filed a
16 motion yesterday morning and it was to amend the answer
17 and I presume now I'm making an oral motion that relates
18 back to our written motion, motion to amend the answer,
19 for which to include one particular subsection of
20 15-78-60. We've raised others. We would like to also
21 include 15-78-60, Subsection 25, in this case. And in
22 that particular -- in that particular subsection, it
23 establishes -- excuse me -- absolute sovereign immunity
24 for the entity for a loss resulting from issues relating
25 to an inmate or a prisoner. The facts in this particular

1 case, the undisputed facts, is that the Plaintiff was an
2 inmate at the Alvin S. Glenn Detention Center and the
3 actual -- the subsection, as Your Honor's aware, acts as
4 an exception to the waiver of sovereign immunity. It is
5 an immunity from suit, it is not simply an affirmative
6 defense such as self-defense or another avoidance. We
7 take the position that we would be able to amend the answer
8 right up and to the time of trial because it does -- it's
9 purely of a legal matter, it is something that the entity,
10 Richland County, would be entitled to, it would conform to
11 the evidence and this type of amendment would cause no --
12 or create a no legal prejudice for the Plaintiff in this
13 case and this particular -- excuse me -- this particular
14 subsection affords the entity to be able to set a gross
15 negligence standard. This is a standard that is pretty
16 much boilerplate for any type of events that occur when
17 it relates to a student or a prisoner or a detainee when
18 they are being housed or in custody and the events giving
19 rise to the suit directly relate to their -- to their
20 classification in this case. We'd simply like to go ahead
21 and amend the complaint to -- or, excuse me, amend the
22 answer to raise this particular provision.

23 **THE COURT:** Ms. Miles.

24 **MS. MILES:** Your Honor, I don't think this provision
25 actually comes back to negligence and excludes -- this

1 case is based solely on negligence and I don't think that
2 that will apply in this case and the Rule 15(a), for them
3 to relate that, we filed this case some time ago and the
4 40(j) was consented to. I think that the untimeliness of
5 this amendment without -- it was only filed yesterday --
6 yes, yesterday. I don't think that it should be amended.

7 **MR. GARFIELD:** Well, I just would -- with all due
8 respect to Ms. Miles, I do concede that this is somewhat
9 at the eleventh hour, but what authority is she relying on
10 to state that we would not be able to raise the statutory
11 immunity before the jury is sworn and how would she be
12 prejudiced in this particular case to go forward with the
13 gross negligence standard? In her complaint, she alleges
14 both negligence and gross negligence. The General Assembly
15 bestowed upon entities such as this specifically the gross
16 negligence standard that would require a plaintiff to
17 actually meet in a case such as this. I do recognize that
18 this is late in the game, but this is not, again, something
19 that we would be raising as a simple affirmative defense or
20 an avoidance that would completely change the dynamics of
21 the trial. This is simply the legal standard for which a
22 jury would have to come back with and the jury has not been
23 sworn, they have not been advised as to what the legal
24 standard is, and as Ms. Miles said, that this is just a
25 negligence case. Well, again, she pled negligence and

1 gross negligence. This just takes the negligence aspect
2 of this. And there are good reasons why this particular
3 statute's in place because instead of it being obviously
4 failure to exercise due care, it would be the failure to
5 exercise even the slightest care, and that is the standard
6 just across the board when it comes to any kind of these
7 plaintiff classifications. And unless she can -- again,
8 with all respect, Your Honor, unless she can tell the
9 Court, you know, or show something -- because it would be
10 new to me why I would not be able to avail ourselves of
11 this standard at this time. We would ask that the answer
12 be amended and for us to have that standard as we go
13 forward.

14 **MS. MILES:** Well, Your Honor, I can ask the same thing
15 because of the fact that I don't see any case law or any
16 evidence to present why that they should be granted that
17 for this amendment. Your Honor, under the circumstances
18 of the situation we find that negligence is one in which
19 that we are basing this case on and if there's anything in
20 which that will cause any detriment to my client should not
21 be -- at the last hour be brought up, so I'd ask the Court
22 that this shall not be amended.

23 **THE COURT:** I've looked at the initial complaint that
24 was filed and it looks like it was filed back in --
25 originally was filed in 2014 and throughout the complaint

1 there are allegations relating to gross negligence --
2 negligence and gross negligence, and it talks about the
3 conduct of the Defendant being grossly negligent or that
4 they acted with gross negligence in, you know, failing to
5 provide care and failing to -- failing to prevent the
6 incident from occurring in terms of being negligent in the
7 manner in which the act caused the injury and so I don't
8 -- I don't charge that particular statute, although based
9 upon the facts of this case, I think it's gonna be obvious
10 that he was within the confines of the Alvin S. Glenn
11 Detention Center at the time that the injury occurred.

12 **MS. MILES:** Yes.

13 **THE COURT:** So I don't think there's any prejudice
14 from that standpoint calling him a prisoner or inmate at
15 that particular time. So I think -- since you've alleged
16 gross negligence, I don't think that there's any -- that
17 there's any error in allowing the amendment at this
18 particular point. What I'll simply charge the jury is
19 that they would have to find that the Defendant was
20 grossly negligent in his conduct and define that term for
21 them and so I think that would be within the statutory
22 provisions as well. It's not -- it's not like it will
23 completely absolve them of any responsibility at this
24 particular point and the case doesn't go forward, it still
25 becomes a jury issue as to whether or not they acted with

1 gross negligence, so I'll allow the amendment just as to
2 that one particular exception to the waiver of immunity.

3 **MS. MILES:** Thank you, Your Honor.

4 **MR. GARFIELD:** Thank you, Your Honor. Nothing
5 further.

6 **MS. MILES:** Your Honor, we'd like to know what to do
7 about the -- whether or not we should go ahead and send
8 this to the reporter so they can be marked.

9 **THE COURT:** I think you can go ahead and mark them as
10 exhibits just to be on the safe side and then we can just
11 take it up.

12 **MS. MILES:** Okay. Thank you.

13 **THE COURT:** And if we need to, if it needs to be
14 revised, we can, you know, take the time to do that.

15 **MS. MILES:** Okay. Thank you.

16 (Plaintiff's Exhibit Number 1 was marked for
17 identification.)

18 **MS. MILES:** That's all for the Plaintiff.

19 **THE COURT:** I'm sorry?

20 **MS. MILES:** I have nothing further.

21 **THE COURT:** Is there anything else we need to take up?

22 **MR. GARFIELD:** No, ma'am. Thank you.

23 **THE COURT:** You may ask for the jury to come, up
24 please.

25 Do you-all have the strike list as well?

1 **THE CLERK:** Not yet.

2 **THE COURT:** I'm sorry. We'll give you your strike
3 list now.

4 Do the parties wish to have an alternate?

5 **MR. GARFIELD:** I don't believe that's necessary,
6 Your Honor.

7 **THE COURT:** Ms. Miles, do you need an alternate?

8 **MS. MILES:** Oh, no, Your Honor.

9 **THE COURT:** Would you be willing to go to ten if
10 necessary?

11 **MS. MILES:** Yes, Your Honor.

12 **MR. GARFIELD:** I'd go to eleven. Ten would be kind
13 of a record for me. Maybe I don't want to set that.

14 **THE COURT:** Eleven is good.

15 **MS. MILES:** Your Honor, would we have the same strikes
16 with less jurors?

17 **THE COURT:** We're going to select twelve, but in the
18 event that something happens and somebody's got to go or
19 they get sick or something and they get excused, we'll
20 still continue on with eleven. But we'll still select
21 twelve.

22 **MS. MILES:** Okay.

23 **THE COURT:** Okay. Counsel, there are a couple of
24 jurors who are not here who are on your strike list, so
25 the only ones that makes any difference is Number -- if

1 you use the numbers on the left-hand side, Number 7 is not
2 here, so we're just gonna cross out Number 7 and keep going
3 with the rest of them. If we select twelve jurors, with
4 the strikes that would take us down to Number 21, if my
5 math is correct. So those -- and the other jurors who are
6 not here are way down on the list so it doesn't impact the
7 rest of those, so that would be the only one.

8 **MR. GARFIELD:** Thank you.

9 **MS. MILES:** Thank you, Your Honor.

10 **THE COURT:** And they're on their way up.

11 (Pause in proceedings.)

12 (Whereupon, the jury panel enter the courtroom at
13 10:26 AM.)

14 **BAILIFF:** The jury is seated, Your Honor.

15 **THE CLERK:** Brown? Shantea Brown? I understood we
16 counted 37. Did they send 38?

17 **THE COURT:** What's your name, ma'am?

18 **POTENTIAL JUROR:** Shantea Brown.

19 **THE COURT:** Ms. Brown, what's your juror number?

20 **POTENTIAL JUROR:** 34.

21 **THE COURT:** Is Ms. Hiluv Johnson present?

22 **POTENTIAL JUROR:** Yes.

23 **THE COURT:** Is Grace Cuffy present?

24 Is Natalie Brunson present?

25 Good morning, ladies and gentlemen.

1 Again, my name is Alison Lee. I'm your circuit court
2 judge here this week for common pleas or civil court. We
3 are about to begin the trial of the case of Keith L.
4 Montgomery versus Richland County.

5 Ladies and gentlemen, this lawsuit comes to us based
6 upon an incident that occurred on or about March the 26th
7 of 2013 at the Alvin S. Glenn Detention Center here in
8 Richland County. Mr. Montgomery was at the detention
9 center at that particular time for issues related to child
10 support.

11 Is there any member of the jury panel that has any
12 knowledge of any of the facts or the issues to be tried in
13 this particular case? If so, please stand.

14 There's a lady in the fourth row, second from the end.
15 Yes, ma'am. You're hiding from me. If you'd move to your
16 right or your left. I couldn't see your face. Thank you.

17 The Plaintiff in this case is Keith Montgomery.

18 Mr. Montgomery, if you'd stand and face the jury
19 panel, please.

20 Is there any member of the jury panel whose is
21 related by blood or marriage or a close personal friend
22 of Mr. Montgomery? If so, please stand.

23 Thank you, sir.

24 Mr. Montgomery is represented by Mary P. Miles of the
25 Law Offices of Mary P. Miles. If you'd stand and face the

1 jury panel, Ms. Miles.

2 Is there any member of the jury panel who is related
3 by blood or marriage or a close personal friend of
4 Ms. Miles or have you ever been represented by her or by
5 members of her law firm? If so, please stand.

6 Thank you.

7 The Defendant in this case is Richland County. Is
8 there any member of the jury panel who has ever been
9 employed with Richland County? If so, please stand.

10 Is there any member of the jury panel who has ever
11 been employed at Alvin S. Glenn Detention Center or been
12 an inmate within the detention center? If so, please
13 stand.

14 The County is represented by Robert Garfield of the
15 law firm of Crowe and LaFave. Is there any member of the
16 jury panel who has ever been -- who is related by blood or
17 marriage or a close personal friend of Mr. Garfield or have
18 you ever been represented by him or by members of his law
19 firm? If so, please stand.

20 Thank you.

21 Is there any member of the jury panel who has ever
22 brought an action against Richland County, in particular,
23 involving the Alvin S. Glenn Detention Center? If so,
24 please stand.

25 Is there any member of the jury panel who has ever

1 filed a lawsuit against a law enforcement agency or police
2 officer in the police officer's capacity as a police
3 officer? If so, please stand.

4 Is there any member of the jury panel or a member of
5 your immediate family who has ever filed a complaint
6 against a law enforcement officer or a law enforcement
7 agency? If so, please stand.

8 (Potential juror stands.)

9 **THE COURT:** Yes, ma'am.

10 **POTENTIAL JUROR:** Did you say a family member?

11 **THE COURT:** Yes, ma'am.

12 **POTENTIAL JUROR:** Yes.

13 **THE COURT:** Tell me your name, please.

14 **POTENTIAL JUROR:** Ginna Shupper. My husband is
15 Attorney John Shupper.

16 **THE COURT:** And did he personally bring the lawsuit or
17 was it because -- or was it based upon his representation
18 of the client?

19 **POTENTIAL JUROR:** Based upon his representation.

20 **THE COURT:** And just to be sure, the fact that he's a
21 lawyer and he's in that profession and has brought an
22 action on behalf of a client, would that prevent you in
23 this case from being able to listen to the evidence in this
24 matter?

25 **POTENTIAL JUROR:** No.

1 **THE COURT:** Would you be able to make a decision that
2 would be based strictly upon the evidence to be presented
3 here?

4 **POTENTIAL JUROR:** Yes, ma'am.

5 **THE COURT:** Would you be able to give both the
6 Plaintiff, as well as the Defendant, a fair and impartial
7 trial?

8 **POTENTIAL JUROR:** Yes.

9 **THE COURT:** Thank you. You may have a seat.

10 Ladies and gentlemen, there may be a number of
11 witnesses in this case or individuals who are -- have been
12 involved in some manner with this particular matter. The
13 question that I will ask you is, is there any member of the
14 jury panel who is related by blood or marriage or a close
15 personal friend of any of the following individuals?
16 Charles Bethea. And if that applies, if you'd stand when
17 you hear the name. Brandon Walsh. Michael Smith. Johnnie
18 Taylor. Alisha Cunningham. Dr. Jeffrey Buncher. And
19 Dr. Timothy Zgleszewski, also known as Dr. Z. If that
20 applies to you, if you'd please stand.

21 Is there any member of the jury panel that's aware of
22 any bias or prejudice towards either the Plaintiff or the
23 Defendant in this case? If so, please stand.

24 Is there any member of the jury panel who has formed
25 or expressed an opinion about any of the issues that are

1 to be tried in this particular case? If so, please stand.

2 Is there any member of the jury panel that knows of
3 any reason why you would not be able to serve as a fair
4 and impartial juror in the trial of this particular case?
5 If so, please stand.

6 Is there anything further from the Plaintiff?

7 **MS. MILES:** None, Your Honor.

8 **THE COURT:** Anything further from the Defendant?

9 **MR. GARFIELD:** Yes, Your Honor.

10 May I introduce the individuals at counsel table?

11 **THE COURT:** Certainly.

12 **MR. GARFIELD:** Okay. With me to my left is Michael
13 Smith. He's facility services manager at the Alvin S.
14 Glenn Detention Center.

15 **THE COURT:** And I did mention his name as a possible
16 individual.

17 **MR. GARFIELD:** Yes, ma'am, you did.

18 And to my right is Lauren Hogan. She's assistant
19 county attorney for Richland County.

20 Thank you.

21 **THE COURT:** And is there any member of the jury panel
22 who is related by blood or marriage or a close personal
23 friend of Ms. Hogan? If so, please stand.

24 Thank you.

25 Anything further, counsel?

1 **MS. MILES:** Nothing from the Plaintiff, Your Honor.

2 **MR. GARFIELD:** No, Your Honor. Thank you.

3 **THE COURT:** Counsel, if you will, again, look at your
4 strike list. Using the numbers on the left-hand side of
5 the page, Number 7 is present, and so if you will use
6 Numbers 1 through 20. There are four strikes for the
7 Plaintiff and four strikes for the Defendant. And we'll
8 begin with the Plaintiff.

9 **MR. GARFIELD:** Your Honor, may we just have two or
10 three minutes just to acquaint ourselves?

11 **THE COURT:** Yes, sir. I understand I just gave them
12 to you right before they came in.

13 **MR. GARFIELD:** Yes, Your Honor. Thank you.

14 (Pause in proceedings.)

15 **MR. GARFIELD:** Thank you, Your Honor. We're ready.

16 **THE COURT:** Ms. Miles.

17 **MS. MILES:** Thank you, Your Honor. If it please the
18 Court, 10, 15 --

19 **THE COURT:** One moment. Number 10?

20 **MS. MILES:** Yes, Your Honor.

21 **THE COURT:** And defense?

22 **MR. GARFIELD:** The Defendant would strike Number 6.

23 **MS. MILES:** Number 15, Your Honor.

24 **MR. GARFIELD:** Defendant would strike Number 2,
25 please.

1 **MS. MILES:** Number 17, Your Honor.

2 **MR. GARFIELD:** The Defendant strikes Number 19,
3 please.

4 **MS. MILES:** Number 21, Your Honor.

5 **THE COURT:** Numbers 1 through 20.

6 **MS. MILES:** I'm sorry, Your Honor. I beg the Court's
7 indulgence. Number 3, Your Honor.

8 **MR. GARFIELD:** I'm sorry, I didn't hear that number.

9 **THE COURT:** Number 3.

10 **MR. GARFIELD:** Thank you. Defendant strikes
11 Number 8.

12 **MS. MILES:** What was that?

13 **MR. GARFIELD:** Number 8.

14 **THE COURT:** Are there any motions with respect to the
15 selection of the jury?

16 **MS. MILES:** None from the Plaintiff.

17 **MR. GARFIELD:** Just one moment, Your Honor.

18 No, Your Honor.

19 **THE COURT:** And I didn't allow the clerk to confirm
20 your strikes.

21 **THE CLERK:** Thank you, if we could. Plaintiff
22 strikes Number 10, Number 15, Number 17 and Number 3. Is
23 that correct?

24 **MS. MILES:** That's correct.

25 **THE CLERK:** Defendant strikes Number 6, Number 2,

1 Number 19 and Number 8. Is that correct?

2 **MR. GARFIELD:** Yes, ma'am.

3 **THE CLERK:** Thank you.

4 **THE COURT:** Ladies and gentlemen, when your names are
5 called, if you would bring all of your belongings and have
6 a seat in the jury box.

7 **THE CLERK:** Could we have Robin Shirley.

8 (Whereupon, Robin Shirley, a black female, was called
9 forward.)

10 **THE CLERK:** Jay Cross.

11 (Whereupon, Jay Cross, a white male, was called
12 forward.)

13 **THE CLERK:** Emily Grant.

14 (Whereupon, Emily Grant, a black female, was called
15 forward.)

16 **THE CLERK:** Hiluv Johnson.

17 (Whereupon, Hiluv Johnson, a black female, was called
18 forward.)

19 **THE CLERK:** Cheryl Byrd.

20 (Whereupon, Cheryl Byrd, a black female, was called
21 forward.)

22 **THE CLERK:** Robert Coleman.

23 (Whereupon, Robert Coleman, a white male, was called
24 forward.)

25 **THE CLERK:** Ginna Shupper.

1 (Whereupon, Ginna Shupper, a white female, was called
2 forward.)

3 **THE CLERK:** Emmett Pugh.

4 (Whereupon, Emmett Pugh, a black male, was called
5 forward.)

6 **THE CLERK:** Devon Quattlebaum.

7 (Whereupon, Devon Quattlebaum, a black male, was
8 called forward.)

9 **THE CLERK:** Shannon Olsen.

10 (Whereupon, Shannon Olsen, a white female, was called
11 forward.)

12 **THE CLERK:** Nashaun Burns.

13 (Whereupon, Nashaun Burns, a black male, was called
14 forward.)

15 **THE CLERK:** Virginia Winfrey.

16 (Whereupon, Virginia Winfrey, a black female, was
17 called forward.)

18 **THE COURT:** Ladies and gentlemen, if you'd please
19 stand and raise your right hand for the administration of
20 the oath.

21 (Whereupon, the trial jury was duly sworn by the Clerk
22 of Court.)

23 **THE CLERK:** Thank you. You may be seated.

24 **THE COURT:** To the remaining members of the panel,
25 I'd like to thank you very much for your willingness to

1 serve as jurors in this particular matter. I ask that you
2 return downstairs to the jury assembly room for further
3 instructions.

4 Thank you very much.

5 (Whereupon, the jury panel was released at 10:48 AM.)

6 **THE COURT:** Good morning again, ladies and gentlemen.

7 You have now been sworn as jurors in this matter and
8 as jurors you are sworn to determine the facts of this case
9 based upon the evidence that will be presented throughout
10 the course of this trial. In connection with that, I'm
11 going to ask that you follow these instructions.

12 First of all, ladies and gentlemen, I'm gonna ask that
13 you not discuss this matter among yourselves until it's
14 time for you-all to begin your deliberations. Many times
15 the evidence does not come in in a chronological order, it
16 comes in on a piecemeal basis, but until you've heard all
17 of the evidence in this case you are not in a position to
18 be able to determine the facts of this case, so I ask that
19 you not have any discussions about what you hear or see
20 throughout the course of this trial at any time until it's
21 time for you-all to begin your deliberations.

22 Secondly, ladies and gentlemen, I ask that you not
23 allow anyone to approach you to discuss this matter with
24 you. It's inappropriate for anyone to come up to you
25 while you're seated as a juror and to talk to you about

1 this case. If someone approaches you or wants to talk to
2 you about this matter, please tell them that you are a
3 juror and you cannot discuss it. We ask that you report
4 it as soon as possible. You can report it to the bailiffs
5 or to the clerk's office or to me, but we do ask that you
6 report it so that we can conduct an investigation to make
7 sure that no one is attempting to influence you in any way,
8 and the only way we can do that is if you report it to us.

9 Also, ladies and gentlemen, as you come and go from
10 the courthouse and when we take a lunch break, I ask that
11 you not listen to conversations that you may hear in the
12 hallways as you come and go. Oftentimes the attorneys may
13 be discussing things with each other or with their clients
14 or with witnesses and the decisions that you have to make
15 about this case must be based upon the evidence that's
16 presented here in this courtroom. It should not be based
17 upon conversations that you may hear as you come and go, so
18 I ask that you simply not listen to those conversations.

19 Also, ladies and gentlemen, if you have any cell
20 phones, I ask that you turn your cell phones off and that
21 you keep them off at all times throughout the course of
22 this trial. When we take a break this morning and you
23 will go to the jury room, they will collect your phones
24 from you. If for some reason you need to be connected to
25 your home or office and do not wish to turn off your phone,

1 if you will turn it to vibrate or silent. If it goes off,
2 then we can address any emergencies that may come up, but
3 we ask that you not keep your cellphones with you while
4 you're in the jury room.

5 The same applies to any reading materials. I don't
6 screen reading materials, I don't want to screen reading
7 materials, but I never know when there's something that
8 you have in your possession that could have an impact upon
9 some fact or some issue that's to be determined in this
10 case, so out of an abundance of caution we ask that you
11 not keep it with you in the jury room. They will collect
12 those materials from you as well and when you go out at
13 lunchtime, you'll have your phones back and you can have
14 any reading materials and then when you return they'll
15 collect them from you again.

16 Now, ladies and gentlemen, I'm gonna go ahead and tell
17 you a little bit about how the trial will proceed and we'll
18 see if we can maybe get into opening statements before we
19 take a break.

20 Ladies and gentlemen, the first thing that you will
21 hear will be the opening statements of the attorneys.
22 Their opening statements are not evidence, but they'll tell
23 you a little bit more about what this case is about and
24 what they hope that you'll be able to hear in the form of
25 evidence that will be presented throughout of the course

1 of this trial, so I ask that you listen carefully to those
2 opening statements. They'll kind of give you an overview
3 of what's going on so that you'll kind of be extra
4 listening out for the information that may be provided.

5 Once you've heard the opening statements, then you
6 will hear the evidence. Now the evidence may be in many
7 forms. It may be in the forms of documents or photographs
8 or other physical pieces of evidence in addition to the
9 testimony from the witnesses. So just as in any -- and so
10 I ask that you pay close attention to all of the evidence
11 as it is presented throughout the course of the trial. As
12 I've indicated, it may not come in in a chronological
13 order, it may come in on a piecemeal basis, but I ask that
14 you carefully listen to and watch all of the evidence as
15 it's being presented.

16 Now just as in any profession, there's certain rules
17 that govern for trials that will be called rules of
18 evidence. Those rules are designed to make sure what you
19 hear and what you can consider will assist you in being
20 able to determine the facts of this case. For, again,
21 that's your role here. To determine the facts based upon
22 the evidence. From time to time you may hear the attorneys
23 objecting about certain evidence that's being presented.
24 They're simply doing their job and their raising issues for
25 me to make a decision on. Those objections are related to

1 legal issues. So if I sustain the objection, then that
2 means that the evidence will not be allowed in. I ask that
3 you not speculate as to what the evidence might have been
4 or the reasons for the objection. I assure you that we're
5 not trying to hide or keep anything from you. Again, we're
6 just trying to make sure that what you can consider will
7 help you in determining the facts of this case. On the
8 other hand, if I overrule the objection, then you will be
9 able to hear the evidence and it will come in.

10 From time to time we may need to take up some other
11 legal issues outside of your presence. To the extent that
12 we can do that quickly here in court, the attorneys may
13 approach the bench and we'll talk about those things. On
14 other occasions I may need to ask that you retire to the
15 jury room. I ask you, again, not to speculate as to what
16 we're discussing and the reasons for our conversation.
17 Again, we're not trying to keep anything from you, we're
18 just trying to discuss those legal issues and the only way
19 we can do that is outside of your presence and just trying
20 to make sure that, again, everyone's legal rights are
21 protected.

22 Once you've heard all of the evidence, then you will
23 hear again from the attorneys in the form of a closing
24 argument. Their closing arguments, again, are not
25 evidence, but they will pick out portions of the evidence

1 that you've heard and make arguments to you in an effort
2 to try to sway you to find the facts in accordance with
3 their view of what occurred. So I ask that you listen
4 carefully to those closing arguments and then once you've
5 heard those closing arguments, then I will instruct you on
6 the law that's to be applied and then you may begin your
7 deliberations at that time.

8 Ladies and gentlemen, I understand that this will be
9 a relatively short trial, so we should be able hopefully
10 to get the testimony in or any -- all the evidence in
11 around lunchtime or hopefully before lunchtime and then
12 when you come back from lunch then at that time we should
13 be ready to hear the closing arguments and then my
14 instructions to you as to the law. So I'm hoping that
15 we'll be able to conclude today and so I ask that you give
16 the attorneys all of your attention -- and the witnesses
17 your attention in this matter.

18 I ask that you not take notes. I find that
19 oftentimes when people are taking notes, they're busy
20 writing something and they're missing something that's
21 being presented, but having said that I do understand that
22 people sometimes need to take notes to help them remember
23 and if that applies to you and you wish to take notes to
24 help you remember what's going on, please let me know so
25 that I can accommodate you in that regard. I do think it

1 will be relatively easy to follow along and that it should
2 be fairly forthright from what little bit I know about the
3 case, but if you find that you need assistance with taking
4 notes, please let me know so that I can accommodate you.

5 I believe at this time -- make sure all your
6 telephones are turned off before we begin.

7 And, Ms. Miles, would you like to make an opening
8 statement?

9 **MS. MILES:** Thank you, Your Honor. If it please the
10 Court?

11 Bailiff, will you please put the podium over here,
12 please.

13 **THE COURT:** The podium.

14 **BAILIFF:** I'm sorry.

15 **MS. MILES:** That's okay. Thank you.

16 If it please the Court?

17 **THE COURT:** Yes, ma'am.

18 **MS. MILES:** Counsel, ladies and gentlemen, today,
19 April the 4th, Martin Luther King was killed. He was a
20 civil rights leader and he believed in the rights, liberty
21 and justice for everyone. And here you are today. You
22 are doing your civic duties. I know that you wish that
23 you were someplace else and, frankly, we wish that we were
24 somewhere else, but when people fail to do the right thing,
25 you have to stand up, even if you have to stand up alone.

1 And in this case Mr. Montgomery, Keith, who's sitting
2 at the desk, is my client, and I'm a sole practitioner.
3 I've been practicing for a long time. I won't tell you how
4 long or then you will try to guess my age, but I've been in
5 this world long enough to know right from wrong and I know
6 that there are times people can prejudge people without
7 knowing the true story. And in this situation you heard
8 the judge say about Keith was an inmate at the time of
9 this accident. But on March the 26th, 2013, Keith was an
10 inmate, as I said, at Alvin Glenn Detention Center and he
11 will be able to tell you why he was there, but I ask you
12 not to draw or jump to a conclusion before you hear his
13 story.

14 Keith will tell you how he was injured while he was
15 there. He was injured by a steel door, a steel door that
16 slammed into his head and his shoulders and hurt his back.
17 He will tell you that the supervisor who was driving the
18 truck with a long trailer hitched on the truck was not
19 paying attention to what he was doing and he got in the
20 truck and before you know it the trailer, the long trailer,
21 hit the storage bin where Keith was standing and caused
22 that steel door to come down. And as a result of the
23 supervisor, who was Officer Taylor, not paying attention
24 to what he was doing, Keith was injured.

25 Now we are not gonna be long today as Judge Lee

1 indicated. We don't have a lot of witnesses. We don't
2 have medical doctors here. Who better than Keith can tell
3 you about his pain and suffering and what he had to go
4 through as a result of that accident. The doctors can tell
5 you in terms of what he did as far as the treatment, but
6 Keith will be able to tell you also about his treatment.
7 He can tell you whether or not his treatment he thought
8 was reasonable and was necessary. There may be a period
9 of time that he did not get any treatment, if that should
10 come up, but when you look at the situation where he will
11 tell you that he was in you will understand that without
12 the new situation that we have now with medical care there
13 were many people who did not have medical care, so you
14 will understand that there may be a long length of time
15 where there was no medical treatment.

16 But I want you to please pay attention to Mr. Keith
17 because he has a story to tell. It is necessary in these
18 type of trials that when you have a situation when it comes
19 down to inmates, sometimes juries get the wrong impression
20 about people who are inmates. There are situations that
21 cause a lot of people to be there that are innocent, so I
22 hope that you will pay attention, and I know you will, and
23 you will find that Mr. Keith Montgomery is worthy of having
24 a favorable decision from you. Thank you.

25 **THE COURT:** Mr. Garfield.

1 **MR. GARFIELD:** Ladies and gentlemen, just like
2 Ms. Miles said, all we have is Mr. Montgomery's word in
3 this case because, otherwise, and frankly speaking, we
4 don't really know other than what his word says as to what
5 really happened on March 24, 2018 {sic}. Last week that
6 would have been five years ago that these alleged events
7 happened.

8 What do we know? Well, we know that Mr. Montgomery
9 was an inmate trustee at the Alvin S. Glenn Detention
10 Center. It used to be the Richland County Detention
11 Center. It's up on John Mark Dial Drive. It's now the
12 Alvin S. Glenn Detention Center. He was working in a yard.
13 He was working a yard duty that's assigned to inmate
14 trustees. He was in there for nonpayment of child support.
15 I'm not up here saying that he's a bad guy, I'm not up
16 here saying that he's anything other than being an inmate
17 trustee on March 24th of 2018 {sic}.

18 Well, what do we know about that date? Well, we know
19 that they had work duty and on this particular assignment
20 he and other inmates were loading up lawnmowers on a
21 flatbed to be taken offsite to Richland County Public Works
22 for repair, and that's what inmate trustees oftentimes do.
23 They assist with these type of assignments. And it was
24 during these events that he claims that he was injured
25 because a door on a storage unit struck him in the back

1 and the head and the shoulder and he was injured, and
2 that's why we have a lawsuit from this one event five
3 years ago.

4 Well, it's very unfortunate that I'm standing up here,
5 although the Defendant, as Her Honor will tell you later
6 in the trial, does not have the burden of proof. But it's
7 unfortunate for both sides. We don't have a video camera,
8 I don't think we have any other witnesses, eyewitnesses,
9 earwitnesses I guess they call it. We don't have doctors,
10 we don't have expert testimony. We've got Mr. Montgomery's
11 word and his version of what happened.

12 And I understand that he has a story to tell. I
13 understand that. I'm sure he does because he was there
14 and I wasn't and no one in this room was, but the Court
15 requires proof and Her Honor will charge you at the close
16 of the evidence, and it will be a short trial, that she
17 will explain to you or charge you what the law is, and
18 the law is that the Plaintiff has a burden of proof.

19 The Plaintiff in this case is suing Richland County
20 for events, alleged events, that happened at the Alvin S.
21 Glenn Detention Center. Now why Richland County? Well,
22 Richland County owns and operates the detention center, so
23 the appropriate Defendant, my client, Richland County,
24 would be represented here, but he has the burden of proof
25 and the burden is -- the standard of proof is that he has

1 to prove by the greater weight of the evidence or by the
2 preponderance of the evidence that my client wasn't just
3 negligent, but my client was grossly negligent.

4 Well, what's the difference between negligence and
5 gross negligence? Surely it's a legal term. Negligence
6 is the failure to exercise due care. Momentarily looking
7 away at a traffic light is negligence. We should be
8 careful driving. It could cause an accident. It could be
9 any of those. Gross negligence is a completely different
10 legal concept. It's a much higher standard. It's not
11 just the failure to exercise due care, it's the failure to
12 exercise even the slightest care. Her Honor will charge
13 you that it's the conscious and intentional act of not
14 doing the proper thing. One is guilty of gross negligence
15 if he is so indifferent to the consequences of his conduct
16 not to give even slight care of what he is doing.

17 Now we don't have anyone from the detention center.
18 Mr. Johnnie Taylor you will hear was the supervisor that
19 was riding in the car. You will hear evidence that he's
20 retired from the detention center. He retired after many
21 years of service and also military service, so he is onto
22 greener pastures. So five years from this event we have
23 the word of the Plaintiff, and I understand that, and he
24 absolutely can testify in his behalf and he absolutely can
25 sit up here and tell you what he experienced and what he

1 encountered and his injuries. And he has his day in court
2 and he can sit up here and tell you here are my medical
3 bills, but I will come up to you -- come back before you
4 after the evidence, at the close of all the evidence, and
5 I'm gonna talk to you again and I'm gonna talk about what
6 the evidence was in this case and how he failed to meet
7 the burden of proof by proving that Mr. Taylor acted with
8 gross negligence on this day and that his injuries were
9 related to this particular event, that he's unable to meet
10 his burden, and at that time I will come before you and
11 ask for a verdict that would against the Plaintiff and for
12 the County.

13 And, again, this is gonna be short, but I thank you
14 in advance for your attention.

15 **THE COURT:** Ladies and gentlemen, at this time I'd
16 like to take a brief break. We've been here talking about
17 some legal issues before you-all came up and so we've not
18 had a break, a morning break. This would be a good time
19 to take a morning break.

20 During this break, I'm going to ask that you select a
21 foreperson. The foreperson's role is to communicate with
22 me in the event that there's anything that you-all need,
23 particularly with respect to taking a break or a lunch
24 hour. For example, if there's anyone that has any health
25 issues that I need to be aware of. Particularly, I think

1 about individuals who may have dietary needs or, you know,
2 diabetes-related needs or any other incident or any other
3 information that would have a bearing upon taking breaks
4 and making sure that you-all are comfortable and okay.

5 More importantly, however, when this case is
6 submitted to you-all to begin your deliberations, it's
7 the foreperson's responsibility to make sure that everyone
8 has the opportunity to express his or her views about the
9 evidence and what the evidence shows and then it's the
10 foreperson's role to coordinate those discussions and then
11 ultimately when you-all have reached a verdict, it will be
12 the foreperson's responsibility to record the verdict on
13 the appropriate form. It's someone who you should select
14 among the twelve of you who you think would be best suited
15 to serve in that capacity. I just ask that during this
16 break once you've selected the foreperson, if you'd write
17 the person's name on a sheet of paper and give it to the
18 bailiff and then when you come back in the courtroom after
19 our break if the foreperson would take the very first seat
20 in the first row where this young lady is in the black and
21 white. The rest of you are free to sit wherever you'd like
22 to sit in the first three rows.

23 So at this time if -- we'll just take a break and
24 then we'll come back in just a few moments. So if you'll
25 follow the bailiffs out, they'll show you where to go.

1 (Whereupon, the jury retires to the jury room at
2 11:09 AM.)

3 **THE COURT:** Is there anything we need to take up
4 before we take a break?

5 **MS. MILES:** Nothing from the Plaintiff.

6 **THE COURT:** Let's take a brief break and then we'll
7 come back.

8 **MR. GARFIELD:** Yes, ma'am.

9 (Recess taken at 11:10 AM.)

10 (Back on the record at 11:24 AM.)

11 **BAILIFF:** Court come to order. Please rise.

12 **THE COURT:** Be seated, please. Thank you.

13 Our foreperson is Hiluv Johnson.

14 **THE COURT:** Is there anything we need to take up
15 before we bring the jury in?

16 **MS. MILES:** None from the Plaintiff, Your Honor.

17 **MR. GARFIELD:** Your Honor, if the Plaintiff intends
18 to call Mr. Montgomery in its case in chief to testify on
19 his behalf, might I ask that if Your Honor was inclined to
20 do so that we have the in-camera hearing now?

21 **THE COURT:** Well, the only thing I really need to
22 have the in-camera hearing about is as to his medicals.
23 I mean, we can certainly do that at this particular point
24 or we could -- I don't know how long -- I'm happy to have
25 him begin his testimony and then when we get to the part

1 where he wants to talk about his treatment, then we can do
2 the in-camera.

3 **MR. GARFIELD:** Yes. Yes, Your Honor.

4 **MS. MILES:** Your Honor, he will be talking about his
5 treatment from each one of the medical providers. I think
6 that he's talking about if when we want to introduce some
7 medical bills, the invoices. Is that what you're talking
8 about as well as far as in-camera? Because he will be
9 talking about his treatments.

10 **THE COURT:** Yeah, I think to the -- to the extent that
11 he's going to make claims beyond the March, April, May of
12 2013, I would need to hear -- anything after 2013 I would
13 need to hear some additional testimony from him that may
14 be appropriate in-camera. I don't think -- I don't think
15 that there's an objection at this particular point about
16 -- depending on what he testifies to about the medical
17 treatment he received in 2013 and those bills. I think
18 the question comes up for treatment after 2013.

19 **MS. MILES:** Well, he saw Dr. Z and Buncher in 2014.

20 **THE COURT:** And the MRIs.

21 **MS. MILES:** The MRIs were done after, but they were
22 scheduled for -- I mean, was -- Dr. Z ordered them in 2013,
23 but he wasn't able to get them until 2014.

24 **THE COURT:** Well, then I think we need to hear -- we
25 need to hear about that.

1 **MS. MILES:** Okay. All right. Then we'll do it
2 in-camera.

3 **THE COURT:** Do you want to do it now or --

4 **MS. MILES:** Well, Your Honor, we did not plan to put
5 the -- see, I'm a little confused because I thought that
6 the objection was about the medical bill in reference to
7 after 2013, but nothing about what sort of treatment he
8 received, and so to have him not testify to the treatments
9 seems like it's out of place. I don't understand. I
10 understand about an invoice for the billing, but he had
11 medical treatment and why he didn't get his medical
12 treatment from 2013 and then that gap, he will testify to
13 that.

14 **THE COURT:** And I understand that, but I guess the
15 question is whether or not the treatment that he received
16 in 2014 is -- from a medical standpoint is related to the
17 particular incident that occurred. In other words, there
18 needs to be some medical -- some medical testimony that
19 relates to the fact that the treatment that he received
20 from Dr. Buncher was related and there was a causal
21 connection to the incident that occurred in 2013.

22 **MS. MILES:** Well, I think that due to -- I beg the
23 Court's indulgence, but the Palmetto Imaging caused him to
24 have to go back to Dr. Z and Buncher. That's causation
25 right there. Because the 2014 referral for the MRI was

1 the reason why he had to get more treatment. It speaks
2 for itself with all medical doctors because of the -- the
3 dates are on there.

4 **THE COURT:** I guess my point is I need to hear what
5 he has to say related to that and why that treatment --
6 why he went back for that treatment at such a late date
7 without -- you know, without the physician coming in and
8 saying he came back to see me and this is what his symptoms
9 were and, yes, I believe that these symptoms and his
10 condition at that time still related back to the incident
11 that occurred in March of 2013. I don't think -- I don't
12 think he's capable of saying -- he's capable of saying how
13 he felt and what went on, but when it comes to going back
14 and seeking additional treatment I think there has to be a
15 -- there has to be some causal connection between the two
16 because he can't say that the MRI was related to --
17 Mr. Montgomery can't say the MRI was related to the
18 treatment, the physician has to say I ordered the MRI
19 because of this condition that's related to the incident
20 that occurred in March of 2013.

21 **MS. MILES:** Well, he can't testify to the fact that
22 the MRI was ordered by his treating physician? Because
23 that's why we have the bill here because -- I mean -- I
24 mean, with reason, Your Honor, it has to be related. I
25 mean, because when you stop to think about it why would he

1 have these MRIs done if it wasn't related because it was
2 ordered by the judge -- not the judge -- by his medical
3 providers in 2013.

4 **THE COURT:** And that may get you past the -- that may
5 get you past the MRIs, but it doesn't connect you with
6 Dr. Buncher.

7 **MS. MILES:** Okay. All right.

8 **THE COURT:** In other words, he may not have been
9 able to afford the MRIs in 2013, he went and got them in
10 2014, but he still had to go back to the doctor and based
11 upon what he was experiencing at that particular time the
12 doctor needs to say yes, this is still -- this is the
13 condition that's related -- based upon the medical history
14 I have and this is still related because there's that
15 eight-month time period in between and so there's got to
16 be some way to connect it back to -- forget the payment
17 part. His physical condition still demanded that he
18 receive medical treatment because of what occurred in
19 March of 2013.

20 **MS. MILES:** But, Your Honor, I think that for
21 Dr. Buncher -- he was released from Dr. Z and there's
22 nearly -- before he started seeing Dr. Buncher it's like
23 near four months, three months because he had to get the
24 money to go back to get the MRI required by Dr. Buncher.
25 But I understand there may be some question about relation

1 back to Dr. Buncher because he went back to Dr. Buncher
2 really for mostly therapy. But Dr. Z, I mean, it was an
3 on-going, you know, treatment plan. So Dr. -- he could
4 not go back to Dr. Z without having those MRIs done.

5 **THE COURT:** And, Ms. Miles, I understand where you're
6 coming from. The way --

7 **MS. MILES:** I understand. It has to relate back.

8 **THE COURT:** He can talk about how he felt, he can
9 talk about what he was experiencing, and those -- that
10 would be of his own knowledge of what he's saying, but
11 in terms of saying I went back to Dr. Z in April of 2014
12 because I needed more treatment, I think Dr. Z is gonna
13 have to come in and say yes, the treatment I gave to him
14 in April of 2014, and if he referred him to Dr. Buncher
15 that was for this medical condition and, yes, this medical
16 condition is related to the injury that occurred a year
17 ago.

18 **MS. MILES:** Okay. Well, I guess we just have to see
19 where it goes.

20 **THE COURT:** Yes. So I'm happy to go ahead and let
21 him begin his testimony and then when we get to that
22 particular part after the initial medicals, we can -- we
23 can do the in-camera.

24 **MS. MILES:** Thank you, Your Honor.

25 **THE COURT:** You may call the jury in.

1 (Whereupon, the jury returns to the courtroom at
2 11:36 A.M.)

3 **BAILIFF:** The jury is seated, Your Honor.

4 **THE COURT:** Ms. Johnson, you've been selected as the
5 foreperson?

6 **FOREPERSON:** Yes.

7 **THE COURT:** Thank you very much for serving in that
8 capacity.

9 **THE COURT:** At this time, Ms. Miles, you may call your
10 first witness.

11 **MS. MILES:** Thank you, Your Honor.

12 If it please the Court, I would like to call
13 Mr. Montgomery, please.

14 **THE COURT:** If you'd step forward, please, sir, to be
15 sworn.

16 **THE CLERK:** Would you state your full name, please?

17 **THE WITNESS:** Keith Montgomery.

18 (Whereupon, Keith L. Montgomery was duly sworn by the
19 Clerk of Court.)

20 **THE CLERK:** Thank you. You may have a seat.
21 You may have a seat.

22 **THE COURT:** Yes, ma'am.

23 **MS. MILES:** Thank you, Your Honor.

24 May it please the Court, Counsel?

25 KEITH MONTGOMERY,

1 having been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. MILES:

4 Q. Mr. Montgomery, would you, please, tell the Court and
5 the jury your full name.

6 A. Keith Montgomery.

7 Q. And, Keith, where do you live and how long have you
8 lived there?

9 A. I live in Hopkins, South Carolina. I've been living
10 there like fifty-two years.

11 Q. Okay. And who lives with you?

12 A. My mother.

13 Q. Okay. And do you have any children?

14 A. Yes, I have a son and a daughter. My son is nineteen,
15 my daughter is seventeen.

16 Q. Okay. Do your children live with you?

17 A. No, ma'am.

18 Q. Okay. Tell me what sort of educational background do
19 you have. Did you finish high school?

20 A. Yes, ma'am. I graduated from Lower Richland High
21 School back in 1984.

22 Q. Okay. And do you have any other schooling outside of
23 your high school diploma?

24 A. No, ma'am.

25 **THE COURT:** Mr. Montgomery, if you'd please pull

1 yourself a little bit closer to the microphone and speak
2 a little bit louder, please. You don't have to speak
3 directly into it, but just a little bit louder.

4 **THE WITNESS:** Okay.

5 BY MS. MILES:

6 Q. Did you receive any awards or a certificate after
7 graduating high school?

8 A. No, ma'am.

9 Q. Okay. How about on the job?

10 A. Yes, I was a certified welder and I went to Midlands
11 Tech for forklift driving.

12 Q. Okay. Did you receive a certificate?

13 A. Yes, ma'am.

14 Q. Okay. When did you start working after high school?

15 A. I started working approximately about two weeks after
16 high school in '84 for an exterminating company, which I
17 was treating houses, restrooms, stuff like that, doing
18 demolition work, taking out box sills and joists in
19 bathrooms and replacing them.

20 Q. Okay. How long did you work there?

21 A. About three years.

22 Q. Okay. And from there where did you work?

23 A. I went to U.S. Textile. I was working as a serviceman
24 getting supplies for the women to make quilts and stuff
25 like that and after that -- I worked there maybe two years

1 and I got a job at Intercontinental, a cake place. I was
2 a serviceman there for like five years and then after that
3 I went to work for Orange Steel. I was a certified welder.
4 I stayed there for like about seven years. I had numerous
5 jobs, different jobs. A cabinet shop worker, American
6 Roofing, stuff like that. CMS South. All that, too.

7 Q. So you worked constantly throughout your life?

8 A. Yes, ma'am.

9 Q. Okay. Now let's talk about in 2013. Did you have a
10 job before 2013 in March?

11 A. No, I had got laid off from Image Pointe. I was
12 building GM signs, Ford signs, stuff, and the company had
13 transferred to Virginia and laid all us off.

14 Q. Okay. Were you laid off in 2012 or 2013?

15 A. I think it was around 2012.

16 Q. Okay. And -- and how long had you been working on
17 that job before you were laid off?

18 A. I was working there approximately maybe about
19 seven years.

20 Q. Were you the only one that was laid off?

21 A. No, they laid off the whole plant.

22 Q. Okay. Were you laid off from any other job before
23 that job?

24 A. No, ma'am.

25 Q. Okay. Had you had any problems with your child

1 support before you were laid off your job?

2 A. Yes, I did.

3 Q. Okay. What was the problems you had?

4 A. I was behind because I was laid off. I was making
5 payments and they would call me to court and then they'd
6 fine me like four or \$500. I would come over here and my
7 mom might pay it and I'd just go -- continue, you know,
8 and try to put \$25 on the book a week by doing something
9 to pay my child support.

10 Q. Okay. But this last time when you went to court, were
11 you able to pay any money or what happened?

12 A. I was not paying any money. I wasn't able to pay it
13 because I was ordered to pay like \$5,000 and I didn't have
14 it, so the judge sentenced me to six months at Alvin Glenn
15 Detention Center.

16 Q. Okay. For six months. Did you make the six months in
17 Alvin Glenn?

18 A. No, ma'am. I did ninety days.

19 Q. Ninety days?

20 A. Yes, ma'am.

21 Q. Okay. Did you look for another job when you were laid
22 off?

23 A. Yes, I was looking for another job because I was
24 receiving unemployment and you have to look for three to
25 four jobs a week and call it in. Yes, I was. And I was

1 looking outside of those, too. I wasn't able to find a
2 job.

3 Q. Well, did you find any part-time work?

4 A. Part-time work? No, ma'am.

5 Q. Okay. And you were detained at Alvin Glenn because
6 of the child support?

7 A. Yes, ma'am.

8 Q. Okay. Well, what happened when you got to the
9 facility?

10 A. I was appointed to be a trustee. That way you
11 normally work out on the yard or in the kitchen or the
12 laundry room or like buffing floors and stuff like that.
13 It depends on where they need you at that's where they will
14 give you a job.

15 Q. Okay. Now were you a deadbeat dad that wasn't paying
16 your child support at all?

17 A. No, ma'am, I was not. I was paying my child support,
18 but when I'd get laid off, you know, I'd fall back a
19 little, but, like I said, I tried, you know, to put \$25 on
20 the book or something a week. I did try.

21 Q. And what sort of relationship do you have with your
22 children?

23 A. A wonderful relationship. I talk to my daughter and
24 son often, maybe once or twice a week. You know, they're
25 grown children now, you know, and they don't want talk to

1 their dad.

2 Q. Yeah. Well, let's tell the Court and the jury what
3 you were doing on the day of March 26, 2013, at Alvin
4 Glenn.

5 A. They usually wake you up around about 7:00 and then
6 all the supervisors would come over to the dorm to get you
7 to go out to do your duties and that morning we was --
8 around about 8:00, me, Charles Bethea and Brandon Walsh,
9 we was told to go out to the Connex. It's a big -- big
10 utility trailer, like a tractor trailer, because they
11 needed the lawnmowers to go be serviced.

12 Q. Okay. And do you receive any training or workshop to
13 become a trustee there?

14 A. No, ma'am.

15 Q. Okay. So how were you selected to be a trustee?

16 A. They just pick you out and ask you what job; do you
17 want to go to the kitchen, do you be want to be on the
18 yard.

19 Q. Okay. Mr. Montgomery, I don't know whether I'm
20 having a problem or the jury is having a problem, but it
21 seems as though that you go down and are not talking as
22 loud. So would you explain that again?

23 A. Okay. They come around and they pick you to go out
24 to the yard or work in the laundry or the kitchen or other
25 details of jobs like that.

1 Q. Okay. So they usually pick people that are not there
2 for severe charges or how is that done?

3 A. Mostly -- 90 percent of the people there are for
4 child support and a few people's there for shoplifting or
5 bad checks that's only there for like a couple of weeks or
6 a couple of months.

7 Q. So you were not there that long before you were chosen
8 to be a trustee?

9 A. No, ma'am. I was there like maybe a week or three
10 days or so.

11 Q. Now you said that you were chosen to go outside with
12 the supervisor and what's the name of that supervisor?

13 A. Mr. Taylor.

14 Q. Officer Taylor?

15 A. Yes, ma'am.

16 Q. Okay. Now you said that on March the 26th of 2013,
17 you got up and what happened after that?

18 A. He came to the dorm to get all of the inmates to go
19 to their position. That morning me, Brandon Walsh and
20 Bethea, we had to unload some lawnmowers on the truck to
21 go be serviced.

22 Q. Okay. And where were you when this accident occurred
23 on March 26th?

24 A. I was outside standing by the storage bin where they
25 keep the lawnmowers and stuff like that in, the yard

1 utilities.

2 Q. And where was Officer Taylor?

3 A. Officer Taylor was outside standing in the yard, but
4 then he was on the walkie-talkie.

5 Q. Okay. Now what I'm gonna do, if the Court will allow
6 me, I'm going to, if I could, give a chart to the witness.

7 **THE COURT:** (Nods head.)

8 BY MS. MILES:

9 Q. Mr. Montgomery, there's a chart behind you there. I
10 want you to draw exactly where you were and --

11 **THE COURT:** And if you would keep your voice up. If
12 you're going to explain anything, talk loudly so everyone
13 can hear you, including the court reporter.

14 **THE WITNESS:** Yes, ma'am.

15 Okay. On that day --

16 BY MS. MILES:

17 Q. Speak up. I know you have a soft voice, but speak up.

18 A. Okay.

19 Q. What's that outline that -- that you have here?

20 A. This is the storage bin.

21 Q. The storage bin with the lawnmowers?

22 A. Yes. The lawnmowers was sitting inside the storage
23 bin right here.

24 Q. Okay.

25 A. Okay. The trailer was like --

1 Q. And the tractor -- the trailer was there and then the
2 truck?

3 A. Yes, ma'am. Was here.

4 Q. All right. Put an X where the trailer is located.

5 A. (Witness complies.)

6 Q. Right there?

7 A. Right here.

8 Q. Okay. And Mr. Taylor -- well, Officer Taylor was in
9 the truck? That's that other little -- right there?
10 That's the truck?

11 A. Yes, ma'am.

12 Q. Okay. Now explain what happened to the jury.

13 A. On that day, I was standing to the left side of the
14 door. Brandon Walsh was on the inside of the bin.
15 Charles Bethea was standing on the right side of the door.

16 Q. Now the door, where was the steel door?

17 A. The steel door was right here. It's like about a
18 two inches thick solid door with metal and everything,
19 made out of metal, and Supervisor Taylor went and got in
20 the truck talking on the walkie-talkie as I was standing
21 here and the next thing I know he was driving off and I
22 heard a loud crash that was hitting me -- that hit me in
23 the back of the head, my shoulder and my right -- on my
24 left shoulder and my back, and I was thrown in the air
25 maybe about six feet, about from here to Ms. Miles. I

1 landed on my hands and everything and then after
2 Mr. Taylor drove around about right here in front of the
3 bin with the truck and the trailer, Supervisor Taylor got
4 out of the truck and I explained to him that he almost
5 killed me, he hit me with the door, and my back and my
6 neck and my shoulder was hurting. I -- then Brandon Walsh
7 and Charles Bethea, they continued loading the lawnmowers
8 on the trailer and --

9 Q. Well, let's stop a second here because we want to make
10 sure that it wasn't the truck but it was the trailer that
11 hit the steel door -- slammed into the steel door?

12 A. Yes, ma'am.

13 Q. And it caused it to come down?

14 A. It caused this to swing.

15 Q. Swing into you?

16 A. Into my back. Yes, ma'am.

17 Q. And where did it hit you?

18 A. It hit me right here on the back of the head across
19 the left side of my shoulder and down my backside here.

20 Q. Okay. Anything else that you need to let the jury
21 know about what happened on that day as far as that
22 drawing?

23 A. No, ma'am. That's how it happened.

24 Q. Were you knocked unconscious? You can have a seat
25 now.

1 A. No, ma'am, I was not knocked unconscious.

2 Q. Well, tell us how -- how were you after that accident
3 when the steel door slammed into you?

4 A. Well, I was explaining to Mr. Taylor that my head was
5 light and my shoulder and my back -- I had back pains and
6 across my shoulder was aching, and I told him numerous
7 times I'm lightheaded before we went back into the jail
8 and we went into the lobby and I kept on complaining.
9 Then I had told another officer what happened, that I was
10 feeling lightheaded and wasn't feeling well, and the next
11 thing you know after that they sent me to the medic to get
12 an examination. I went to see the doctor.

13 Q. Okay. Now what kind of pain -- what level of pain
14 were you experiencing when you first got hit?

15 A. Around a seven.

16 Q. Seven out of ten?

17 A. Yes, ma'am.

18 Q. If ten is the highest pain and one is the lowest,
19 what level of pain did you experience at that time of the
20 accident?

21 A. Around seven. I was in pain with a migraine headache,
22 my head was thumping, and then I feel like burning --
23 burning needles and pins in my back and I had an ache
24 across the top of my shoulders.

25 Q. Okay. Were you treated and given medication or what

1 happened?

2 A. Yes, I was treated at medical and then after that
3 they would -- they had gave me some opiates or some Motrin
4 medicine to take.

5 Q. Motrin for pain?

6 A. Yes, Motrin for pain.

7 Q. Okay. And what happened after that? What kind of
8 treatment did you receive when you were there at the
9 infirmary?

10 A. Well, he examined me across my shoulder and the back
11 of my head and my back and found out it was swollen on my
12 back and my shoulder and I was complaining about these
13 headaches I had and sharp pains in my head and stuff with
14 my back.

15 Q. Now as a trustee, did you have a cell? Did you go
16 back to your cell?

17 A. No, I went back to the dorm.

18 Q. Why the dorm?

19 A. Because I wasn't in a cell. A cell is for like
20 people that's down there for murder or rape and stuff like
21 that, but when you're in a dorm, you're a trustee, you're
22 out there separate from the jailhouse. You're kept out
23 there in a dorm.

24 Q. So what happened when you went back to the dorm?

25 A. I tried to go to sleep, but I couldn't sleep because

1 of all the noise and everything and I was having migraine
2 headaches, so I just tried to put the pillow up over my
3 head just, you know, to ease the pain.

4 Q. Okay. During that time when you were getting
5 treatment at the medical infirmary, they didn't do any
6 x-rays or MRIs or a CAT scan or anything?

7 A. No, ma'am.

8 Q. Okay. So you went back to your dorm. Did you sleep
9 the whole night through or what happened?

10 A. No, I couldn't sleep. Like I said, you know,
11 headaches, shoulder ache, back pain.

12 Q. Did you get up the next morning to go to work?

13 A. Yes, I got up the next morning to go to work.

14 Q. And what happened?

15 A. One of the supervisors said you're not able to go to
16 work.

17 Q. Okay. So what happened when you were not able to go
18 to work?

19 A. They moved me out of the trustee dorm and sent me back
20 to Bravo. It's another open dorm.

21 Q. And what happened when you went to that Bravo dorm?

22 A. I was in there for like maybe seventeen days and the
23 doctor told me he was to have a follow-up visit on April
24 -- April 17th, but I got out on April 17th, so I didn't
25 get a follow-up visit to be examined again.

1 Q. Were you able to go back to work at any time after
2 the accident?

3 A. No, ma'am.

4 Q. Okay. Now you said that you were released. What
5 date was that that you were released from the detention
6 center?

7 A. It was around April the 17th.

8 Q. Okay. 2013?

9 A. 2013.

10 Q. Okay. And what happened after you were released?

11 A. I was still in pain and I was telling my cousin, I
12 was talking to him, and he had recommended me to a doctor
13 to see to go to because he's a back doctor, a spine doctor,
14 because I still was having pain in my back and across my
15 shoulder and every now and then I was having migraine
16 headaches.

17 Q. Well, before you left the detention center, were you
18 getting any kind of treatment at all other than that one
19 time?

20 A. They was giving me some medicine, pain medicine at
21 night, some Motrin. That was about it.

22 Q. Did you go back to the infirmary?

23 A. No, I did not.

24 Q. Okay. Why not?

25 A. Because they had scheduled me another visit for

1 April the 17th and I got out on April 17th when I was
2 supposed to go back to see the physician, the doctor.

3 Q. And you went to see the doctor after you got out?

4 A. Yes, I went to the doctor. Yes, ma'am.

5 Q. Okay. And were you able to get a doctor right away?

6 A. No, ma'am. I tried, but it took like -- it took me
7 maybe three to four weeks before I got to be seen by Dr. Z.

8 Q. Okay. And when you went to see Dr. Z, were you still
9 having complaints?

10 A. Yes.

11 Q. What were you complaining about?

12 A. Back pains. I had sharp pains in my back. Like,
13 you know, needles and heat and stuff like that across my
14 shoulder. At night when I tried to sleep, I couldn't
15 sleep because if I rolled over to the left, I'd get a
16 sharp pain coming down my arm and stuff like that. And,
17 like I said, I'd get headaches, sharp pains, migraines.

18 Q. Were you having those type of pains prior to this
19 accident on March the 26th?

20 A. No, ma'am.

21 Q. Okay. Now did you have any back pain prior to this
22 accident?

23 A. No, I did not.

24 Q. How about your head?

25 A. No.

1 Q. Did you have any migraine headaches prior to this
2 accident?

3 A. Every now and then I'd get a headache from not eating,
4 hungry, or something like that, yes.

5 Q. Okay. Now when you went to see Dr. Z, what sort of
6 treatment he gave you?

7 A. He was -- like acupuncture. He was sticking needles
8 in my back about this long.

9 Q. Excuse me. Before you tell us about the treatment,
10 what kind of doctor was Dr. Z?

11 A. He is a spine doctor.

12 Q. Okay.

13 A. Yeah, a back doctor.

14 Q. Okay. And so, therefore, you kept your appointments
15 with Dr. Z?

16 A. Yes, I did.

17 Q. Okay. So your first appointment was like in -- do
18 you recall when your first appointment was with him?

19 A. I think it was around May 5, 2013.

20 Q. Okay. So about May 7th, do you think, that you saw
21 him?

22 A. Yes, ma'am.

23 Q. Or right after you were able to get an appointment?

24 A. Yes, ma'am.

25 Q. And what kind of treatment were you receiving?

1 A. I was receiving, you know, sort of like acupuncture.
2 He was sticking needles in my back, about three-inch
3 needles, and x-rays and testing my balance to see how can
4 I stand because of like the pressure on my back and across
5 my shoulder, and he was giving me steroid shots with about
6 four to six-inch needles in my back, and it was painful,
7 you know, so I can -- was in tears, you know.

8 Q. Did -- those injections, is that what you're talking
9 about? Not shots, but injections?

10 A. It was injections.

11 Q. Steroid injections?

12 A. Yes, ma'am.

13 Q. Okay. Did they help you?

14 A. Yes, they did.

15 Q. Okay. And were you able to continue to get those
16 injections?

17 A. Yes.

18 Q. Okay.

19 A. For a period of time, yes.

20 Q. Okay. And how long would those injections last?

21 A. Sometimes it might last six hours, sometimes a day,
22 you know, then the pain would come back, you know, over
23 and over, you know. It depends, you know.

24 Q. If you would, if the Court would allow, Your Honor,
25 for Mr. Montgomery to stand and show the jury his back,

1 where the pain was situated in his back? Was it the upper
2 and the lower?

3 A. It was the upper and the lower back.

4 Q. Okay. Would you stand, if he could, Your Honor?

5 **THE COURT:** Yes.

6 BY MS. MILES:

7 Q. Just stand and show the jury what kind of pains
8 you're talking about, where the pains were. Excuse us for
9 turning your back to the jury.

10 A. Okay. I had sharp pains right here on the right and
11 left side of my lower back and I had sharp pains up top on
12 the right side of my upper back, and he was sticking
13 needles here, here and over here, and doing injections up
14 here, like four injections every time he would, steroids,
15 running down my back with about four-inch or six-inch
16 needles.

17 Q. Okay. And how many times do you remember seeing
18 Dr. Z?

19 A. Around fifteen times, I believe.

20 Q. But he did not give you injections fifteen times, did
21 he?

22 A. No, ma'am.

23 Q. Okay. Now you said that the injections helped you.
24 What else -- what happened after that? You were taking
25 injections for a long period of time, is that right, up

1 into 2013?

2 A. Yes.

3 Q. Okay. And then what happened after that?

4 A. Well, I needed an MRI and I didn't have any money.
5 I wasn't working and I didn't have no insurance, so --

6 **MR. GARFIELD:** Your Honor, based on previous
7 conversations with the Court I believe maybe some
8 discussion off the record.

9 **THE COURT:** Ladies and gentlemen, I'm gonna ask that
10 you retire to the jury room. We have a matter that we
11 need to take up outside of your presence. I'm gonna ask
12 that you not discuss what you've heard of the testimony or
13 anything in reference to this case at this time and we'll
14 bring you back as soon as we resolve these particular
15 issues.

16 (Whereupon, the jury retires to the jury room at
17 12:02 PM.)

18 **MR. GARFIELD:** One point of concern, Judge, just as
19 we're talking about the accuracy of information so we're
20 all on the same page, I understand that the Plaintiff is
21 producing medical bills -- as far as Dr. Z is concerned,
22 medical bills with respect to four office visits from what
23 I read with my little aged-old eyes, so we've got four
24 office visits. He's just testified that he saw Dr. Z
25 fifteen times. Now I was keeping a close eye on this

1 because I was expecting him to say three times because he
2 saw -- the bills reflect that the Plaintiff saw Dr. Z
3 three times between May and June of 2013, and that was
4 based on what Your Honor had, you know, set the parameters
5 for his initial testimony and then I was waiting for him
6 to hear -- to see if he was gonna say three or four and
7 now we're hearing fifteen. Before we get far afield, I
8 think it definitely begs the in-camera inquiry. I have
9 questions for this witness as well, if it will assist the
10 Court in making a determination based on our pending motion
11 to strike.

12 **MS. MILES:** Your Honor, I think that what
13 Mr. Montgomery was testifying to -- I think that counsel
14 is just looking at office visits, for example, when he went
15 to see Dr. Z, but he was going also -- I think it's about
16 thirteen times, if I'm not mistaken, one, two, three, four,
17 five, six, seven, eight, nine, ten -- there's ten times in
18 which that he was going -- he was there being treated. I
19 think that you're looking at just the office visits with
20 Dr. Z because if you will look on the diagnosis and the
21 amount, the amount of treatment is on the right-hand side
22 where it says amount. So he was going down there, he just
23 saw Dr. Z, the office visit, but he was getting other
24 treatment.

25 **MR. GARFIELD:** Okay, Judge. I would like to correct

1 what I said. Ms. Miles is absolutely correct because you
2 can go in for services and be administered, you know, pain
3 shots and cortisone shots and these sort of things without
4 actually going to an office visit with the physician, so I
5 stand corrected. So I have -- these are entries that I
6 have. May 7th, May 14th, May 21st, May 28th, June 4th and
7 June 26th. Those are six occasions that he saw Dr. Z in
8 an office visit or otherwise services rendered from his
9 office. We've got six times in the May to June, 2013
10 timeframe. There were two additional times in 2014 that's
11 part and parcel of our motion. One was April 1st and one
12 was April 15th. So if what Your Honor was asking him to
13 initially testify to the immediate sort of treatment, so
14 we're really talking -- he said fifteen times, so I stand
15 corrected -- or six times, so that's what I wanted to be
16 real clear because this jury can get mighty confused mighty
17 fast about how many times he actually saw Dr. Z alone
18 because it just doesn't add up.

19 **THE COURT:** Well, I think based upon what's contained
20 in the exhibit there were sixteen separate entries, but
21 they seem to cover eight visits total.

22 **MS. MILES:** Yes, that's right. That's correct. I'm
23 sure that he said about, he didn't say directly that it
24 was fifteen.

25 **THE COURT:** Well, the record -- I mean, the jury will

1 have to recall what they heard. I did hear him say fifteen
2 times, so, you know, that -- that is really something that
3 can be --

4 MS. MILES: Explained.

5 THE COURT: -- explained or corrected on direct or
6 cross.

7 MS. MILES: Right.

8 THE COURT: But that's not --

9 MR. GARFIELD: Yes, ma'am.

10 THE COURT: -- really why we're here at this
11 particular point.

12 MS. MILES: Yes. Right.

13 THE COURT: So I think he indicated that -- where we
14 left off was that he talked about needing an MRI and that
15 he didn't have the funds to be able to do that and I think
16 that's where -- you know, that's where we need to hear the
17 rest of the testimony as relates to the other treatment
18 that he received.

19 MS. MILES: Okay. Thank you, Your Honor.

20 EXAMINATION (In-Camera)

21 BY MS. MILES:

22 Q. Mr. Montgomery, you indicated that you needed an MRI.
23 Was that ordered in 2013?

24 A. Yes, ma'am.

25 Q. Okay. And who ordered that?

1 A. Dr. Z.

2 Q. And there were two orders for you to have MRIs from
3 Dr. Z in 2013?

4 A. Yes.

5 Q. Okay. Well, why didn't you -- did you go and get
6 those treatments or the MRI in 2013?

7 A. No.

8 Q. Why not?

9 A. Because of my finances and I had no insurance,
10 money-wise I didn't, so I wasn't able to go back until
11 like 2014 as I got in touch with you, you know, and you
12 talked to Dr. Z to work something out.

13 Q. Were you still going to Dr. Z according to your
14 invoice when he ordered you to -- when he ordered that
15 you needed an MRI?

16 A. Yes. I had a couple more, yes.

17 Q. But he kept giving you the injections without the MRI?

18 A. Yes.

19 Q. Okay. And so when you went to get the MRI, that was
20 in 2014?

21 A. Yes, ma'am.

22 Q. Okay. How long it took you before you were able to
23 get the MRI?

24 A. Maybe about -- I think eight, nine months.

25 Q. Okay. And where did you go to get the MRI?

1 A. I think it was Palmetto Imaging in West Columbia,
2 Lexington County.

3 Q. Okay. And you had two that was ordered by Dr. Z?

4 A. Yes, ma'am.

5 Q. Okay. Now what happened -- how did you come up with
6 the funds in order for you to have those two MRIs done?

7 A. I got back in touch with you and I think you had
8 called the insurance company and they had gave me the money
9 to have the MRI.

10 Q. Okay. Was it -- did you try to get funds otherwise
11 in order for you to have the MRI done?

12 A. I tried, but there wasn't no exception. It was like
13 -- it was hard. I didn't have no insurance, so no way of
14 getting no funds or a loan or anything like that.

15 Q. Okay. In order to -- let's correct the record. You
16 said that there was an insurance company, but you're
17 talking about health -- Key Health Medical Solutions?

18 A. Yes, ma'am.

19 Q. Which would allow a patient to have an MRI done and
20 they will pay for it?

21 A. Yes, ma'am.

22 Q. Okay. So, therefore, you still owe them that amount
23 of money?

24 A. Yes, I do.

25 Q. Okay. Now those two MRIs, after that, were you able

1 to go back to see Dr. Z?

2 A. After the MRI?

3 Q. Yes.

4 A. Yes.

5 Q. Okay. And that's when you went back in 2014?

6 A. Yes, ma'am.

7 Q. Now how would we know that those MRIs were related
8 back to your accident on March 26, 2013?

9 A. Because Dr. Z ordered it.

10 Q. Okay.

11 A. For me to take it.

12 Q. Did you hurt yourself any other time in between
13 March the 26th, 2013, up to the time that you had those
14 MRIs done?

15 A. No, ma'am.

16 Q. Okay. Were you working anywhere?

17 A. No, ma'am.

18 Q. What kind -- what were you doing at home?

19 A. I was doing -- at home I was like -- I was in pain,
20 you know, my back, my shoulder. Every now and then I might
21 catch a migraine headache.

22 Q. Were you doing any household work?

23 A. No, ma'am.

24 Q. Okay. Were you doing any yard work?

25 A. No, ma'am.

1 Q. Were you doing any strenuous exercises?

2 A. No, I was not.

3 Q. Okay. Were you playing basketball?

4 A. No. I haven't played basketball in twenty years or
5 more.

6 Q. Were you playing football?

7 A. No, ma'am.

8 Q. Were you doing any sort of sports?

9 A. No, I was not.

10 Q. Were you raking your yard?

11 A. No.

12 Q. Were you mowing the yard?

13 A. No, ma'am.

14 Q. Okay. Were you lifting any heavy groceries?

15 A. No, ma'am.

16 Q. Did you go shopping?

17 A. No, I did not.

18 Q. Was there anything that intervened up from March 26th,
19 2013, until you had those MRIs done in 2014?

20 A. No.

21 Q. Okay. And after that, you had the MRI done, you went
22 to see Dr. Z?

23 A. Yes.

24 Q. Okay.

25 **MS. MILES:** Your Honor, I think that we have shown

1 that there were no intervening circumstances and that they
2 were ordered by Dr. Z in 2013, he had it done in 2014, and
3 right after that he went on back to Dr. Z.

4 **MR. GARFIELD:** May I question this witness?

5 **THE COURT:** Yes, sir.

6 **MR. GARFIELD:** Thank you.

7 EXAMINATION (In-Camera)

8 BY MR. GARFIELD:

9 Q. Good morning, Mr. Montgomery.

10 A. Good morning.

11 Q. So -- that's fine. You can keep it up there. That's
12 fine.

13 So you went to Dr. Z from -- in the months of May and
14 June of 2013, right?

15 A. Yes.

16 Q. Okay. And from his office you received services and
17 you went to office visits, right?

18 A. Yes.

19 Q. All right. And your last visit or your date of
20 service would have been either June 4th or June 26th of
21 2014. Does that sound correct, sir?

22 A. I believe so.

23 Q. Okay. And you reengaged Dr. Z for treatment in 2014;
24 isn't that right?

25 A. Yes.

1 Q. And so specifically April 2014; is that correct? You
2 went to him April 1st and April 15th of 2014. Does that
3 sound correct to you?

4 A. Yes.

5 Q. Okay. This was roughly ten months after your last
6 visit with him in June of 2013, right?

7 A. Yes.

8 Q. And roughly thirteen months after the event at the
9 Alvin S. Glenn Detention Center, which would have been
10 March of 2013; isn't that right?

11 A. Yes.

12 Q. Okay. So, Mr. Montgomery, on what basis do you
13 contend that the reengagement of Dr. Z's services and
14 treatment that he provided is related to your injuries at
15 the detention center? In other words, you going back to
16 Dr. Z in April 2014, what evidence and testimony do you
17 intend to show that that was -- there's a causal connection
18 between that and your injury?

19 A. Because he asked me to go get the MRI.

20 Q. Okay. And, Mr. Montgomery, what expert or medical
21 testimony are you prepared to introduce here at your trial
22 that the injuries that Dr. Z treated -- let's say all the
23 -- in both 2013 and 2014, all the times you went to him
24 in his office, all the treatments that you had, were
25 proximately related to the injury at the detention center?

1 A. Because I was getting the same treatment before in '13
2 and the same treatment in '14.

3 Q. Okay. So your evidence that you intend to show is
4 that the treatments were similar?

5 A. Yes.

6 Q. Okay. And then what expert or medical opinion
7 testimony are you prepared to introduce here at your trial
8 that the injuries that you complained of to Dr. Z were a
9 proximate cause -- proximately caused by the injury at the
10 detention center? What expert testimony is gonna say to a
11 reasonable degree of medical certainty most probably that
12 the injuries you complained of were as a result of what
13 happened at the detention center?

14 A. Because I went to the medic at Alvin Glenn and was
15 examined by the doctor and he said I had swelling in my
16 back and across my shoulder and I was having migraine
17 headaches, sharp pains and stuff.

18 Q. Yes, sir. Okay. I believe that's all the questions
19 I have -- well, that's concerning Dr. Z.

20 Now let me ask you about the actual MRIs. You had
21 an MRI, an imaging study, conducted in March of 2014; is
22 that correct?

23 A. What's the name again?

24 Q. An MRI. You had an MRI in March of 2014?

25 A. Yes.

1 Q. And in the MRI they checked out both your lumbar spine
2 area and your thoracic spine area. Does that sound right
3 to you?

4 A. Yes, sir.

5 Q. And then you went to -- well, let's just talk about
6 that one first, March of 2014. That in and of itself was
7 one year after the event at the detention center. Does
8 that sound right to you? March of 2013 to March of 2014,
9 one year?

10 A. If you say so.

11 Q. Well, do you have any reason to disagree with that?

12 A. No.

13 Q. Okay. So you get these imaging studies a year after
14 the alleged events, what evidence and testimony are you
15 prepared to offer at your trial to say that those MRIs
16 were ordered by a doctor as a result of the injuries you
17 sustained at the detention center?

18 A. Because he had ordered them in 2013.

19 Q. Okay. Because he told you that he ordered them in
20 2013; is that right?

21 A. He gave me a paper saying that I needed an MRI in
22 2013, yes.

23 Q. Okay. So that's a piece of paper out there that
24 should have said that?

25 A. Yes.

1 Q. How about August of 2014 now that we're on the imaging
2 studies? You had a second MRI in August of 2014, again,
3 taking a look at the lumbar spine. Does that sound right
4 to you?

5 A. Yes.

6 Q. Okay. What evidence or testimony are you going to
7 show that the medical bills associated with the MRI in
8 August of 2014 looking at your lumbar spine were reasonable
9 and necessary as a result of your injury at the detention
10 center?

11 A. So you're talking about Dr. Buncher now?

12 Q. Well, I'm just asking about a second MRI in August of
13 2014.

14 A. Okay. I took one for Dr. Buncher that he had got the
15 disk, it's a disk, and Dr. Z had said that I needed another
16 MRI on my lower back.

17 Q. Of the same exact place that they had checked out with
18 the MRI from five months earlier in March of 2014?

19 A. Yes.

20 **MR. GARFIELD:** Okay. Your Honor, I'd like at the
21 appropriate time when he's questioned about Buncher, which
22 I don't think he got into, but I'd like to be heard on the
23 Dr. Z and the MRI treatment and bills.

24 **THE COURT:** Well, let's hear about it now.

25 **MR. GARFIELD:** Okay. Well, Your Honor, the Plaintiff

1 is arguing well, gosh, isn't it obvious that he would not
2 have gotten this MRI scheduled but for the order of a
3 physician because you can't just walk into an imaging
4 place and schedule that. I understand that.

5 And she makes another leap that says not only does a
6 doctor need to schedule the MRI, but, of course, it would
7 have been scheduled and ordered as a result of the only
8 injury that he would have had and that would have been
9 at -- the alleged injury in March of 2013 and I think she
10 confuses what may be a legitimate explanation by a witness
11 to say I couldn't go because I couldn't afford it, a
12 reasonable legitimate explanation because that could be
13 any of us, but she confuses that with what the legal
14 standard is; is that the witness has to show that the
15 actual bills were reasonable and necessary, and that's a
16 completely different issue.

17 He had diagnostic testing ordered as a result of his
18 own complaints to the doctor. She has to link that up.
19 She is unable to link up either the proximate cause --
20 there's no medical testimony to say that his injuries
21 itself and the treatment afterwards, that he was treated
22 and the injuries that he complained of resulted back -- or
23 like Your Honor noted there was a causal connection to a
24 reasonable degree of medical certainty most probably.
25 She's unable to show that any of these medical bills,

1 including the ones in May and June, were reasonable and
2 necessary.

3 And the only way she intends, Your Honor, the
4 Plaintiff is able to try to put up evidence of this, and
5 I took notes, number one, Dr. Z asked him to get an MRI;
6 number two, that the medic at the Alvin S. Glenn Detention
7 Center told him that these were all related; number three,
8 I think he said that there's a piece of paper out there
9 that says that the doctor had ordered this.

10 As Your Honor heard me argue last week on another
11 case, the State does not recognize res ipsa loquitur. Her
12 entire argument is that this is circumstantial. The burden
13 in a personal injury case is much higher and is much more
14 concrete, that she has to put forth medical evidence --
15 excuse me -- medical opinion testimony or an expert to
16 link these things up. He is unable to say the things in
17 front of the jury. He's precluded from saying that under
18 admissibility considerations and I will object because
19 all of those are hearsay and I'd rather not go in front of
20 the jury and make that objection because I don't think I
21 would find favor with the jury, it would look like I was
22 hiding something. I think in order to prevent those
23 circumstances, we believe that we would be unduly
24 prejudiced for him to go forward and put in any testimony
25 whatsoever of any treatment that he had after the initial

1 treatment regimen of office visits in March -- excuse me
2 -- in May and June of 2013.

3 And I would also expand upon my motion to strike or
4 preclude this evidence or testimony relating to this
5 treatment and medicals that he's unable to link up even
6 the office visits in May of 2013. He's unable to link up
7 June 2013. He went to the doctor after he got out, but
8 there's no medical testimony to say that there's a causal
9 connection to any degree of certainty, much less the legal
10 standard. We would ask for all of his medical bills that
11 he intends to put up in front of the jury be stricken and
12 precluded for the reasons set forth. Thank you.

13 **THE COURT:** All right. Are you -- so you're also
14 saying all of Dr. Z's medical bills or just portions of
15 them?

16 **MR. GARFIELD:** Yes, ma'am. I think all Dr. Z's.
17 I'm expanding upon my motion based on the inquiry that I
18 had just now is that he's unable to put up any medical
19 testimony or expert opinion testimony that could relate the
20 office visits, diagnoses, treatments, services rendered,
21 that could relate that back to the injury in March of 2013.
22 There's -- there is no doctor testimony to corroborate or
23 to suggest that what he says rises to the level of what's
24 necessary in a personal injury case. He is -- he is just
25 merely saying he went to the doctor to complain of these

1 things. We don't have any doctor testimony. And in a
2 personal injury case, as Your Honor is aware, whether
3 that's, you know, Ms. Miles elected not to take the
4 deposition of any doctors, has not produced them here
5 today, there's no testimony, there's no evidence in the
6 record from any medical professional, whether that be
7 from the doctor, a nurse, a record's custodian, anything
8 to reflect what he's saying and it would be highly
9 prejudicial for him to be able to tell this jury that he
10 went to the doctor on several occasions based on the
11 issues that he's complaining of and absolutely not being
12 able to link it up because a jury when they make a
13 decision, the jury needs to decide as to whether those
14 treatments rose to the level of the legal standard for
15 medical certainty and they're going to be making a
16 decision without the minimum required evidence and we
17 would be prejudiced for him to go forward with it.

18 **THE COURT:** Ms. Miles.

19 **MS. MILES:** Yes, Your Honor.

20 If it please the Court, Your Honor, 401 of the rules
21 of evidence is it's apparent that relevant evidence means
22 evidence having any tendency to make the existence of any
23 fact that is of consequence to the determination of an
24 action more probable or less probable than it would be
25 without the evidence. And it's probable under these

1 circumstances for Mr. Montgomery's testimony, it's
2 probable in which that he could have -- it's probable for
3 the MRI to be ordered by Dr. Z and it's probable that the
4 MRI was done in 2014, which was March of 2014. He went
5 back to Dr. Z in April of 2014. So it's probable to
6 show that the Court -- I mean, the jury will make that
7 determination of the action more probable or less probable
8 than it would be without it.

9 The relevant evidence that Mr. Montgomery is
10 testifying to, Your Honor, is admissible. It's not
11 irrelevant what he's saying. He testified. He showed a
12 transaction from the time in which that he got out of jail
13 and the time in which that he went to see Dr. Z. We can
14 see the correlation there. It's just like when we're
15 doing cases to show the chain reaction if there was some
16 drugs and you have to show how that drug went from one
17 place to the next. He has linked it up in his testimony.
18 His testimony was the fact that he got injured on
19 March 26th, 2017 {sic}, he tried to get a doctor, he
20 finally went to a doctor in March -- no, in May.

21 There was -- counsel has the right to cross-examine
22 Mr. Montgomery to find out if there were anything that
23 intervened in between there, he has that right, and the
24 jury has the right to make the determination if something
25 else would have caused Mr. Montgomery to seek additional

1 medical treatment.

2 I don't see that the evidence that Mr. Montgomery
3 had testified to is irrelevant. All of his testimony
4 according to Rule 402 of evidence is that all relevant
5 evidence is admissible except as otherwise provided by
6 the Constitution of the United States and the Constitution
7 of the State of South Carolina and we are not in that
8 category. It says these rules or any other rules by
9 the Supreme Court of South Carolina. Evidence which is
10 not relevant is not admissible and everything that he
11 testified to about his treatment is relevant.

12 So I don't see how that this Court can deny
13 Mr. Montgomery the opportunity to introduce his medical
14 expenses when he's already testified that he went to the
15 doctor for treatment. Doctors just don't give you free
16 -- not the doctors I know, you know -- treatment without
17 some kind of expense, so it's irrelevant for us to be
18 arguing at this time without looking at the rule.
19 There's nothing here in this rule that would show that
20 Mr. Montgomery don't have the right to introduce these
21 medical bills. He has already shown the chain in which
22 that he was injured, he got treatment at the infirmary,
23 when he left there he was still having pain and he went
24 to the doctor. What else?

25 **MR. GARFIELD:** Judge, if -- if I may just make a

1 record of this one way or the other. It's relevant.
2 Ms. Miles is right. It's relevant. 402. All relevant
3 evidence is admissible and then there's exceptions. Might
4 I suggest Your Honor look at Rule 403, which states
5 although relevant comma evidence may be excluded if its
6 probative value is substantially outweighed by the danger
7 of unfair prejudice, which we're claiming here, confusion
8 of the issue, same, or misleading the jury, absolutely,
9 or by considerations of undue delay and waste of time or
10 needless presentation of cumulative evidence.

11 As Your Honor had noted earlier, I believe, Rule 701,
12 which is opinion testimony by lay witnesses, clearly
13 Mr. Montgomery can talk about what hurt him, his pain, all
14 subjective complaints, what he went through and that kind
15 of thing, but he's not testifying as an expert in this
16 case. They don't intend to put up any expert that would
17 otherwise be required by Rule 702, which is testimony of
18 experts.

19 Now I always find it interesting that Rule 703 allows
20 an expert or medical doctor to testify to the bases that
21 would be in his exam that would be hearsay; in other words,
22 the patient providing a history and he could talk about
23 the bases or an expert witness could talk about the facts
24 that he relied upon or she relied upon, but doesn't work
25 in reverse. A lay witness cannot talk about what an expert

1 would have said and thought and decided and concluded and
2 opined, so she's making a step, her entire argument is
3 relevant, it is, but it has to pass through those tests and
4 it also has to pass through tests of hearsay. Everything
5 he testified to would be inadmissible hearsay because it
6 would be for -- offered in this court no doubt for the
7 truth of the matter asserted and that's what the -- the
8 jury would hear. Thank you.

9 **THE COURT:** I basically have heard enough. I think
10 Mr. Montgomery can testify that he went to the physician,
11 that he was treated by the physician and he can talk about
12 the treatment that he received, and he's -- he's done that.
13 Where the problem comes up is -- and I have -- I think that
14 the jury can make the decision as to whether or not -- the
15 fact that he had an appointment on April the 17th, he was
16 discharged or released from Alvin S. Glenn at that time,
17 and that he still wanted medical treatment and so he
18 scheduled an appointment and went to the doctor in May.
19 I think that's perfectly acceptable. And that he was
20 treated by the doctor and I think he can say what was
21 done -- what treatment he received. No, there's not a
22 diagnosis, but I think that the jury can determine whether
23 that treatment in May would have been related and
24 reasonable under the circumstances given the fact that
25 he was released on April the 17th.

1 The two things I noticed that -- you know, initially
2 I thought okay, well, it would be okay for him to talk
3 about the MRI, but that is -- that is a recommendation
4 about treatment. We don't know the reasons why that MRI
5 was prescribed for him. There's no medical record that
6 demonstrates at least what -- you know, that there was,
7 in fact, an MRI ordered and what the doctor -- what the
8 doctor wanted and when it was ordered. So -- and I
9 understand his testimony about he couldn't afford it, but
10 I think Mr. Garfield is correct that in terms of being
11 able to present information about the MRI occurring in
12 2014 that there has to be something other than the hearsay
13 testimony that he ordered an MRI. Whether that -- and that
14 could be done through non-hearsay documents such as the
15 medical records, the -- I think the exception to the
16 hearsay rule would have been 803(6), which would have been
17 the custodian coming in with the medical records that show
18 that the physician ordered the MRI. I think that going
19 back to the doctor in May -- I'm sorry, April of 2014, that
20 there's got to be some testimony related to that as well in
21 terms of, you know, what the doctor's diagnosis was and
22 what the course of treatment was at that particular time
23 and certainly anything that occurred -- at this particular
24 point anything that occurred in August of 2014, which would
25 have been Dr. Buncher's treatment, as well as the -- the

1 second lumbar spine MRI, those are things that I think
2 clearly require some medical testimony to provide a causal
3 connection. Sure I -- I have no doubt that Mr. Montgomery
4 went to a physician at that time. The question is what was
5 the medical condition that required treatment and was it,
6 in fact, related and can it be directly related through
7 expert testimony to the incident that occurred in March of
8 2013.

9 So I'll -- I won't allow him to go any further into
10 the MRI, either in 2014 -- March of 2014 or August of
11 2014. I don't think he can talk about Dr. Z's office
12 visits in April of 2014 and I don't think he can talk
13 about Dr. Buncher without having some medical record that
14 shows -- or some -- something that's other than hearsay to
15 be able -- to connect it to show that it was causally
16 related to the incident and I think it's too far removed
17 in time and there's -- there's nothing to link it up other
18 than the hearsay testimony of this particular witness and
19 I think it is hearsay and it's inadmissible hearsay.

20 **MR. GARFIELD:** Thank you, Your Honor.

21 **MS. MILES:** Your Honor, we also say in terms of that
22 -- I understand your ruling, Your Honor, however, I would
23 take -- I ask the Court to take in consideration Rule 701,
24 opinion testimony by the lay witness. Because what we are
25 trying to get in is not scientific as far as talking about

1 what the MRI shows. We're only talking about that he had
2 the MRI. That's the evidence.

3 I could see if this was a medical malpractice case
4 whereas we had to show specifically the scientific -- or
5 what the expert needs as to Rule 702. That's when you
6 talk about scientific, technical or other specialized
7 knowledge. We're not talking about that in this case.
8 We're only talking about the fact that it was ordered for
9 him to do an MRI. That's all we're talking about. We're
10 not talking about what the MRI shows.

11 **THE COURT:** And I -- Ms. Miles, with all due respect,
12 I think you're gonna need to provide the medical record to
13 show when it was ordered and that it was ordered at the
14 time that he was seeing Dr. Z in 2013 and absent that, you
15 know, there's -- the jury's left to consider the hearsay
16 testimony of this witness who says well, he ordered it,
17 and for the truth of the matter that's being asserted,
18 that he ordered it, and I think there's got to be some --
19 there's got to be some showing through the medical records
20 that an MRI was ordered for him to be able to talk about
21 that MRI and the subsequent -- and the subsequent treatment
22 that he received after the MRI was done.

23 **MS. MILES:** So the ruling is that he cannot say that
24 he had an MRI done?

25 **THE COURT:** Well, he's already said it basically in

1 front of the jury, but he can't discuss it any further
2 than that.

3 **MS. MILES:** Okay. And as far as introducing into
4 evidence, can he show the bill?

5 **THE COURT:** No, because I think -- I think that's a
6 self-fulfilling prophecy. I mean, he still has to show
7 that -- my problem is the timing with which the MRI
8 occurred.

9 **MS. MILES:** Okay.

10 **THE COURT:** There's nothing to demonstrate -- yes, he
11 says that the MRI was ordered, he says it was ordered in
12 2013, but it wasn't done until 2014 and then the bill's
13 in 2014, and I think there needs to be some connection,
14 something to demonstrate that it was, in fact, ordered
15 in 2013, whether it's through the medical record, you know,
16 the physician's notes or the records to demonstrate that,
17 yes, they were ordered, and I think that's the problem in
18 this particular case because it does lead the jury to
19 speculation and to assume that it was ordered in 2013 and
20 -- but he couldn't do it until 2014 because of his
21 financial circumstances, and so I just think that's too
22 tenuous.

23 **MS. MILES:** Your Honor, you have been very patient
24 with me, but I would like to get some clarity in my mind
25 because it's not hearsay when the person who was there in

1 the action, in the conversation. It's not hearsay. He
2 was there.

3 **THE COURT:** But he's testifying as to what he was
4 told by the doctor. That's hearsay.

5 **MS. MILES:** But he didn't say he was told, he said it
6 was ordered.

7 **THE COURT:** And how did that occur? It was through
8 -- it was through the -- it was through the medical action
9 that he was told by the doctor he needed to have an MRI
10 and here's your order to get it done. If he could --
11 Mr. Garfield is right. If you could produce the order,
12 if you could produce the record which shows in the
13 physician's notes that this was what was ordered, I think
14 you would get past the objections that we're calling out.

15 **MS. MILES:** I can show you the Palmetto -- where they
16 have Dr. Z's name on it as the physician. Look up to the
17 top.

18 **MR. GARFIELD:** Yes, ma'am.

19 What Ms. Miles respectfully is showing me is a
20 diagnostic imaging report that looks like -- it's just
21 exam notes by -- I guess it's a radiologist, which would
22 be Zachary Kilpatrick, M.D., who's not been identified as
23 a witness and obviously this piece of paper would
24 constitute inadmissible hearsay because no one would be
25 able to authenticate it and relate it to these events.

1 I understand where Ms. Miles is going, but it just -- it
2 just goes with my earlier grounds, Your Honor. This --
3 this would not be sufficient as far as we're concerned.

4 **MS. MILES:** Your Honor, the question was whether or
5 not Dr. Z ordered and we answered by saying that just
6 can't walk into Palmetto Imaging without it being ordered
7 and the physician's name is on this paper in which that it
8 is the diagnostic imaging and it says specifically that
9 Dr. Timothy M. -- Dr. Z is the physician.

10 **THE COURT:** The question is with also when did he
11 order it. I mean, it's not just -- it's not just about
12 the order, but it's also about when he ordered it.

13 **MS. MILES:** Okay. I beg the Court's indulgence.

14 I have here, Your Honor, on Dr. Z's letterhead saying
15 Palmetto Spine Sports Medicine and it says re: Keith
16 Montgomery, orders for MRI lumbar spine, thoracic spine,
17 and it's from Dr. Z.

18 **MR. GARFIELD:** She's right, Your Honor. It's dated
19 March 3, 2014.

20 **THE COURT:** And, Ms. Montgomery -- or Ms. Miles,
21 that doesn't -- that doesn't get us past the 2000 -- what
22 happened between in terms of those orders are 2014,
23 several months after. There needs to be some medical
24 testimony to say why wasn't it -- why wasn't it ordered
25 in 2013 and to be able -- you know, for someone to come

1 and explain that. It calls for speculation, Ms. Miles.
2 It does not -- there's nothing to link the reasons for
3 the MRI, why it was ordered, what was the diagnosis, what
4 was the prognosis. You know, if he stopped seeing the
5 doctor in June of 2013 and then there's an order eight
6 months later in March of -- I'm sorry. If he stopped
7 seeing the doctor in 2013 and then eight months later in
8 2014 there's an order for an MRI, there's no -- there's no
9 causal connection there. There's got to be some medical
10 testimony that links the two up. If he had an order that
11 was dated in March when he was in the middle of the
12 treatment from Dr. Z, I'd be all for allowing that to come
13 in because that's in the middle of the treatment that he's
14 done right after he was released and during that course of
15 treatment, but for eight months later with no -- with
16 nothing to draw it together, I don't believe that this
17 witness can be able to say why the MRI was needed and that
18 it was related to the accident that occurred in 2013 --
19 the incident that occurred in March of 2013.

20 **MS. MILES:** I understand, Your Honor. We have no
21 other witness other than Mr. Montgomery and you already
22 told me that he can testify to his treatment up to 2013;
23 however, he will not be able to testify to any further
24 treatment. Is that correct?

25 **THE COURT:** Yes, ma'am.

1 **MS. MILES:** Okay.

2 All right. So in order to -- we're going to have to
3 redact the invoice.

4 **THE COURT:** Yes, ma'am. And what you can do is you
5 can -- it's been marked. I would just say that it doesn't
6 go to the jury until it's been redacted, so during the
7 lunchtime it can be redacted.

8 **MS. MILES:** Thank you, Your Honor.

9 **THE COURT:** And, of course, the amount that's on the
10 front would have to be --

11 **MS. MILES:** Taken off, yes.

12 **THE COURT:** So -- and I think -- and because the
13 exhibit does contain the costs associated with the
14 services --

15 **MS. MILES:** Yes.

16 **THE COURT:** -- I don't think he has to testify as to
17 a final dollar amount at this particular point because
18 the records would be introduced and I think he can -- you
19 can argue the final amount during your closing arguments.

20 **MS. MILES:** Your Honor, to beg the Court's indulgence,
21 I thought I left my medical records at the office because
22 I knew I couldn't introduce them, but I just remembered I
23 just -- I do have Dr. Z's medical records. May I -- I
24 know I saw it in here last night that he ordered it. Just
25 a moment.

1 Your Honor, I have here June the 4th, 2013. And let
2 me let counsel see the list. This is from Dr. Z.

3 **BAILIFF:** May I approach?

4 **THE COURT:** I've got a note from the jury.

5 **MS. MILES:** They want to eat, huh?

6 **THE COURT:** Yeah, they do.

7 **MS. MILES:** Okay.

8 And that was -- one was in 2013. Those are the
9 things I sent to you and there's another one in there.

10 **MR. GARFIELD:** Thank you.

11 **MS. MILES:** Your Honor, may I approach?

12 **THE COURT:** Yes, ma'am.

13 **MR. GARFIELD:** I'm trying to find what Ms. Miles
14 provided the Court, which I guess is some reference to an
15 order in 2013 for the -- 2014 for a thoracic spine MRI.
16 The confusing part here is that on March 11th of 2014 the
17 bill says for a lumbar spine and a thoracic spine. The
18 order from 2013 was -- just reflected that the magnetic
19 resonance imaging, whatever that is, that it would be for
20 the thoracic spine, and even if us sitting here under the
21 lights thinking that that adds up, we just respectfully
22 take the position that she needs some sort of medical
23 testimony to say that not only -- that the imaging done in
24 March of 2014 related back to the complaints from 2013.
25 They need to have some medical related testimony, expert

1 opinion. I see what the piece of paper purports to say,
2 but it doesn't -- it just references thoracic spine and
3 then there's one -- okay. There is one. There's another
4 one.

5 **MS. MILES:** There's two in there.

6 **MR. GARFIELD:** There's two. I see. There's one --
7 but to take a needle in a haystack and rip this out of
8 a copy portion of a medical record and then turn it in
9 -- to offer into evidence for the truth of the matter
10 asserted, this clearly contains inadmissible hearsay.
11 First of all, it would be offered for the truth of the
12 matter asserted, number one. There's no -- there's no
13 one that could testify that can authenticate it and
14 there's no medical testimony over and above that that
15 could relate this to what happened, we just have a sheet
16 of paper, and that's why that there are -- the rules of
17 evidence require some type of competent evidence, usually
18 by way of medical testimony, video deposition of the
19 doctor, some sort of sworn testimony, instead of me just
20 taking this and turning it to the jury to link this up.
21 I see what she's saying and I think it does answer the
22 question to some degree, but it doesn't rise to the level
23 of competent evidence.

24 **MS. MILES:** Your Honor, I think under the rules of
25 evidence there's an exception. That is a business record

1 which that was presented to show that -- to support
2 Mr. Montgomery's argument and which that -- his testimony
3 rather, that he actually was ordered to get an MRI -- two
4 MRIs and under the laymen rule he can testify to that and
5 that can be introduced to support what he already testified
6 to. So I don't see how that is a confusion or prejudices
7 the Defendant or a waste of time. This is evidence and
8 to be able to show the probable value that this actually
9 occurred.

10 **THE COURT:** First of all, my first question is where
11 is the second order?

12 **MS. MILES:** Well, it should be in there, Your Honor.

13 **MR. GARFIELD:** It should be the page right -- it says
14 page three out of three. I think the second order was the
15 page previous to that, page two out of three.

16 **THE COURT:** I don't have that. That's not here.

17 **MS. MILES:** I don't have the whole -- I guess I don't
18 have the whole -- but I know it was two in there.

19 **THE COURT:** Let me see that one.

20 **MS. MILES:** May I have yours, please? Because I don't
21 have the whole package.

22 **MR. GARFIELD:** Yes, ma'am.

23 **THE COURT:** Well, I guess my question would be was it
24 provided to Mr. Montgomery?

25 **MS. MILES:** Yes, I provide everything to

1 Mr. Montgomery.

2 **THE COURT:** No, no, no. Was this diagnostic order
3 given to Mr. Montgomery? The order.

4 **MS. MILES:** You mean, was it given to Mr. Montgomery?
5 Yes, because they sent me a copy of it and Mr. Montgomery
6 got a copy of it, too.

7 **MR. GARFIELD:** I just don't understand how he can
8 show that he had copies -- a couple of issues, Judge.
9 First, I can't understand how he shows he had a copy
10 because we got this off of a medical authorization. This
11 looks like this went from one -- a clinical router. This
12 is the other page that went from one covered entity, like
13 a doctor's office, to the other. This would be the -- I
14 don't see that there's any sort of indication on there
15 that that would have been provided to Mr. Montgomery or
16 his lawyer.

17 The second issue is if she's gonna claim a business
18 records exception, we don't know -- ordinarily, Judge, I
19 think the rule requires for someone to actually testify
20 that they're familiar with this for identification, that
21 that was prepared in the ordinary scope of the business,
22 and it was kept and maintained. I mean, it's sort of --
23 I understand the temptation, but it is an end-around of
24 the business records rule. That would also not rise to
25 the level of an exception.

1 **THE COURT:** Yeah, this -- Ms. Miles, I applaud you
2 for your efforts, but I would agree that -- I would have
3 no problem allowing that in if you could get the custodian
4 of the records to come and testify to it because I think
5 under 80 -- Rule 803(6), which is one of the hearsay
6 exceptions for records of regular conducted activity, I
7 think that those business records would fall under that
8 and that if you had a custodian of the records who could
9 say there's this order with this date on it that was
10 electronically signed by the physician, Dr. Z, for him
11 to get an MRI, you'd be home free, but I don't think --

12 **MS. MILES:** That we have that under the circumstances.

13 **THE COURT:** Yes. I don't think -- I don't think that
14 he can testify to that. He may be aware of it --

15 **MS. MILES:** Yes.

16 **THE COURT:** -- but it was told to him and so that
17 constitutes hearsay.

18 **MS. MILES:** Okay.

19 **THE COURT:** And even though it's hearsay from his
20 doctor who has a record, you still need -- I think you
21 still need the custodian of the records to say these are
22 the records we kept, these were done at the time that he
23 saw him, that this was ordered and here it is, it's in
24 the record where he sent it to Palmetto Imaging for him
25 to get an MRI in 2013.

1 **MS. MILES:** I understand, Your Honor. I think -- I
2 think I've given my best effort on this --

3 **THE COURT:** You have.

4 **MS. MILES:** -- and we need to move on.

5 **THE COURT:** I have to say you have given it your best
6 effort. What I'm gonna do -- given the time and the note
7 from the jury that says when is lunch, and the County is
8 not paying for lunch, I will call them in and send them
9 to lunch and we'll come back and continue on with his
10 testimony at that particular time. That will give you an
11 opportunity during the lunchtime to do the exhibit and
12 correct that.

13 **MS. MILES:** Okay. Yes.

14 Your Honor, I was hoping that we could really get out
15 of here. I'm sorry I caused this because we want -- this
16 is not a lengthy case.

17 **THE COURT:** I know it's not and it's not -- it's
18 still not gonna be a lengthy case. I understand that, you
19 know, things happen and no matter how well we try to plan
20 the best made plans of mice and men often go awry.

21 If you will ask the jury to come in, please.

22 So we just may be here a little bit longer today.
23 We'll still got done today.

24 **MS. MILES:** Okay.

25 (Whereupon, the jury returns to the courtroom at

1 1:04 PM.)

2 **BAILIFF:** The jury is seated, Your Honor.

3 **THE COURT:** Madam Foreperson, thank you for your
4 note.

5 At this time I am going to send you to lunch. I'm
6 going to ask you and remind you to follow all the
7 instructions that I've given to you; that is, not to
8 discuss this matter among yourselves as you've still not
9 heard all of the evidence that has to be presented.

10 Please remember as you come and go from the
11 courthouse not to listen to conversations that you may
12 hear in the hallways, again, for the reason that you will
13 have to make your decisions based upon the evidence that
14 will be presented here in this courtroom and not based
15 upon conversations that you may overhear.

16 Please also remember not to allow anyone to approach
17 you to discuss this matter with you. Again, if someone
18 attempts to do that, please tell them that you are a juror
19 and you cannot discuss it and I ask that you report it as
20 soon as possible.

21 Ladies and gentlemen, it's a little bit after 1:00.
22 I'm going to ask that you report back to the jury room
23 when you come back from lunch at 2:25 and when you come
24 back at that time we'll be ready to continue on with the
25 trial of this matter.

1 Again, remember do not go to the jury assembly room,
2 come upstairs to the third floor and come down the hallway
3 to the jury room and we'll be ready to continue at that
4 point.

5 Thank you for your patience. I do appreciate that
6 and I hope you have a good lunch. We'll see you back at
7 2:25.

8 (Whereupon, the jury was excused for lunch at
9 1:06 PM.)

10 **THE COURT:** Mr. Montgomery, you may step down from
11 the witness stand. I'll caution you that during the
12 break you should not discuss your testimony with anyone,
13 including your attorney. Certainly she can tell you
14 before you go to lunch what the parameters are in case
15 you haven't grasped the whole concept of our conversation,
16 but she can explain that part to you. But you should not
17 discuss your testimony further with her because you've not
18 completed your testimony and it would be inappropriate for
19 you to discuss it further with her.

20 Do you understand?

21 **THE WITNESS:** Yes, ma'am.

22 **THE COURT:** Thank you. You may step down.

23 Is there anything else we need to take up before we
24 adjourn for lunch?

25 **MS. MILES:** Nothing from the Plaintiff.

1 **MR. GARFIELD:** No, Your Honor.

2 **THE COURT:** Okay. Then we'll take a break for lunch.

3 The exhibit has not been admitted yet, so I'll allow
4 you to take that to redact it and correct it and we'll put
5 a new sticker on it.

6 **MS. MILES:** Thank you, Your Honor.

7 **THE COURT:** And if there's nothing else, then we'll
8 come back at 2:25.

9 **MR. GARFIELD:** Thank you.

10 And would it be a problem for me to remain here during
11 lunch and keep working? That's normally what I do.

12 **THE COURT:** No, it's okay. They lock the doors.

13 **MR. GARFIELD:** Yes, ma'am. I understand.

14 **MS. MILES:** They do lock the doors?

15 **THE COURT:** They do lock the doors, so if you need
16 to leave you will need to go because otherwise you'll be
17 locked in.

18 **MS. MILES:** Okay.

19 **THE COURT:** And you can leave whatever materials you
20 would like to leave.

21 **MS. MILES:** Okay. Thank you.

22 (Whereupon, a luncheon recess was taken.)

23 (Back on the record at 2:30 PM.)

24 **BAILIFF:** Court come to order. Please rise.

25 **THE COURT:** Good afternoon. Be seated, please.

1 Thank you.

2 **MR. GARFIELD:** Your Honor, could I just -- off the
3 record about what you had asked? I conveyed an offer to
4 the Plaintiff and she said she was going to discuss it with
5 her client and I just hadn't heard back.

6 **THE COURT:** Okay. Anything from you, Ms. Miles?

7 **MS. MILES:** No, Your Honor. Off the record we
8 considered what the offer was, but it was just for the
9 medicals and I think that Mr. Montgomery has demonstrated
10 that pain and suffering was not even considered.

11 **THE COURT:** I received a note from one of the jurors,
12 Number 115, Emily Grant. She is -- she's retired from
13 SLED and she indicated that she grew up in Eastover and
14 that she knows of Mr. Montgomery's family, but once she
15 graduated from high school she moved away from the area
16 and -- but she wanted me to be aware of that fact. She
17 said she didn't know him until he began to testify. She
18 indicated that she wanted to make sure that she disclosed
19 that information. I asked her whether she could be fair
20 and impartial and she indicated that she could and she also
21 wanted to make sure that the parties were aware that she
22 was retired from SLED, so she would have handled, you know,
23 criminal records and that kind of thing, and I assured her
24 that the attorneys were at jury qualification on Monday
25 even though she may not have seen them or recognized them,

1 but that they were aware of that at the time because
2 you-all were there for rollcall when she stood up and said
3 that she was retired from SLED, so I told her I would bring
4 that to your attention.

5 **MS. MILES:** Yes, Your Honor.

6 **THE COURT:** And if you have anything you want to say
7 in response to that, that's fine, but if not, then we can
8 move on.

9 **MR. GARFIELD:** Yes, ma'am. We don't have a position
10 on that, Judge. Thank you.

11 **MS. MILES:** We don't have anything.

12 **THE COURT:** Okay. All right.

13 **MR. GARFIELD:** The only thing to take up before I
14 forget before the jury comes in, I believe the last bit of
15 questioning that the jury would have heard on direct would
16 have been some reference to the MRI and I didn't know if
17 that warranted some type of innocuous type of instruction
18 to, you know, kind of keep -- keep them, you know, situated
19 on or that they shouldn't really focus on any kind of
20 diagnostic testing, what's before you is in evidence kind
21 of thing because I know during the break that Ms. Miles
22 did the redaction and I've looked at it and I've agreed to
23 it and that's gonna go in front of the jury and none of
24 that is referencing any kind of MRI or CT or anything. So
25 if there was a reference made, I didn't know if that was

1 something to clear up or not.

2 **THE COURT:** Well, frankly, I hadn't -- I hadn't
3 thought about addressing that particular issue. My
4 thought was that it just would have created more attention
5 to it.

6 **MR. GARFIELD:** Maybe.

7 **THE COURT:** But I'll be happy to consider -- you
8 know, if there's something that you want me to indicate
9 maybe at the end of his testimony or at the end of the
10 trial during my instructions, I'll be happy to take care
11 of it at that particular time.

12 **MR. GARFIELD:** Yes, ma'am. At the end of trial I
13 think that would be adequate. Thank you.

14 **THE COURT:** Anything further, Ms. Miles? Anything
15 from you?

16 **MS. MILES:** No, Your Honor.

17 **THE COURT:** Mr. Montgomery, if you would come and
18 retake the witness stand for me, please.

19 (Whereupon, the witness retakes the witness stand.)

20 **THE COURT:** You can ask the jury to come in, please.

21 (Court's Exhibit Number 1 was marked for
22 identification.)

23 (Whereupon, the jury returns to the courtroom at
24 2:36 PM.)

25 **BAILIFF:** The jury is seated, Your Honor.

1 **THE COURT:** At this time we're ready to continue on,
2 Ms. Miles.

3 **MS. MILES:** Thank you, Your Honor.
4 If it please the Court, Counsel?

5 **THE COURT:** Yes, ma'am.

6 CONTINUED DIRECT EXAMINATION

7 BY MS. MILES:

8 Q. I want to continue on the questioning of your
9 treatment, Mr. Montgomery. Tell me what was your
10 emotional and mental state after this accident.

11 A. My emotional and mental state, I was very
12 discombobulated. I -- you know, I was hurting, in pain
13 in my back, then I wasn't able to find a job for -- it was
14 a couple of months that I was hurt that I was out and
15 couldn't, you know, pay my child support or anything like
16 that, so it was, you know, emotional stress.

17 Q. Okay. Did you go through any depression?

18 A. Yeah, I was down. I wasn't eating or sleeping well.

19 Q. Okay. Were you taking any medication for your
20 depression?

21 A. No, ma'am.

22 Q. Okay. How did you handle it?

23 A. Just prayed to God is what I did.

24 Q. Okay. Were you taking any over-the-counter
25 medication?

1 A. Yes, I would go and get like Goody powder, Tylenols,
2 Bayer aspirin and stuff like that, and I still had a little
3 bit of medicine that Dr. Z had gave me.

4 Q. Okay. Were you doing any exercises that Dr. Z told
5 you or that Dr. Z may have indicated that you could do?

6 A. Yes, ma'am.

7 Q. What were those exercises to do?

8 A. Loosen up my back muscles and stuff like that, you
9 know, a little bit of sit-ups every now and then, maybe
10 two or three, repetition with my arms and stuff like that,
11 lift my legs up.

12 Q. Were you receiving -- were you doing anything for the
13 stiffness in your back?

14 A. I was putting like heating pads on and Ben-Gay, Icy
15 Hot and stuff like that.

16 Q. Okay. Did you find any relief?

17 A. For a few hours, you know, and then it would just
18 wear off and the pain would come back.

19 Q. Okay. So you start taking over-the-counter medication
20 and doing some exercises and a heating pad on your own?

21 A. Yes, ma'am.

22 Q. Okay. You were released from Dr. Z on June 4th of
23 2013; is that right?

24 A. Yes, ma'am.

25 Q. Okay. And during the time that you -- you already

1 testified that you were given injections by Dr. Z.

2 A. Yes.

3 Q. Okay. And was those -- those injections, you thought
4 that those treatments were reasonable?

5 A. Yes, ma'am.

6 Q. Were they necessary for you?

7 A. Yes.

8 Q. Why was that?

9 A. The pain and the suffering that I had in my back.
10 You know, it feel like stickpins and a warm sensation and
11 stuff like that. Just it was aggravating.

12 Q. Okay. Did you incur expenses for your medical
13 treatment with Dr. Z?

14 A. Yes, ma'am.

15 **MS. MILES:** Your Honor, we have Plaintiff's Exhibit
16 Number 1 in which that we have already shown to counsel
17 with the redaction and we would like to, Your Honor,
18 present this to Mr. Montgomery.

19 BY MS. MILES:

20 Q. Can you identify that document at this time?

21 A. Yes, ma'am.

22 Q. What is that?

23 A. It's a bill of the treatment that I received at
24 Dr. Z.

25 Q. Okay. And those treatments, did you actually receive

1 those treatments?

2 A. Yes, ma'am.

3 Q. Okay?

4 **MS. MILES:** Your Honor, if I may, we would like to
5 introduce into evidence Plaintiff's Exhibit 1.

6 **MR. GARFIELD:** Without objection, but also pursuant
7 to the earlier issues we placed on the record with respect
8 to that.

9 **THE COURT:** Yes, sir.

10 And so it will be admitted.

11 **MS. MILES:** Thank you, Your Honor.

12 **MR. GARFIELD:** Yes, ma'am, thank you.

13 **THE COURT:** Yes. Is it two documents with one
14 sticker?

15 **MS. MILES:** It's just -- it's two documents. One has
16 the amount and the other one has the treatment costs.

17 **THE COURT:** Okay.

18 (Plaintiff's Exhibit Number 1, Medical Bill Costs, was
19 admitted into evidence.)

20 **MS. MILES:** I apologize to the Court, as well as to
21 the jury, of the texture of that document. We had to make
22 some changes.

23 BY MS. MILES:

24 Q. While the jury is looking at that document or the
25 invoice, did the accident kept you from doing things that

1 you normally would do?

2 A. Yes, ma'am.

3 Q. Okay. What are some of the things that it kept you
4 from doing?

5 A. I couldn't drive too much or too long at a certain
6 period of time, walking, you know, playing basketball,
7 football or whatever, but, you know, any kind of
8 exercising, I couldn't have done that. Then, you know, I
9 couldn't really go and get a great job because my back was
10 hurting and aching.

11 Q. Okay. So the exercises that Dr. Z had prescribed for
12 you were not strenuous?

13 A. No, because he would tell you like do one or two reps,
14 like five, at one minute or two minutes, you know, not
15 overstrain yourself.

16 Q. Were you able to complete those type of exercises?

17 A. Well, I might have got, you know, maybe one or two
18 reps and then, you know, the pain and everything went back,
19 so, you know.

20 Q. Well, how often would you actually play basketball or
21 anything like that before this accident?

22 A. Well, not often, no.

23 Q. Okay. But you were not able to do that after, play
24 basketball or any other sports --

25 A. No, ma'am.

1 Q. -- after the accident?

2 A. (Shakes head.)

3 Q. Okay. Now the steel door that slammed on your head,
4 do you have any kind of fracture or any -- did it fracture
5 anything on your body?

6 A. No, ma'am.

7 Q. Okay. Did you have a lump on your head or anything
8 like that?

9 A. A little -- I had a little bump on the back of my head
10 on the left side when I went to medic.

11 Q. Okay. And what about your back? Did it come all the
12 way down to the back or it was just -- what happened?

13 A. It's in my upper back and all the way down into my
14 lower back, the pain.

15 Q. Okay. Do you think that the accident could have been
16 avoided?

17 A. Yes.

18 Q. Okay. Do you think that the Officer Taylor actually
19 had a duty to make sure that the inmates were safe before
20 he pulled off?

21 **MR. GARFIELD:** Objection, Your Honor. Objection.

22 This calls for a legal conclusion.

23 **THE COURT:** Rephrase the question.

24 **MS. MILES:** Okay.

25 **BY MS. MILES:**

1 Q. Do you know whether or not Officer Taylor knew that
2 you were on -- on the storage?

3 A. Yes.

4 **MR. GARFIELD:** Objection. Calls for speculation.

5 **MS. MILES:** Your Honor --

6 **THE COURT:** I overrule that objection.

7 **MS. MILES:** Thank you.

8 BY MS. MILES:

9 Q. Where were -- when you first got to the place to pick
10 up the -- the lawnmower, where was Officer Taylor?

11 A. He was standing in front of the truck, the F-150 Ford.

12 Q. Okay. He saw the -- he saw you standing in the
13 storage?

14 **MR. GARFIELD:** Objection. Calls for speculation.

15 **THE COURT:** Rephrase the question.

16 BY MS. MILES:

17 Q. Okay. Did you see Officer Taylor at all times while
18 you were there?

19 A. Yes.

20 Q. Okay. And was Officer Taylor visible to you or he was
21 always -- or was he in the truck at any time?

22 A. He was visible to me.

23 Q. Okay. He saw you?

24 **MR. GARFIELD:** Objection, Your Honor. Same objection.

25 Calls for speculation.

1 BY MS. MILES:

2 Q. Did you talk to Officer Taylor while you were getting
3 the lawnmower out of there?

4 A. No, ma'am. He was on a walkie-talkie talking.

5 Q. Okay. And when he was on the walkie-talkie, you saw
6 him?

7 A. Yes, ma'am.

8 Q. And the other inmates saw him?

9 A. Yes, ma'am.

10 Q. Okay. Now what happened -- when you saw Officer
11 Taylor, was anyone else was there like a supervisor over
12 Officer Taylor or it was just the three of you out there?

13 A. Just three inmates and a supervisor, Officer Taylor,
14 was outside on the yard.

15 Q. Okay. Was anyone out there to tell Officer Taylor to
16 pull that truck off?

17 A. No, ma'am.

18 Q. Okay. Was anyone there to tell Officer Taylor that
19 he could not pull the truck off?

20 A. No, ma'am.

21 Q. Okay. So Officer Taylor voluntarily pulled the truck
22 off?

23 A. Yes.

24 Q. Okay. Now when he pulled the truck off, where -- were
25 you able to see him?

1 A. At the time I was looking toward the right.

2 Q. Okay. Well -- but before he got into the truck, what
3 was he doing?

4 A. Talking on the walkie-talkie to someone.

5 Q. Okay. So do you think that if Mr. -- Officer Taylor
6 would have looked or did due diligence as far as to watch
7 or look for where the inmates were that this accident could
8 have been avoided?

9 **MR. GARFIELD:** Objection, Your Honor. It calls for
10 legal conclusions. It's a compound question.

11 **MS. MILES:** Your Honor --

12 **THE COURT:** Rephrase the question.

13 **MS. MILES:** Okay.

14 BY MS. MILES:

15 Q. Were there -- do you think that you could tell this
16 jury whether or not there was a failure by Officer Taylor
17 that caused this accident?

18 A. Yes, ma'am.

19 Q. Okay. How do you know that?

20 A. Because in protocol he's supposed to be visual on all
21 the inmates and when an officer or supervisor gets in a
22 vehicle he's automatically supposed to blow the horn to
23 get your attention to let you know that he was pulling off.

24 Q. Okay. Did that happen in this -- when you had this
25 accident, you heard a horn?

1 A. No, ma'am.

2 Q. Okay. And so there -- the consequences for not
3 hearing a horn or looking or paying attention, the result
4 was that you got injured?

5 A. Yes, ma'am.

6 Q. And the injury was caused by the failure of Officer
7 Taylor?

8 A. Yes, ma'am.

9 Q. Okay. Do you think that Officer Taylor knowingly
10 started that truck up?

11 A. Yes.

12 Q. And do you think that Officer Taylor knowingly had a
13 trailer that was hitched to that truck?

14 A. Yes.

15 Q. Okay. And do you think that Officer Taylor knew that
16 that truck and that trailer could cause some harm?

17 **MR. GARFIELD:** Objection, Your Honor. I'm sorry,
18 Your Honor. It calls for speculation. She's trying to
19 ask the question what another person might have known or
20 what they knew or saw.

21 **MS. MILES:** Your Honor, this is a professional person.
22 May I just follow through, Your Honor, with some other
23 questions?

24 **THE COURT:** You can rephrase the question or ask
25 another question.

1 **MS. MILES:** Thank you.

2 BY MS. MILES:

3 Q. Have you been out with Officer Taylor before at that
4 bin, the storage?

5 A. Yes.

6 Q. And what normally happens when you go out there with
7 Officer Taylor?

8 A. We always would march or walk in front of the officer
9 to where we're going and then he would let us know what to
10 do. Like we used to clean up the buildings or wipe down
11 the walls and he always would be supervising us at all
12 times.

13 Q. Okay. And at this time particular time -- was there
14 anything different at this time on March the 26th, 2013?

15 A. Yes, he was on the -- talking on the walkie-talkie
16 and he wasn't paying attention to the inmates where they
17 were standing or where they was at.

18 Q. Okay. So there was a slight difference than when you
19 were working with Officer Taylor before?

20 A. Yes.

21 Q. Okay. And was that to the point where you were -- it
22 was noticeable that he was doing something different?

23 A. Yes.

24 Q. Okay. And did he omit to watch what was going on?

25 A. No, he was on the walkie-talkie just going back and

1 forth, back and forth, with someone.

2 Q. Okay. Well, did he omit to watch out for you, the
3 inmates? Did he watch out for the inmates?

4 A. Not on that day, no.

5 Q. Not on that day. Okay. And by not watching out for
6 the inmates caused your injury?

7 A. Yes.

8 Q. Okay. Now also you were not able to get a job after
9 this accident?

10 A. No, ma'am.

11 Q. Was it due to you just couldn't find a job or was it
12 due to your injury?

13 A. Both. The pain in the back, suffering and everything,
14 you know, hard to get up, lack of sleep and everything.
15 And, you know, mostly all I did in my life was labor work
16 and stuff like that, so you can't lift, so it was hard.

17 Q. Okay. Well, do you think that you will have any
18 future medicals as a result of this accident?

19 A. Well, I still have migraine headaches every now and
20 again, so, yes.

21 Q. How about the loss of enjoyment of life? Were you
22 able to do anything that you enjoyed to do after this
23 accident?

24 A. Do anything? Basically not do as much as I used to
25 do because of my back and everything, my shoulder, I

1 couldn't, no. No, ma'am.

2 Q. What about with your children? Were you still able
3 to spend as much time with them?

4 A. I spent time with them, but wasn't able to do as much
5 as we used to do like walks or whatever and get together
6 and go out of town for long trips and all.

7 Q. Okay. Well, were you able to go to -- on any
8 vacations during that period of time?

9 A. No, ma'am. I couldn't afford it.

10 Q. Okay. Well, what about the pain? I know you couldn't
11 afford it, but if you could afford, could you go?

12 A. Well, not really. Because we usually ride to Atlanta
13 and that's like a three or four hour drive and my back
14 would be hurting so bad on the drive, you know, we'd have
15 to pull over and, you know, I'd have to get out and stand
16 up for about fifteen, twenty minutes. It just ached and
17 pained, so we didn't go on too many trips, no. We used to
18 go to the beach. I wouldn't go to the beach. We'd go to
19 the beach every year in September.

20 Q. What about your bending? Did it affect your bending?

21 A. Yes.

22 Q. How? Would you explain that.

23 A. When I -- usually when I bend, my back pops with the
24 hip popping and everything, and I can't, you know, lift
25 for so much now.

1 Q. Okay. About how many pounds during the time with the
2 worst pain? If one was the -- if ten was the highest and
3 one was the less, tell me what about during that period of
4 time. Because you were released from Dr. Z, as I said
5 earlier, I believe that was in June. So from the time that
6 you were injured up until June the 4th, 2013, did the pain
7 ever reach less than a seven?

8 A. No, ma'am. I usually could probably pick up no more
9 than about five pounds or less than that because of pain.

10 Q. Okay. So, therefore, after June the 4th, 2013, you
11 were still in pain?

12 A. Yes.

13 Q. Okay. Now as far as you having future medical, why
14 do you think that you would need future medical?

15 A. Like I stated, you know, I still was having migraine
16 headaches. Not too often, maybe once a month or something
17 like that from the head injury, so I might. You know, I
18 really don't know. In fact, I would never know with a
19 lick, you know, a concussion.

20 Q. Okay. Was the force of the steel door was on the head
21 or all -- it was the same for your shoulders, too?

22 A. It was the same going down from the left side of my
23 head, my shoulder on the left side, down the back and up
24 the lower back.

25 Q. Okay. Can you do any squatting now?

1 A. No, ma'am.

2 Q. What happens when you try?

3 A. Like I say, my back will -- you will hear it popping
4 and the muscles get tight and I just -- I just can't do it.

5 Q. Okay. What about walking upstairs? Can you do that?

6 A. Yeah, I can, but it's kind of difficult, you know. I
7 have to hold onto a rail or something like that because my
8 balance is not too well.

9 Q. Okay. And are you driving now?

10 A. Yes, ma'am.

11 Q. Do you have any problems driving?

12 A. Yes, I do. You know, you if you drive -- if I drive
13 over maybe fifteen minutes my back starts hurting. You
14 can feel the pain in my back.

15 Q. Would you describe to the jury what kind of pain?
16 Because people have pain every day, so what kind of pain
17 are you experiencing?

18 A. It just feels like pins and needles, you know, poking
19 in your back and a little burning sensation. That's the
20 kind of pain I experience in my back.

21 Q. And how often does that happen?

22 A. Oh, maybe twice or three times a week you can feel the
23 pain when I'm driving and then at night I feel pain when
24 I'm laying in the bed, you know, and I wake up out of my
25 sleep because I have back pain.

1 Q. And how often do you usually wake out of your sleep?

2 A. Maybe once a week and then I'll get a heating pad to
3 put on my back and Ben-Gay or Icy Hot or stuff like that.
4 Sometimes I use ice.

5 Q. Okay. And these migraine headaches, how often do you
6 have them?

7 A. Maybe once a month or so like that.

8 Q. And how long do they last?

9 A. Sometimes they last up to two or three hours, you
10 know, six hours. And that will be sharp pain, you know.
11 Mostly a sharp pain in the head, you know, on the side over
12 here aching.

13 Q. And you reached over. Is this one side, the right
14 side?

15 A. Mostly right in the temple area will be a little achy.

16 Q. Would be throbbing or aching?

17 A. Throbbing and aching.

18 Q. Okay. And do you go to a dark place or how do you
19 handle it when you have these migraine headaches?

20 A. Well, I get up and take me some pain medicine like
21 Bayer aspirin or some Goody powder or something that my
22 mom would have around the house.

23 Q. Okay. And when you have these headaches, are you
24 saying that you didn't have these headaches prior to this
25 accident?

1 A. No, ma'am.

2 Q. And after the accident -- how soon after the accident
3 did you start having these headaches?

4 A. Well, I was dizzy on that day and, you know, kind of
5 dizzy going in and out when I was explaining to Mr. Taylor
6 that I was dizzy and woozy.

7 Q. Okay. Did Officer Taylor act -- was his action
8 completely disregard for your safety?

9 A. Yes, ma'am.

10 Q. Did you contribute to this accident at all?

11 A. No, I did not.

12 Q. What could you have done to avoid this accident?

13 A. Nothing.

14 Q. And you're asking this jury to find in favor of this
15 action against the County who actually is held accountable
16 for Alvin Glenn; is that right? Are you asking the jury to
17 find in your favor?

18 A. Yes, ma'am.

19 Q. Okay. And your actual expenses is only \$7,414.28
20 from Dr. Z; is that right?

21 A. Yes, ma'am.

22 Q. Okay. But your pain and suffering and -- and other
23 things that you have experienced, you don't have a number
24 or anything as far as that expense, right?

25 A. No, ma'am.

1 Q. Okay. But you feel that you have been damaged?

2 **MR. GARFIELD:** Objection, Your Honor. Leading.

3 **THE COURT:** Rephrase.

4 BY MS. MILES:

5 Q. Were you -- were you damaged as far as this accident?

6 A. Yes.

7 Q. Okay.

8 **MS. MILES:** And we're asking that you would be so
9 kind to answer any questions that Attorney Garfield may
10 have, okay? Thank you so much.

11 **THE COURT:** Any cross?

12 **MR. GARFIELD:** Yes, ma'am. May it please the Court?

13 **THE COURT:** Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. GARFIELD:

16 Q. Good afternoon, Mr. Montgomery. Now working backward
17 from what your lawyer has just asked you, you decided to
18 sue Richland County government based on what happened to
19 you at Alvin S. Glenn; isn't that right?

20 A. Yes.

21 Q. And you would agree with me that filing a lawsuit is
22 a very serious undertaking; is it not?

23 A. Yes.

24 Q. In other words, you wouldn't enter into a lawsuit
25 lightly, would you?

1 A. No.

2 Q. You'd give it a good deal of thought before hiring a
3 lawyer and filing a lawsuit; isn't that true?

4 A. True.

5 Q. Okay. And you'd also agree with me that it's very
6 important that the facts you allege in a lawsuit be
7 truthful, wouldn't it?

8 A. Yes.

9 Q. Sure. And because by starting a legal action you
10 could end up here in front of a judge and a jury in the
11 big courthouse; isn't that right?

12 A. Yes.

13 Q. Sure. On the other hand, filing a lawsuit alleging
14 -- hypothetically alleging inaccurate events in the trial
15 of a case could make everyone doubt whether the allegations
16 are truthful; isn't that true?

17 A. Yes.

18 Q. Now you filed -- or your lawyer filed on your behalf
19 a complaint in this case. It's a pleading that's filed
20 in this courthouse, okay? And in this complaint filed
21 October 13, 2014 -- I know Your Honor has a copy of it.
22 I'm just gonna provide this extra -- filed in this court
23 in October of 2014, this was about a year and a half
24 after the event at the detention center; isn't that true?
25 March 2013 to October 2014.

1 A. I don't know when she filed it.

2 Q. Sure. Okay. Well, let's take a look at this. This
3 complaint right here, I represent to you that this was
4 filed, okay, and this has a filing stamp by the Richland
5 County Clerk of Court.

6 A. Okay.

7 Q. And what's the date on that filing stamp?

8 A. It's August 13th.

9 Q. October?

10 A. October 13, 2014.

11 Q. 2014. So that's some year and a half after these
12 events; isn't that true?

13 A. Yes.

14 Q. All right. Okay. So let's -- let's think about how
15 you've testified in this case. You've told the jury that
16 these were doors -- two steel doors to a storage bin,
17 right?

18 A. Yes.

19 Q. Okay. And these were doors that would be sort of dual
20 doors and they have the ability to swing out like a -- like
21 a barn door; isn't that right?

22 A. Yes.

23 Q. And these swinging doors that swung out struck you
24 and then made contact with you and this propelled you;
25 isn't that true?

1 A. Yes, one of them did.

2 Q. Okay. In this complaint that's filed in this court,
3 I'd like you to take a look at Paragraph 12, and that's
4 highlighted down there. Isn't it true that the allegations
5 filed in this court stated that on March 26, 2013, the
6 Plaintiff was assisting a supervisor, Mr. Taylor, at the
7 Alvin S. Glenn Detention Center -- you can go to the next
8 page, this is page 4 -- to load a lawn -- it says "lawn
9 mow", but a lawnmower onto an eighteen-wheeler tractor
10 trailer. Did I read that correctly so far?

11 A. Yeah, that's what it says.

12 Q. Okay. When the steel sliding door on the tractor
13 trailer came down on Plaintiff's back as he stood on the
14 exterior of the eighteen-wheeler tractor trailer.

15 A. Right.

16 Q. Did I read that correctly?

17 A. Yes.

18 Q. All right. Let's go to Paragraph 14. You further
19 allege in this lawsuit that Mr. Taylor cranked the tractor
20 trailer up --

21 A. No.

22 Q. -- the steel sliding door came down while Plaintiff
23 was standing on the eighteen-wheeler tractor trailer under
24 the steel sliding door.

25 A. I do not allege that.

1 Q. Well, I want to -- did I read that correctly?

2 A. Well, you're reading correctly, but that wasn't my
3 statement.

4 Q. Hum. Well, let me go further so you can clarify,
5 okay? It's also alleged in this case that Plaintiff is
6 informed and believed that Mr. Taylor was distracted with
7 a mobile phone conversation, that he did not take
8 precautions to look where the inmates were before he
9 caused the steel sliding door on the eighteen-wheeler
10 tractor trailer --

11 **MS. MILES:** Your Honor, may I object because of the
12 fact, Your Honor, I don't think it had been established
13 that Mr. Montgomery read this document before it was filed
14 and definitely what's in the complaint was between the
15 client and attorney privilege and, therefore, this should
16 not be something in which that should be brought up at
17 this time.

18 **MR. GARFIELD:** Your Honor, I'd like to be heard on
19 that. I'd like to ask Your Honor for a curative
20 instruction that it is absolutely adequate for a party to
21 impeached on the pleading. This a pleading filed in this
22 court. This is not attorney/client privilege. This is a
23 public document in which this was filed based on the
24 initiation of this lawsuit.

25 **MS. MILES:** Your Honor, first you have to establish

1 that the party and the witness in which that's actually
2 being questioned read this pleading before it was filed
3 and there's -- he's already established and testified to
4 the fact that wasn't his statement.

5 **THE COURT:** You can ask -- you can ask him about what
6 he's read after he's had a chance to review it and I'll
7 talk about the pleadings separately.

8 **MR. GARFIELD:** Thank you, Your Honor.

9 BY MR. GARFIELD:

10 Q. Did you know that this complaint was filed in this
11 courtroom -- courthouse, okay, that alleges that the steel
12 sliding door on the eighteen-wheeler tractor trailer came
13 crashing down on your back? Do you know that that was
14 filed?

15 A. No.

16 Q. Do you know that it was filed in this courthouse in
17 Paragraph 23 that Mr. Taylor caused a steel door on an
18 eighteen-wheeler trailer truck to come down and crash on
19 your back on March 26, 2013?

20 A. No.

21 Q. And, finally, on page 8 -- this is Paragraph 43(a),
22 Your Honor -- are you aware that this document was filed
23 on your behalf that alleges that the Defendant's employee
24 caused the steel door to drop down on Plaintiff with such
25 severe force where Plaintiff was standing on the exterior

1 of the eighteen-wheeler tractor-trailer that injured the
2 Plaintiff? Were you aware?

3 A. No.

4 Q. This is the first time you heard of this?

5 A. First time I've heard of this, no.

6 Q. Yes, sir. Go ahead.

7 A. She sent me a copy months later when I went to her
8 office and we had a conversation that no, I was not
9 standing on an eighteen-wheeler tractor trailer. She
10 misunderstood what I was saying, yeah.

11 Q. This was filed, sir, in October of 2014 as we've
12 established.

13 A. I understand that. Right.

14 Q. It is now April of 2018. After you explained this to
15 your lawyer and you clarified and you told her the truth
16 according to you --

17 A. Yes.

18 Q. -- there was never a complaint amended or corrected
19 in this courthouse. We're sitting here today with the
20 original complaint. Are you aware of that?

21 **MS. MILES:** Your Honor, I think that he's already
22 testified to this and this is argumentative.

23 **MR. GARFIELD:** This is a separate question, Your
24 Honor. I just wanted to know if he was aware that there's
25 been no attempts on anyone's part to amend the original

1 complaint to set the record straight.

2 **THE COURT:** He can testify as to --

3 **MS. MILES:** Your Honor, he's answering and asking
4 the question because he's already testified today how the
5 accident occurred, he already demonstrated how the accident
6 occurred, and this is irrelevant under this questioning.

7 **THE COURT:** I'll overrule the objection. He can
8 testify as to what he has knowledge of and he can testify
9 as to whether to his knowledge the pleadings have been
10 amended and under -- under the rules, pleadings can be
11 read to the jury and they are in evidence for the jury
12 to consider along with all the other evidence in the case.

13 **MR. GARFIELD:** I'll ask the question again out of
14 fairness.

15 BY MR. GARFIELD:

16 Q. Were you aware in the three and a half years since
17 this was originally filed with the Richland County Clerk
18 of Court on your behalf and after explaining to your lawyer
19 what happened, do you know if there's been any other
20 changes made to that complaint?

21 A. No, I do not.

22 Q. Now I think you've also testified, Mr. Montgomery,
23 that the door that struck you now we know the testimony --
24 well, which is it? Which is the truth? Is the truth that
25 there was a sliding roll-down door that hit you or is the

1 truth that there was dual doors like a barn -- like a
2 garage door or a barn door? Which is it?

3 A. Dual doors that kind of swing out, a barn door, yes,
4 on the back of an eighteen-wheeler tractor trailer bin,
5 yes. That's what it was, sir. A tractor trailer bin
6 that an eighteen-wheeler would pull down the highway and
7 they had that as a bin that they put the lawnmowers and
8 everything in.

9 Q. And, Mr. Montgomery, you've testified that when the
10 trailer came and knocked the door, you said there was a
11 loud crash; isn't that true?

12 A. Yes. Right.

13 Q. Okay. You heard that noise. There was a loud crash,
14 metal hitting?

15 A. It was a boom, yes.

16 Q. Okay. Do you recall giving your deposition in this
17 case? In other words, going to your lawyer's office and
18 being asked questions about -- about this case?

19 A. Yes.

20 Q. The deposition in this case was taken Friday,
21 July 10th of 2015. Do you recall that?

22 A. I have some recollection of it, yes.

23 Q. Sure. It was -- you gave sworn testimony, right?

24 A. Yes, sir.

25 Q. In other words, you were asked questions. You were

1 sworn under oath to tell the truth, right?

2 A. I was asked questions. Yes, I was.

3 Q. Yes, sir. But before you were, they -- you had a
4 court reporter, a nice court reporter that swore you in,
5 and you promised and swore to tell the truth, correct?

6 A. Yes.

7 Q. Okay.

8 A. I believe I did.

9 Q. And this was at Ms. Miles's law office?

10 A. Yes, it was.

11 Q. Okay.

12 A. No -- yes.

13 Q. On 810 Dutch Square Boulevard?

14 A. Yes.

15 Q. Okay. And she was present during your deposition?

16 A. Right.

17 Q. Okay. So she could be there or make objections or do
18 whatever she would do, correct?

19 A. Yes.

20 Q. All right.

21 **MR. GARFIELD:** This is the original. And I'm gonna
22 ask the witness, Your Honor, about page 33, and I don't
23 know if I have a --

24 **THE COURT:** He gets to have this one.

25 **MR. GARFIELD:** Yes. Absolutely, Your Honor. And if

1 I may approach again, Your Honor?

2 BY MR. GARFIELD:

3 Q. So I'm gonna just show you page 33 of your deposition
4 and I'm just gonna refer to line 17.

5 A. Uh-huh.

6 Q. And you were asked "When the trailer hit the door,
7 did it make a noise? I mean, do you remember hearing
8 anything?"

9 What was your answer?

10 A. On line 20 or where are you at?

11 Q. Well, let's start over. Page 33, line 17.

12 A. Okay. Up here.

13 Q. "When the trailer hit the door, did it make a noise?
14 I mean, do you remember hearing anything?"

15 How did you answer?

16 A. I said no.

17 Q. Okay. Well, were you telling a story then or are you
18 telling a story now?

19 A. What you mean?

20 Q. I want to know what the truth is, sir. Did you hear
21 a noise when the trailer hit the door?

22 A. Yes, I did. Yes. You know, it happened -- you forget
23 things over a time period, right?

24 Q. I certainly do and everyone does and I can appreciate
25 that.

1 A. Okay.

2 Q. This was on July 20, 2015, when you gave your
3 testimony. That was -- you would agree with me that was
4 a lot closer in time to March 2013 than it is today?

5 A. You know, time is time.

6 Q. I can't disagree with you there. After these events,
7 this happened March 26th of 2013, you filled out an inmate
8 request. It's a written inmate request and that's your way
9 of communicating to the detention officers or the medical
10 unit that you have a need or you have a question or a
11 request, right?

12 A. Yes.

13 Q. Okay. And you did so in this case; did you not?

14 A. I don't know what day that was.

15 Q. Well, according to this it was March 27th of 2013.

16 A. Uh-huh.

17 Q. Take a look at that. So you made the request -- or
18 not a request, but you stated in writing that you had got
19 hurt out in the yard?

20 A. I can hardly see that writing. Yes, I did.

21 Q. Uh-huh. And you did so on March 27, 2013?

22 A. Uh-huh.

23 Q. Is that yes?

24 A. Yes.

25 Q. Okay. The day after these events?

1 A. Yes. Because the nurse don't come around until a
2 certain amount of days when you fill out your request
3 form, so I guess that's when she came in the dorm, when
4 she received it.

5 Q. Uh-huh. So your testimony is there would have been
6 no way for you to have filled out a request any time on
7 March 26th?

8 A. They don't give them out but so -- so many at this
9 time of night or this time of day when you got to the
10 jailhouse.

11 Q. But the event in the yard happened in the morning;
12 isn't that true, sir?

13 A. Yes.

14 Q. And your testimony is that right after it happened,
15 making sure I understand, you immediately told Mr. Taylor?

16 A. Yes, because I was out in the yard, but he didn't
17 care.

18 Q. I understand.

19 A. Okay.

20 Q. But you made it clear to him. That's your testimony?

21 A. Yes, I did.

22 Q. Okay. And one other point to clarify.

23 A. Uh-huh.

24 Q. This -- I'm trying to understand when the door struck
25 you.

1 A. Yes.

2 Q. You didn't just get ejected, but I think your
3 testimony is that it propelled you I think you said
4 six feet out?

5 A. Yeah, from that wall maybe to that podium right there.
6 Yeah, that would be about six feet there.

7 Q. The steel door bumped into the trailer, bumped into
8 you, making sure I understand. I wasn't there.

9 A. No, you wasn't.

10 Q. No, I wasn't and I'm not -- I'm not pretending to
11 be --

12 A. Okay.

13 Q. -- but I'd like to know the truth.

14 A. I am telling you the truth.

15 Q. The door -- I understand. The door hits you and that
16 ejected or propelled you horizontally six feet out?

17 A. I went this way.

18 Q. This would have been this way?

19 A. Yeah, I was on the left-hand side.

20 Q. Right here?

21 A. No, I was about -- yeah, I was right there.

22 Q. This was you. I think you said this was you?

23 A. That was me.

24 Q. This was Mr. Bethea?

25 A. Yes.

1 Q. And this was Mr. Walsh?

2 A. Yes.

3 Q. Okay. Both of whom are not here today, correct?

4 A. Correct.

5 Q. All right. This was -- but you being right here got
6 struck by the door and it propelled you, you said an
7 estimate --

8 A. No, I came this way, right --

9 Q. Came this way?

10 A. Yes.

11 Q. Okay. So you came this way about six feet?

12 A. Yeah, right from here to the podium.

13 Q. And you caught yourself with the hands?

14 A. I was stumbling down like that, yes.

15 Q. And after this you said that you went to Dr. Z?

16 A. No, I said I went back in the dorm and I went to the
17 medic.

18 Q. That was a terrible way I asked that question. Let's
19 try again. After you got released from the detention
20 center --

21 A. Oh, you said released?

22 Q. Yes. After you got released, you went to Dr. Z, which
23 was a private doctor, right?

24 A. Yes.

25 Q. All right. And you said earlier that you had fifteen

1 visits -- you saw him fifteen times? You told the jury
2 earlier, and this was before lunch, that you had seen him
3 fifteen times?

4 A. Around fifteen times. I didn't say fifteen.

5 Q. Okay. Approximately around fifteen times. I don't
6 want to put words in your mouth. You saw him or had
7 services done on May 7, 2013, right?

8 A. Uh-huh.

9 Q. Yes?

10 A. Yes.

11 Q. Number two, on May 14, 2013, correct?

12 A. I don't remember all the dates exactly. It's on the
13 paper.

14 Q. Yes, sir. This is -- this is your exhibit.

15 A. Okay.

16 Q. Okay. Let's start over. May 7, 2013?

17 A. Yes.

18 Q. May 14, 2013?

19 A. Yes.

20 Q. A third time on May 21, 2013?

21 A. Yes.

22 Q. A fourth time, May 28, 2013?

23 A. Yes, but you skipped over two of them.

24 Q. Well, that's May 21st, May 21st, May 21st, May 21st.

25 A. Okay.

1 Q. So a fourth time on May 28, 2013?

2 A. Okay.

3 Q. That would -- that's the same day, okay? May 28,
4 2013. Oh, and here we go. In June, June 4, 2013, a fifth
5 time.

6 A. Uh-huh.

7 Q. And you said you were released after June 4, 2013,
8 right? I think that's what your lawyer just asked you;
9 that your last visit or services would have been on
10 June 4, 2013?

11 A. Yes.

12 Q. Okay. So that was five times.

13 A. Right.

14 **MR. GARFIELD:** I beg the Court's indulgence.

15 BY MR. GARFIELD:

16 Q. Mr. Montgomery, your lawyer asked you you're not a
17 deadbeat dad, are you, and you said no, I'm not. True?

18 A. True.

19 Q. Okay. And I'd just like to preface this by saying
20 I'm not here to say that you are, sir, because I don't
21 know you, I don't know anything about you like that, but
22 I would like to talk about one thing. You've brought a
23 lawsuit against Richland County and the Alvin S. Glenn
24 Detention Center, correct?

25 A. Yes.

1 Q. All right. And you have been booked into the Alvin S.
2 Glenn Detention Center several times throughout your adult
3 life; isn't that true?

4 A. Yes.

5 Q. Okay. And you were -- if I may approach?

6 A. Uh-huh.

7 Q. You were booked into the Alvin S. Glenn Detention
8 Center May 14th of 2003, true?

9 A. Yes, that's what the paper says.

10 Q. Do you have any reason to disagree with that?

11 A. No.

12 Q. You were booked in April 2, 2003?

13 A. Okay.

14 Q. And then even earlier in 2002 you were booked in on
15 June 12th of 2002?

16 A. Okay.

17 Q. Do you have any reason to dispute that or disagree
18 with that?

19 A. No.

20 Q. You were booked in February 13th of 2005; isn't that
21 true?

22 A. Okay.

23 Q. Do you have any reason to disagree with that?

24 A. No, sir.

25 Q. Do you have any reason to disagree that you were

1 booked in March 10th of 2005?

2 A. No, sir.

3 Q. How about March 13th of 2012?

4 A. No, sir.

5 Q. How about January 17th of 2013?

6 A. No, sir.

7 Q. And even after these events, October 15, 2016, you
8 were booked in?

9 A. No, sir.

10 Q. So you have no reason to disagree that you were booked
11 in and incarcerated at the Richland County Detention Center
12 or Alvin S. Glenn Detention Center roughly eight times?

13 A. Yeah, for a few hours if that's what you want to
14 determine on that paper, too.

15 Q. Every one for a few hours or maybe some for a little
16 longer?

17 A. Maybe a day or two. It's not like I was in there for
18 ten years or something or a year or so or six months or so.

19 Q. Okay. And why do you say that?

20 A. Because you're trying to paint a picture of me being
21 a failure and I'm not.

22 Q. No, sir, I'm not painting a picture of you. You're
23 suing the -- Richland County and the Alvin S. Glenn
24 Detention Center.

25 A. Correct.

1 Q. Okay. You feel like the detention center is picking
2 on you, don't you?

3 A. No. They was negligent by hitting me in my back and
4 across my shoulder. Their duty was to protect me while I
5 was in there regardless of why I was there. That's their
6 job.

7 Q. You said that you couldn't do the same sort of things
8 you did back a few years ago. How old are you now, sir?

9 A. I am fifty-two.

10 Q. And you're saying now that you can't unfortunately do
11 the same sort of things that you did when you were in your
12 forties or you were in your thirties?

13 A. I'm quite sure you can't either.

14 Q. There's no question about that.

15 A. Okay.

16 Q. These glasses get thicker every year and I slow down.

17 A. Mine, too.

18 Q. Yes, sir.

19 A. Okay.

20 Q. But is that your testimony?

21 A. Yes, it is.

22 **MR. GARFIELD:** Thank you.

23 **THE COURT:** Any redirect?

24 **MS. MILES:** Just a few, Your Honor, just to clarify
25 something.

REDIRECT EXAMINATION

BY MS. MILES:

Q. Mr. Montgomery, I know on this detainee sheet the majority of them are just for a few hours; is that right?

A. Yes, ma'am.

Q. Okay. So there was nothing that was actually as a felony?

A. No, ma'am.

Q. Okay. It was just family court matters, the majority?

A. Yes.

Q. Okay. And you were able to take care of those matters?

A. Yes, ma'am.

Q. And you were released?

A. Yes, ma'am.

Q. Okay. Now also let me ask you in reference to that deposition. Do you recall any time during that deposition that was held at my office on 2015 were you still having problems as far as stress and -- and depression?

A. Yes, I was.

Q. Okay. And another thing I wanted to find out, when you made that request, the inmate request for medical, what is the normal procedure?

A. Well, you go back and ask for a request form, a medical form, from the supervisor in the dorm. Sometimes

1 they pass them out on Wednesday, sometimes they pass them
2 out on Friday. The nurse might come around once a week to
3 pick up the medical sheets, you know, and then it might
4 take three or four weeks to get to medical. That's how
5 slow they was down there.

6 Q. Okay. Where would -- these request forms, how would
7 you get them?

8 A. You have to ask the supervisor, the correctional
9 officer, and on that occasion when I asked for a request
10 from him he didn't have any more copies.

11 Q. Okay. So, therefore, you went -- on the 27th is when
12 you received a form to complete?

13 A. Yes, ma'am.

14 Q. Okay. So that's why it wasn't done on the 26th?

15 A. Yes, ma'am.

16 Q. When you went to the infirmary, did they ask you what
17 happened?

18 A. Yes, they did.

19 Q. Okay. Did they have any request forms there at the
20 infirmary?

21 A. I can't answer that question.

22 Q. Okay. But they didn't provide you with one?

23 A. No, ma'am.

24 Q. Okay. And also the mixup with the -- the pleadings,
25 I mean, the complaint, this is something in which that --

1 at the time that you first retained an attorney, were you
2 still suffering from depression and stress?

3 A. Yes.

4 Q. And so, therefore, were you still in a lot of pain?

5 A. Yes, I was.

6 Q. Okay. So are you in pain today?

7 A. I do be in pain every other day. Like I say, when
8 I'm driving or sitting down too long, yes, I'm in pain.
9 Laying down in the bed, like a burning sensation feeling,
10 you know, and slight migraine headaches, I get them.

11 Q. Okay. And Mr. Bethea, who was an inmate, and
12 Mr. Welsh, they saw this accident, right?

13 A. Yes, they did.

14 Q. And tell me did you try to keep up with them to find
15 out where they were?

16 A. I tried to contact Brandon Walsh on Facebook, but he
17 didn't reply back to me and Bethea I couldn't find him at
18 all.

19 Q. Okay. Do you know whether they are still living in
20 South Carolina?

21 A. No, I do not.

22 Q. Okay. Did you do your due diligence and I did the
23 due diligence in trying to locate Bethea and Walsh?

24 A. Yes, ma'am.

25 Q. And were we able to find them?

1 A. No, ma'am.

2 Q. When you saw the invoice as far as the expenses, were
3 you counting each one of the sessions? Like, for example,
4 if there was a bill for three days -- I mean, for three
5 expenses, you were counting them as a visit rather than
6 looking at the date?

7 A. Yes.

8 Q. And that's why you testified that you thought it was
9 more than five times?

10 A. Yes, ma'am.

11 Q. So, therefore, it wasn't as though that you were
12 trying to --

13 **MR. GARFIELD:** Objection, Your Honor. Leading.

14 **THE COURT:** Rephrase.

15 BY MS. MILES:

16 Q. Were you trying to mislead the jury about the amount
17 of times that you saw Dr. Z?

18 A. No, ma'am.

19 Q. Okay. Was it an innocent mistake?

20 A. Yes, it was.

21 Q. Okay.

22 **MS. MILES:** Thank you. Answer any questions.

23 **RE CROSS EXAMINATION**

24 BY MR. GARFIELD:

25 Q. Mr. Montgomery, let's go ahead and set the record

1 straight on this. In 2002 during that first booking, you
2 were booked for manufacture and distribution of the --

3 **MS. MILES:** I objection, Your Honor.

4 **THE COURT:** Counsel -- Counsel approach, please.

5 (Proceedings held at the bench; not reported.)

6 **MR. GARFIELD:** Nothing further. Thank you.

7 **THE COURT:** You may step down. Thank you.

8 **THE WITNESS:** Ma'am?

9 **THE COURT:** You may step down. Thank you.

10 (Witness excused.)

11 **THE COURT:** Any additional witnesses, Ms. Miles?

12 **MS. MILES:** No, Your Honor. The Plaintiff rests.

13 **THE COURT:** Ladies and gentlemen, we have some legal
14 issues which we need to take up outside of your presence.
15 I'm gonna ask you that retire to the jury room and not
16 to begin any discussions at this particular point since
17 you've not heard all of the evidence and even if you have
18 heard all of the evidence, you're still not in a position
19 to be able to consider determining the facts in this case
20 without my instructions to you as to the law.

21 Let's take a break and I'll bring you back as soon as
22 possible.

23 (Whereupon, the jury retires to the jury room at
24 3:32 PM.)

25 **THE COURT:** Yes, sir, Mr. Garfield. You wanted to

1 say relating to the last objection that was made right
2 before Ms. Miles rested?

3 **MR. GARFIELD:** Yes, Your Honor. I'm just making sure
4 I wasn't taking evidence from the court reporter.

5 Yes, that series of questioning, Your Honor, was
6 impeaching the Plaintiff solely based on bias. I think
7 that there is a host of cases out there that allow
8 latitude of counsel to ask of a particular witness things
9 that would only go to bias and I think I just referenced,
10 and I have copies for Your Honor, the Supreme Court in
11 North Greenville College versus Sherman Construction
12 Company. It's a 1978 case. 243 SE.2d 441 in which the
13 court stated that in order to impeach these witnesses it
14 was critical for the college to question them regarding
15 any possible bias.

16 This was an interesting case, Judge, when the
17 Appellant in this asserted that the trial court erred in
18 excluding evidence of previous arbitration proceedings by
19 the college against the architect and the Supreme Court
20 agreed and stated that it was critical for the college to
21 question them regarding any possible bias. We conclude
22 the trial court erred in refusing to permit counsel to
23 cross-examine the Piedmont witnesses on the prior
24 arbitration or to introduce documentary evidence of the
25 proceedings. The court noted as with -- as in which I

1 believe Your Honor is agreeing with based on our bench
2 conference, considerable latitude is generally allowed in
3 the cross-examination of an adverse witness for possible
4 bias. It says evidence of past or pending litigation
5 between the witness and the party against whom the witness
6 is testifying is, thus, commonly admissible to demonstrate
7 bias, so a lot more than the Supreme Court said on this
8 point.

9 There's another case from a few months ago. It's
10 Smalls versus the State of South Carolina. It's a Supreme
11 Court case. It's not yet published, but it will be.
12 2018 WL-736339, filed February 7th of this year, in which
13 there's some really good language upholding not only the
14 Sherman Construction case, but it reflects back on
15 Rule 608(C) stating that bias, prejudice or any motive to
16 misrepresent may be shown to impeach the witness, and that
17 sort of thing.

18 I bring this up for two reasons. Number one, because
19 we do believe that we had a right under initial questioning
20 that if it goes to bias and if there's any concerns we
21 would like a charge at the appropriate time to explain to
22 the jury or something to clarify that they could take
23 certain evidence and consider it if they wish to the extent
24 bias, you know, plays a factor. Where I fell short --
25 excuse me, where I deliberately stopped short is I had

1 asked the Plaintiff about his previous bookings. I didn't
2 talk about how long he stayed incarcerated, I didn't say
3 what the original charge was, I didn't talk about his
4 classification, I didn't talk about his release, just the
5 fact that he was booked on eight separate occasions.
6 Ms. Miles in response asked a question. To paraphrase,
7 she said to the extent did all of those bookings center on
8 family court matters or child support matters? In other
9 words, were all those bookings related to administrative
10 kind of things, and he said -- answered in the affirmative
11 in some way. I deliberately stayed short because I'm
12 looking at the South Carolina evidence synopsis book
13 where it says the details of prior difficulties are not
14 admissible and prior lawsuits are not admissible unless
15 they're relevant. Well, we took the position and we take
16 the position that Ms. Miles opened the door by asking him
17 that, that he's representing to the jury that the only
18 reasons why he was ever booked at this particular detention
19 center was only solely based on nonsupport.

20 I have his record in Alvin S. Glenn that he was booked
21 one time for a third offense of the crack or the crank or
22 the ice manufacture and distribution statute. He was
23 booked another time criminal domestic violence. He was
24 booked another time for unlawful possession of a pistol
25 and he was booked another time for pointing and presenting

1 a firearm, all of which are clearly not administrative
2 kind of issues and three of those four as Your Honor can
3 note are felonies and he said that these would all be
4 misdemeanors, and we would take respectful exception that
5 we were not able to ask or inquire of this of this
6 particular witness, particularly in light of Ms. Miles
7 opening up that line of questioning voluntarily.

8 **THE COURT:** And so what are you claiming is the bias
9 that allows you to be able to even talk about the bookings?

10 **MR. GARFIELD:** The bias -- the bias with the bookings
11 is if the Supreme Court noted that it would be pertinent
12 to bias when someone had a former lawsuit against someone
13 giving counsel wide latitude to inquire about the history,
14 that is it goes to bias, then my -- our point is that if
15 former lawsuits are fair game to make the argument that
16 he believes that the opposing party's picking on him or
17 targeting him or biased against him, clearly booking him in
18 the detention center, detaining him, you know, handcuffing
19 him, putting him through the entire process of being a
20 detainee, if you could -- if we could agree that litigation
21 would allow someone to feel biased against or they feel
22 like the opposing party is biased to them, clearly actually
23 going through the entire process of booking and being
24 detained, even if it's a pre-trial detainee or through the
25 system because it's certainly an involuntary nature, he

1 didn't ask to go in and be booked, that we -- for us to go
2 in was in our opinion very pertinent as it solely went to
3 bias under Rule 608(c) and I was not gonna go in and ask
4 any other particulars.

5 **THE COURT:** And the bias being that he -- that Alvin
6 S. Glenn had a bias against him or he had a bias against
7 them?

8 **MR. GARFIELD:** Well, it could be either one because
9 that's what the Supreme Court stated; that there's
10 animosity or they talk about animus that could go on
11 between opposing counsel just being in the heat of former
12 litigation.

13 **THE COURT:** Well, and had I known that was your line
14 of inquiry, I wouldn't have even let you go into the
15 bookings. I don't think it's -- I don't think that's
16 evidence of bias and I think -- I think the problem is
17 because most people aren't booked into the detention center
18 unless there's some allegation of some activity that might
19 be unlawful and so I think that that's on the verge of
20 using an arrest to impeach someone without -- without there
21 being a conviction. And I may be wrong, but that's my
22 view, is that people are not just detained -- picked up
23 and taken to the detention center without there being some
24 allegation or some hint or some claim of some type of a
25 violation, whether it's of a statute or some other criminal

1 activity.

2 **MR. GARFIELD:** Yes, ma'am.

3 **THE COURT:** And I understand child support may be in
4 the form of a contempt, which is still some type of lawful
5 -- of legal activity, and I think the whole idea behind
6 there being safeguards that only convictions can be used
7 to impeach, I would -- I would not have -- had Ms. Miles
8 objected to it, she didn't object, which is why I didn't
9 say anything, had she objected to it I wouldn't have
10 allowed it in at all.

11 I understand the Supreme Court case that talks about
12 arbitration and prior arbitration because that's in the
13 form of former civil actions or civil-type litigation,
14 which is completely different than the criminal context,
15 and while I think -- I think your analysis of that case is
16 correct based upon what little you've told -- you know,
17 you've me about or what I understand of it, I think in this
18 particular context it may be a little different because
19 where he's going is a detention center, which is designed
20 for people who have been either arrested or are being
21 detained for criminal purposes which gives rise to those
22 other claims and allegations about using criminal activity
23 to impeach the credibility of a witness.

24 And I understand you were using it for bias and not
25 necessarily credibility, but I think that line is very fine

1 and -- but, you know, it came in, I'm not going to -- I'm
2 not gonna do anything else differently from that since
3 there was no objection, but once there was an objection I
4 thought that it was inappropriate even though -- even
5 though she may have opened the door, I wasn't about to go
6 into the fact that he was detained or arrested or held for
7 criminal activity that happens to be felonies without a
8 felony conviction to go along with it.

9 **MR. GARFIELD:** And certainly not to bicker with Your
10 Honor because, again, like you've pointed out, that there
11 was nothing in the record for -- for a formal objection,
12 it's just an interesting area of law that this was not
13 offered in any sort of Rule 609 context where he would be
14 convicted in any sort of way and it wasn't even offered,
15 I guess, in a 403 context that it would be -- the civil
16 counterpart to the State v. Lyles where it would be other
17 bad acts and crimes, this would be solely because of his
18 history with this one -- you know, with this one entity.

19 And I think if I remember years ago I had a trial
20 before Your Honor with the Richland County Sheriff's
21 Department, and I don't remember Your Honor's ruling, but
22 I remember it being that the actual -- the plaintiff had
23 sued Richland County sheriff and we learned that she had
24 been arrested but not convicted four separate times
25 beforehand and as it went to bias that she felt like -- or

1 the argument could be made she felt like the sheriff's
2 department was picking on her. And that would be the same
3 reason why if you had a bad history with Wal-Mart that you
4 could allege that this is it, my line of thinking is, and,
5 again, this is more of a philosophical discussion --

6 **THE COURT:** Sure.

7 **MR. GARFIELD:** -- but my line of thinking was well,
8 gosh, if -- certainly if you could -- if it would be okay
9 to go into matters that it would be justified for you to
10 be angry or upset or have some motive or prejudice or bias
11 based on you just being sued, well, how about actually
12 going to be booked in the detention center?

13 And then there's also this *Smalls v. State* is really
14 fascinating that this is based on a PCR and it said the
15 fact that Green faced the carjacking charge that was
16 dismissed on the morning of trial was strong evidence of
17 Green's bias and counsel's failure to cross-examine him
18 on this point fell well below the objective standard of
19 reasonableness. And then it says if trial counsel had
20 attempted to cross-examine Green on the carjacking charge,
21 she would have demonstrated that the State dismissed a
22 charge that carried up to twenty years. The point being
23 made here that when you said it's not maybe a bright line,
24 on the other hand, you know, I could run afoul of me
25 being able to be proficient in my cross by having this

1 information and not attempting to bring this out.

2 So whether this is an unsettled point of law or not,
3 I just wanted to -- from an etiological standpoint to just
4 address that with you, Judge. And I understand Your
5 Honor's ruling and --

6 **THE COURT:** Well, it's noted for the record. And
7 I think that the Smalls case may be somewhat different
8 because it does involve -- it does involve a
9 postconviction relief, which obviously comes from a
10 criminal matter, so -- but I -- and I haven't -- you said
11 it wasn't published yet, so I know that there was a PCR
12 case out there recently that may have just come out in one
13 of the advanced sheets. It's not -- it's not necessarily
14 published yet.

15 **MR. GARFIELD:** Yes, ma'am. It's new.

16 **THE COURT:** I mean, it's published, but not published
17 in the reporters.

18 **MR. GARFIELD:** Yes, ma'am.

19 **MS. MILES:** Well, Your Honor, I know that this has
20 been too long, but I'm just wondering how can counsel
21 bring this up, and I agree that I should have objected
22 immediately; however, I guess I wanted to see where he
23 was coming from. But actually 608, where is the bias then
24 on my client's part? Because my client never said on the
25 witness stand or anything else in reference to that he felt

1 as though that there was a bias, so how do we jump to that?

2 **THE COURT:** Well, I don't know -- I don't know how we
3 jump there, but as I stated, I wouldn't let him go back and
4 then attempt to show exactly what the bookings related to.
5 I thought -- I thought that was beyond what was even
6 appropriate and so that's why I disallowed it that
7 particular point and so I wanted to put it on the record
8 so he could, you know, make sure that he indicated why he
9 had done what he had done.

10 Are there any motions at this -- I believe the
11 Plaintiff has rested. Are there any motions at this time
12 to take up?

13 **MR. GARFIELD:** Yes, Your Honor, and I think I can make
14 this brief; that is, the Defendant Richland County would
15 move for a directed verdict at this time. It appears
16 looking down the complaint perhaps some of these would be
17 more housekeeping before I go into more of a substantive
18 argument, but it appears that based on the complete --
19 the complaint that was filed in this case, there are four
20 causes of action. One being negligence, the first cause
21 of action, and that appears to be reiterated in the third
22 cause of action where it's labeled negligence and damages.
23 It's really just superfluous language alleging the same
24 things, so we have a negligence claim here. The second
25 cause of action is for deliberate indifference, and that's

1 what was stated. And the fourth cause of action is for
2 negligent infliction of emotional distress.

3 I'll kind of take this backwards, Your Honor. There
4 is, first of all, no evidence that the Plaintiff has put
5 forth in his case in chief for which to sustain a finding
6 for negligent infliction of emotional distress. I believe
7 I've argued this before Your Honor also years ago that the
8 courts are fairly settled in that negligent infliction of
9 emotional distress strictly centers around bystander
10 liability. There's no evidence that there was any sort of
11 eyewitness or earwitness that would give rise to bystander
12 liability in this case and just simple enough we believe
13 that that should be dismissed as a matter of law.

14 Deliberate indifference being the second cause of
15 action, there is no viable cause of action in South
16 Carolina. No cognizable claim of a deliberate
17 indifference. That's really language in a 1983 case, I
18 believe, when someone wants to allege some type of due
19 process violation of the Fourteenth Amendment. There is
20 no Federal claim here, there's no claim alleging any
21 type of deprivation of a constitutional -- you know, a
22 constitutional right. Deliberate indifference, again, in
23 and of itself doesn't really stand for anything. That
24 should be stricken, Your Honor. I just don't quite
25 understand or see how that fits into this case, which

1 leads to the first and third cause of action for
2 negligence.

3 As we have -- already have discussed, the burden is
4 on the Plaintiff to prove by a preponderance or a greater
5 weight of the evidence that the Richland County employee
6 here, Johnnie Taylor, or other employees, were -- acted
7 with some type of gross negligence. The evidence in this
8 case -- the only evidence that the jury has heard with
9 respect to gross negligence is, number one, Mr. Taylor
10 was on his walkie-talkie while driving. Number two, the
11 inference was that he wasn't paying attention or sufficient
12 attention at the time he was driving. Third, this led to
13 his accident. He continually referred to this as an
14 accident, as a bump from one vehicle onto a structure.

15 The motion for directed verdict, Your Honor,
16 considering all of the evidence and all of the inferences
17 to be drawn therefrom in the light most favorably to the
18 Plaintiff, a reasonable factfinder could only reach one
19 finding, and that is that there was no gross negligence.
20 He would have to establish as some finding over and above
21 failure to exercise due care. And the example I thought
22 of several times during his testimony was the influx of
23 claims and lawsuits we have now based on drivers all over
24 the country that are talking on the cell phone at the time
25 that there is a collision or an accident. Or even texting

1 at the time. I have no knowledge that any of those routine
2 accidents or collisions in which a claim derived from would
3 be anything other than failure to exercise due care. Gross
4 negligence would come out when you have a culpability that
5 arises to the level of recklessness or intentional or
6 conscious indifference.

7 Taking the facts in the light most favorably to him,
8 the employee was talking on a work walkie-talkie and
9 didn't see basically where he was going, he didn't even
10 hit the individual, he struck -- or he struck a door or
11 caught the door in the back. Anyone that's actually tried
12 to maneuver a trailer going back, it's a little tricky,
13 but the only inference the jury could draw would be that
14 he -- Mr. Taylor failed to exercise due care, there's no
15 question about that, but there's been no evidence of any
16 kind of gross negligence.

17 Your Honor, in Request to Charge Number 2 we have
18 before Your Honor, we submitted, there is case law that
19 goes back to 1930, and this is more formulated in the
20 charge, but it says gross negligence is not and may not be
21 presumed in the happening of an accident or incident where
22 someone gets injured or even dies does not establish gross
23 negligence. What he's put into evidence are facts
24 consistent of an accident, of an oversight, of
25 carelessness. No facts of recklessness or an intentionally

1 conscious, deliberate act to do the wrong thing because if
2 there is evidence of that, then I'm hazard to say that any
3 time that there's any type of accident in the United States
4 of America in which I would suffice to say there's a large
5 portion of people on cell phones now as they're driving and
6 at the time that there's an accident that they're on their
7 phone, that in and of itself does not give rise to any type
8 of gross negligence claim.

9 There is no evidence in this particular case that --
10 there's no evidence in this case that there was any sort
11 of conscious or willful and because that we believe that a
12 directed verdict is warranted on behalf of the Defendant
13 because there, frankly, could not be more capable of more
14 than just being one inference to that jury, which is that
15 this was a case of negligence, not gross negligence. There
16 are no witnesses. He doesn't even -- if you're taking --
17 construing his testimony at face value and listen to it
18 carefully, we're talking about the oversight of a driver
19 and without him -- I don't even know what the examples
20 would be. You know, cutting wheelies in a parking lot
21 or having an alcoholic beverage while he was driving or
22 laughing and saying I meant to do it, I hope I hurt you
23 or, you know, not even wearing his prescribed, you know,
24 corrective eyewear. I don't even know the examples.
25 There's nothing more than there just being an accident and

1 what Ms. Miles's entire case is that she's asking the Court
2 and asking the jury to presume negligence out of that -- or
3 presume gross negligence. Thank you.

4 **THE COURT:** And I'm -- as it relates to the negligent
5 infliction of emotional distress, I'll grant that one, as
6 well as deliberate inference. I do think that the gross
7 negligence is a jury question. When I listened to you, it
8 sounds like you are really placing gross negligence in the
9 same category of willful, reckless, wanton, and gross
10 negligence is between regular negligence and the willful,
11 reckless, wanton. I think that the definition that I have,
12 and which I intend to charge the jury, would be it's the
13 failure to exercise a slight degree of care. A person who
14 is so indifferent to the consequences of his conduct as to
15 not give a slight care as to what he's doing acts with
16 gross negligence, and to the extent that he's -- he's on
17 his walkie-talkie, he's getting in the car and he's moving
18 without observing, looking and paying attention, you know,
19 if he -- if he was driving and just simply, you know,
20 looked away, that might -- that might be negligence, but
21 when he's preoccupied doing something else I think that
22 rises -- that could rise to the level of gross negligence
23 and when he knows that he's doing something that he
24 shouldn't be doing and does it anyway, you know, that
25 may rise to reckless, willful, wanton conduct, and so I

1 think that's a jury question so I'm gonna deny your motion
2 for directed verdict on the negligence claim.

3 **MR. GARFIELD:** Yes, ma'am. Thank you.

4 **THE COURT:** Anything else we need to take up before
5 we take a brief break?

6 **MR. GARFIELD:** And the only other part of the
7 complaint I believe that -- I guess we could get to this
8 with the charging. She's asked for punitives and punitives
9 are not permissible against the Government in a case like
10 this and so I ask that that be struck. Thank you.

11 **THE COURT:** Yes, sir.

12 Anything else we need to take up? Does the State
13 have any witnesses?

14 **MR. GARFIELD:** The Defendant would have --

15 **THE COURT:** I'm sorry. Does the County have any
16 witness?

17 **MR. GARFIELD:** I understand. I knew what you meant.
18 I have one witness.

19 **THE COURT:** Okay. I can tell you based on where we
20 are today, I probably will not close and charge until
21 tomorrow, but I'll keep an open mind.

22 **MS. MILES:** Thank you, Your Honor.

23 **MR. GARFIELD:** Thank you.

24 **THE COURT:** Let's take a break and come back.

25 (Recess taken.)

1 (Back on the record at 4:05 PM.)

2 **BAILIFF:** Court come to order. Please rise.

3 **THE COURT:** All right. Be seated.

4 Okay. Is there anything else we need to take up?

5 **MS. MILES:** Your Honor, I would like to --

6 **THE COURT:** Hold on. Is your client still in the
7 restroom?

8 **MS. MILES:** Yes.

9 (Pause in proceedings.)

10 **THE COURT:** Yes, ma'am, Ms. Miles.

11 **MS. MILES:** Yes, Your Honor.

12 Your Honor, I would like to make a motion that
13 everything in reference to this bond be stricken based on
14 the fact, Your Honor, it was never established that this
15 person that counsel is talking about, who he was mentioning
16 about this detainee, that it was actually Mr. Montgomery.
17 And now that we had a chance to converse and look at this,
18 these people are -- this is an issue that counsel mentioned
19 that actually was not Mr. Montgomery. So, therefore,
20 they're -- it's misleading and I think that this should
21 not be taken up as evidence from listening to counsel in
22 reference to his questioning about this criminal history
23 because Mr. Montgomery had already had all of this
24 expunged, as well as the fact that none of this was
25 convictions, and that he has already -- as you look at

1 this booking date, you will see that he was immediately
2 released and he has already straightened out -- like, for
3 example, this RCGS and CDV, this is not Mr. Montgomery at
4 all. So, therefore, I think that the Court should strike
5 all of this in reference to this.

6 I admit that I did not object, but based on this the
7 weight of the prejudice toward Mr. Montgomery outweighs,
8 you know, any kind of relevancy of this even being taken
9 to the jury because this is not Mr. Montgomery.

10 **MR. GARFIELD:** Judge, could I just inquire? I have
11 the date of birth and Social Security number just to solve
12 the mystery. The date of birth I have is September 7,
13 1965. May I inquire of Ms. Miles what your client's
14 birthday is?

15 **MS. MILES:** It's the birthday, but there's another
16 person --

17 **MR. GARFIELD:** And there's a 251-43-4329.

18 **MS. MILES:** But that's another person, that name, and
19 it comes up all the time. He has that problem and the
20 solicitor's office have already taken care of that matter.

21 **THE COURT:** At this particular point, he was -- what
22 he was asked on was about being booked into the detention
23 center and he acknowledged that those were correct at
24 the time and I left it at that. I didn't allow other
25 information -- or other information that Mr. Garfield

1 sought to impeach him with and so I'm not going to go
2 back and strike it at this particular point. I think the
3 record stands for itself and you can -- you know, there's
4 a higher court you can raise those issues to, but I don't
5 think that there's been any -- any prejudice to him at
6 this particular time beyond what he was asked and he
7 answered and -- you asked questions in response to that,
8 which he also answered, so I think that it's too late to
9 go back and challenge the questions at this particular
10 point given that the Defendant -- I'm sorry, that the
11 Plaintiff, Mr. Montgomery, admitted that those were times
12 when he had been booked into Alvin S. Glenn. So I'll --
13 I'm respectfully denying your request.

14 . Anything else we need to take up?

15 **MR. GARFIELD:** No, Your Honor. I would just like to
16 -- like to mark one item for identification purposes.

17 (Defendant's Exhibit Number 1 was marked for
18 identification.)

19 **THE COURT:** If there's nothing further, you can ask
20 the jury to come in.

21 (Whereupon, the jury returns to the courtroom at
22 4:12 PM.)

23 **BAILIFF:** The jury's seated, Your Honor.

24 **THE COURT:** At this time we are now ready to hear
25 from the defense.

1 Mr. Garfield, you may call your first witness.

2 **MR. GARFIELD:** Thank you, Your Honor. The Defendant
3 Richland County will call Michael Smith to the stand.

4 **THE COURT:** Step forward, sir, to be sworn.

5 **THE CLERK:** State your full name, please.

6 **THE WITNESS:** I'm Michael Allen Smith.

7 (Whereupon, Michael Allen Smith was duly sworn by the
8 Clerk of Court.)

9 **THE CLERK:** Thank you. You can have a seat.

10 MICHAEL ALLEN SMITH,

11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. GARFIELD:

14 Q. And if you could introduce yourself to the jury, sir.

15 A. I'm Michael Allen Smith. I'm the facility manager at
16 Alvin S. Glenn Detention Center.

17 Q. And that is your job title?

18 A. Yes, sir. Facility manager, yes, sir.

19 Q. And how long have you been employed with the detention
20 center?

21 A. I've been the facility manager since 2009. I was
22 hired as the facility manager.

23 Q. And let's work backwards a little bit. What is your
24 most recent previous employment history? Where did you
25 work immediately beforehand?

1 A. I spent thirty years in the chemical plant industry in
2 Darlington, South Carolina, and Bay St. Louis, Mississippi,
3 working on a chemical plant for thirty years in the
4 maintenance department.

5 Q. And, Mr. Smith, are you considered a detention
6 officer?

7 A. No, sir.

8 Q. And do you have any training as a law enforcement or
9 a detention officer would have?

10 A. No, sir.

11 Q. Your work there is strictly in the civilian capacity,
12 I understand?

13 A. Strictly. I hold the -- the rank of captain as a
14 civilian, yes, sir.

15 Q. Okay. I'll call you Captain Smith then.

16 A. Yes, sir.

17 Q. And do you have any military experience?

18 A. I do.

19 Q. And what branch?

20 A. I was in the United States Navy, one tour. I served
21 in electronics and I received an honorable discharge.

22 Q. Let's go and talk about your job duties as facility
23 manager. During the course of your duties, do you have
24 occasion to investigate internal or administrative
25 complaints?

1 A. I do, sir.

2 Q. And, if you would for the jury, just briefly or
3 generally describe the nature of the complaints that might
4 come across your desk.

5 A. We range from anywhere from three to four a day or a
6 week to twenty a week. We -- we investigate all -- we have
7 a lot of sprinkler head breaks for the fire systems with
8 inmates damaging equipment, so we have to document and we
9 do file reports on everything that happens, and those
10 occurrences are filed with incident reports.

11 Q. And, Mr. Smith, on average how many complaints would
12 you say you address or investigate in a particular week?

13 A. It could average from two to three to twenty in one
14 week. It's very variable. Very variable.

15 Q. Okay. And as far as any findings or conclusions, is
16 this something that you make?

17 A. I -- generally I can make the conclusions if I'm
18 knowledgeable of what exactly we're doing. Sometimes I
19 have to get security involved in it, sometimes I have to
20 get risk management for Richland County involved in it,
21 and it goes on and on. It could be the sheriff's
22 department gets involved in, it's variable, but we
23 initiate those reports. Security initiates the reports
24 or we initiate the reports. Somebody in Alvin S. Glenn
25 initiates an incident report.

1 Q. Are you aware, Mr. Smith, that the Plaintiff,
2 Mr. Keith Montgomery, made a complaint of an injury
3 allegedly taking place on Tuesday, March 26, 2013?

4 A. Yes, sir. I was aware of it after the fact.

5 Q. Okay.

6 A. On that -- on that -- the 28th of March.

7 Q. And why would you have been aware of it after the
8 fact?

9 A. I was attending a jailers conference in Myrtle Beach
10 with law enforcement and I did not return to the facility
11 until the 28th.

12 Q. So you were at a work conference on Tuesday,
13 March 26th, Wednesday, March 27th, and you did not return
14 to your normal job duties until Thursday --

15 A. The 28th.

16 Q. -- March 28th?

17 A. Yes, sir.

18 Q. And upon getting back to work and getting your
19 bearings straight, is that when you learned about the
20 complaint of the alleged injury?

21 A. Yes, sir.

22 Q. And did you investigate this complaint at that time?

23 A. Yes, sir, I did.

24 Q. Did you actually have during the course of your
25 investigation the occasion to actually interview, talk to,

1 Mr. Montgomery?

2 A. Yes, I did, sir.

3 Q. And this was on March 28th?

4 A. Yes, sir.

5 Q. And this was how many days after the alleged event?

6 A. Two. Yes, sir.

7 Q. And what did he indicate to you had happened on that
8 day?

9 A. I asked him -- he was Witness Number 3. I went
10 through -- I went through every witness that was there
11 that day and I numbered all the witnesses and he was
12 Witness Number 3 and I asked -- I did not ask any specific
13 questions. As I do with all of my interviews, I don't --
14 I don't intimidate any of the inmates or staff when I
15 interview them for this. I want them to be free and
16 upfront and honest with me and describe the events, and
17 that's what I asked him to do, describe to me what happened
18 that day.

19 Q. Yes, sir. Witness Number 1, did he indicate to you
20 that he saw anything?

21 A. Mr. Walsh, Witness Number 1?

22 Q. Did he indicate to you whether he actually saw --

23 A. He indicated that he did not see any incident or any
24 injury.

25 Q. Okay.

1 A. He did -- he did --

2 Q. I don't want you to go into any detail.

3 A. Okay.

4 Q. Just that he responded.

5 A. Yes, sir.

6 Q. Witness Number 2, did he indicate whether he saw
7 anything pertinent or relevant?

8 A. He stated he did not.

9 Q. Okay. Witness Number 3 was Mr. Montgomery?

10 A. Yes, sir.

11 Q. And you talked to him?

12 A. Yes, sir.

13 Q. And did he indicate to you -- he indicated to you what
14 had happened?

15 A. He indicated -- he told me that he had been struck by
16 the door from the Connex.

17 Q. Okay. And did he state that he immediately notified
18 his immediate supervisor right afterwards?

19 A. I have no recollection of that part, any
20 communications and reference to Mr. Taylor -- to Mr. Taylor
21 at that time.

22 Q. Okay. Did he -- if he would have stated to you yes,
23 I told my immediate supervisor, what, if anything, would
24 you have done?

25 A. I would have -- well, I would have continued on with

1 the investigation, but I would have documented in my report
2 that was said. I did document that there was no account of
3 that.

4 Q. Okay.

5 A. No reason why he was not notified.

6 Q. All right. And did he give any reason to you for
7 failing to tell Mr. Taylor about being injured by the door
8 immediately afterwards?

9 A. No, sir, he did not.

10 Q. Did you ask him?

11 A. I did ask him. I do not -- I do not recollect the
12 exact verbiage of my conversation with him.

13 Q. Well, I'm not asking you verbatim.

14 A. Yes, sir.

15 Q. But if he had told you any particulars, would you have
16 included that in your report?

17 A. I would have definitely documented it as I did with
18 all the other details.

19 Q. So the complaint doesn't necessarily look at the
20 veracity of Mr. Montgomery. You could be looking at the
21 veracity of Mr. Taylor as well?

22 A. Yes. That's exactly true, sir.

23 Q. Because you want to find out what actually happened?

24 A. Yes, sir. That's exactly right.

25 Q. His immediate supervisor, I've already referenced

1 Mr. Taylor, where does he fall in the chain of command?

2 A. At the time, Mr. Taylor was part of our maintenance
3 support group and he was a plumber and he also filled in
4 as grounds with all general -- maintenance support means
5 we do everything. We can do everything except for the
6 electrical work.

7 Q. And is he presently employed with the detention
8 center?

9 A. He is not.

10 Q. And briefly, and to your knowledge, what's his current
11 status?

12 A. He retired, yes, sir.

13 Q. Okay. And briefly what was his background?

14 A. He retired from the U.S. Army. He was in the airborne
15 division. He also was a detention officer and I'm not sure
16 how many years he was a detention officer, but he retired
17 as a detention officer and he came to work for me as a
18 civilian.

19 Q. Okay. Twice retired?

20 A. Yes, sir.

21 Q. Okay. We'll leave him retired then.

22 I'm gonna show you Defendant's Exhibit Number 1 for
23 identification purposes. If you could, please, hold that.
24 Are you familiar with that document?

25 A. Yes, sir, very much. This is a standard contract that

1 we give all inmate workers.

2 Q. Okay. Would Mr. Montgomery have had the opportunity
3 to receive one of these?

4 A. He would not have been able to work us without
5 completing one of these documents.

6 Q. And when you say complete, tell the jury a little bit
7 about what it is.

8 A. It basically says that you will comply with all of our
9 rules and regulations, and we have three pages of those,
10 and the proper procedures for filing medical grievances,
11 for filing just grievances, proper procedure for turning
12 in injuries. All of this is covered in this contract or
13 agreement we have with the inmate workers and if they
14 comply to this by signature and date, then we will honor
15 our -- the work time credits for those gentlemen.

16 Q. Would Mr. Montgomery ever be permitted -- you said
17 without filling it out, but would he have ever been
18 permitted to perform any of these activities without not
19 only filling it out, but signing and agreeing to the terms
20 of the contract?

21 A. He would not.

22 Q. Did you go back to look to see where the actual copy
23 was that he filed out? Did you actually go to try to run
24 that down --

25 A. No, sir.

1 Q. -- that we're talking about?

2 A. No, sir. At the time --

3 Q. No, I'm talking about now.

4 A. Oh, now? We did and we have a retention -- a two-year
5 retention on these documents and so there were not none
6 available.

7 Q. So we're talking about two years for something that
8 happened, what, five years ago?

9 A. Yes, sir.

10 Q. Or allegedly happened five years ago?

11 A. Yes, sir.

12 Q. Does this agreement make reference or the requirement
13 that an inmate worker needs to notify the officers
14 immediately after an injury?

15 A. That is -- that is -- not only is it in this written
16 contract; it's also given to them verbally.

17 Q. Okay. If you have that in front of you, could you
18 actually reference or read out to the jury that portion of
19 the requirement?

20 A. Yes, sir. Okay. Like I said, it's two parts. All
21 injuries will be reported to immediate supervisor or
22 supervisors and will be documented properly as soon as
23 injury occurs.

24 Q. Okay.

25 A. All medical and grievance requests will be completed

1 in dormitory with security officers.

2 Q. To your knowledge, did Mr. Montgomery comply with
3 those aspects of the agreement?

4 A. On the day of the alleged incident?

5 Q. Yes, sir.

6 A. No, sir.

7 Q. And, again, why not?

8 A. I could not answer why he did not.

9 Q. I don't want to know why he did not. I'm not asking
10 you to read his mind, but based on your investigation why
11 did you conclude that he did not?

12 A. I did not come to a conclusion on why he did not.

13 Q. Okay. Again, I don't want to know why he did what he
14 did. That's not my question. But your investigation was
15 to find out whether he did or did not notify certain people
16 of an injury right afterwards?

17 A. Yes, sir. The -- in my investigation, I found that
18 he had reported to Mr. Claude Johnson on the -- I want to
19 say the 27th that he reported to Mr. Johnson that he had
20 been injured while he was working with Mr. Taylor.

21 Q. In other words, letting a full day go by?

22 A. Right. And Mr. Johnson made me aware of it that
23 Thursday morning on the 28th.

24 Q. In the course of your investigation, Mr. Smith, did
25 you ever look into whether the medical unit was ever

1 summoned to the yard?

2 A. I did and there was no -- there was no code blue,
3 which we have a code blue system for anyone being injured,
4 whether it be staff, inmates, contractors, anybody. There
5 was no -- there was no code blue called and there was no
6 report to medical on the 26th to my knowledge.

7 Q. I understand that. Because you weren't there.

8 A. I was not.

9 Q. This was just you conducting an investigation?

10 A. Yes, sir.

11 Q. Certainly. As a result of your investigation, did
12 you sustain Mr. Montgomery's claim or complaint?

13 A. Do I agree with --

14 Q. Did you sustain it or did you find any facts which
15 would reasonably give rise to his complaint of being
16 injured by being struck by the door?

17 A. No, sir.

18 Q. Let me go into a little different area with you,
19 Mr. Smith, and just maybe so you can help educate us a
20 little bit about the inner workings of the -- of our
21 detention center, okay?

22 A. Yes, sir.

23 Q. Now Alvin S. Glenn detention employees, they're
24 considered employees of what county?

25 A. Richland County.

1 Q. All right. And there's also an in-house medical unit,
2 I understand?

3 A. We have a contracted medical and contracted food
4 services.

5 Q. All right. So leave food services aside, and we see
6 that's contracted, but contracted medical --

7 A. Yes, sir.

8 Q. -- they are actually -- have set up -- set up inside
9 the facility itself, the medical unit?

10 A. They are and they have been -- this group has been
11 with them for quite a while now, this CCS.

12 Q. And CCS stands for what?

13 A. Corrective Care Solutions or Services. I'm not sure.

14 Q. Okay. So CCS, Corrective Care Solutions or Services,
15 operates the medical unit in the Alvin S. Glenn Detention
16 Center?

17 A. Yes, sir.

18 Q. Does Richland County or the detention center maintain
19 any care or control over SCC employees?

20 A. Well, as long as they're in compliance. We make sure
21 -- we have a compliance officer who works closely with
22 medical to make sure that they are in compliance, but they
23 pretty much carry the whole weight of the medical care
24 under their contract.

25 Q. And the compliance is a regulatory thing, that's not

1 a day-to-day supervision?

2 A. Right. Yes, sir.

3 Q. Okay. Medical unit staff, the CCS employees, whether
4 that be physicians and nurses, they're not Richland County
5 employees?

6 A. No, sir.

7 Q. And so when an inmate such as Mr. Montgomery tries to
8 get treatment for a medically-related issue of some sort,
9 would Richland County employees be involved with their
10 treatment or his treatment?

11 A. No, sir. By, of course, the HIPAA laws we're not
12 allowed any contact or any information on the inmates' --

13 Q. So --

14 A. -- medical care.

15 Q. I'm sorry for interrupting.

16 A. That's all right.

17 Q. Yes, sir. And so the testimony here in court has
18 been there's been medical care and treatment and diagnoses,
19 perhaps pharmaceutical matters, all those kind of issues
20 that would go to care to take care of inmates, that would
21 all go through CCS?

22 A. Yes, sir.

23 Q. And not the detention center employees?

24 A. No, that's true.

25 **MR. GARFIELD:** I beg the Court's indulgence.

1 Q. Okay. So you don't know whether or not he was there
2 or not?

3 A. Are you asking me do I know if he was in medical?

4 Q. Yes.

5 A. I do not know.

6 Q. Okay. So you don't know anything really that would
7 contribute to this accident. I notice that you testified
8 about this affidavit about what the inmate's supposed
9 to do. Do you have anything to say what the supervisor is
10 supposed to do?

11 A. Yes, ma'am.

12 Q. Did you bring that here today?

13 A. No, ma'am, I did not.

14 Q. Okay. You are aware of the fact that Mr. -- Officer
15 Taylor was the person who was actually driving that truck
16 that day, right?

17 A. That is true.

18 Q. Okay. And did you ever -- now you don't recall
19 certain things, but you can say that you can recall that
20 -- that the officer was not notified by Mr. Montgomery?

21 A. I did not say that, ma'am.

22 Q. Okay. Are you saying -- well, what are you saying?

23 A. I said I didn't have any knowledge of any contact.

24 Q. Okay. You have no knowledge because you weren't
25 there?

1 A. Exactly.

2 Q. And did you talk to Officer Taylor?

3 A. Mr. Taylor. Mr. Taylor was not an officer, ma'am.

4 Q. Well, Mr. Taylor, did you talk to him?

5 A. I talked to him on my return on the 28th, as I did
6 all the other witnesses.

7 Q. Do you have a report that you're presenting today?

8 A. I handled witnesses, I took notes. That's all I have
9 is notes.

10 Q. Okay. So you didn't write up a report and you're just
11 relying on what you can recall?

12 A. Ma'am, I stated earlier I did file a report and I have
13 a report, yes, ma'am, a complete --

14 Q. And did you bring that report today?

15 A. I have the report with me, yes, ma'am, from me.

16 Q. Did you refresh your memory by reading that report?

17 A. Obviously I did, ma'am. I could not remember back
18 2013 all the details.

19 Q. So, therefore, you were testifying to something to
20 refresh that we have no copies of, we have no knowledge
21 of, and this is the first time that we are hearing about
22 this today?

23 A. No, ma'am, that's not true. It's been filed. As
24 a matter of fact, it was reviewed in 2017. I sat down
25 with the law firm and it was reviewed. My report was

1 submitted back -- back in the first of this. My report
2 is documented.

3 Q. What law firm was that?

4 A. My report is documented through Alvin S. Glenn
5 Detention Center.

6 Q. What law firm did you review this with?

7 A. I don't have any knowledge of that, ma'am.

8 Q. Was it the Plaintiff's attorney?

9 A. I don't have any knowledge of the exact attorney's
10 firm.

11 Q. So these reports was turned over to Richland County's
12 attorney?

13 A. Yes, ma'am.

14 Q. And so, therefore, those were supposed to be presented
15 to -- in discovery?

16 A. My only contact has been through Richland County
17 legal.

18 Q. Okay.

19 **MS. MILES:** Thank you.

20 **THE COURT:** Any redirect?

21 **MR. GARFIELD:** Yes, ma'am. I just beg the Court's
22 indulgence.

23 **REDIRECT EXAMINATION**

24 **BY MR. GARFIELD:**

25 Q. Ms. Miles asked you about the report.

1 A. Yes, sir.

2 Q. I'm gonna ask you if you can identify this.

3 A. Yes, sir.

4 **MR. GARFIELD:** I'd like to go ahead and let's mark
5 this first as Defendant's Exhibit Number 2 for
6 identification purposes.

7 While she's doing that -- well, I'm sorry. I won't
8 talk.

9 **MS. MILES:** Your Honor, may we --

10 **THE COURT:** One moment. She has to mark it before
11 you move on.

12 **MS. MILES:** Yes, ma'am.

13 **MR. GARFIELD:** This has been produced in discovery.

14 **THE COURT:** One moment.

15 **MR. GARFIELD:** Yes, ma'am.

16 (Defendant's Exhibit Number 2 was marked for
17 identification.)

18 **THE COURT:** Yes, sir.

19 **MR. GARFIELD:** Yes, ma'am. And I apologize for
20 talking over the court reporter.

21 This has been produced in discovery. I believe, if
22 I could go back, it's Bates A or B series, but this was
23 from our firm to her and I can go ahead and --

24 **THE COURT:** Would you provide her another copy of it
25 so that --

1 **MS. MILES:** Your Honor, you said another copy. I
2 never received the first copy. In other words, I never
3 received it in discovery. I would like to see where it
4 was --

5 **MR. GARFIELD:** Yes, ma'am. If you could just give me
6 one moment, Your Honor.

7 **THE COURT:** Yes, sir.

8 **MR. GARFIELD:** Your Honor, we did not intend to put
9 the file -- or excuse me, the report into evidence until
10 this was just brought up. I can state that this was on
11 June 3, 2015, we responded to the discovery request, and
12 we provided under Bates A scheme sixteen pages to
13 Ms. Miles, and this report should have been included.

14 And I can now or at an appropriate time try to
15 actually locate the Bates A. I just don't -- I can't get
16 my hands on it at the moment. I can't seem to pull it up
17 here.

18 **THE COURT:** You will need to give her a copy of
19 whatever you just marked.

20 **MR. GARFIELD:** Yes, ma'am.

21 **MS. MILES:** I'll let my objection still stand, Your
22 Honor, because of the fact that we never received it and
23 in the discovery rules, Your Honor, you're supposed to
24 make sure that opposing counsel receives any documents
25 that you're going to present at trial and definitely we

1 did not receive this document and I object to it being
2 introduced if it's going to be even discussed or
3 questioned.

4 **MR. GARFIELD:** Here's the copy I'm providing to
5 Ms. Miles. I'm just trying to find one with the actual
6 Bates number on it. And if Your Honor could just give me
7 one more moment. And I apologize to the jury and everyone.

8 **THE COURT:** Ladies and gentlemen, I'm gonna go ahead
9 and send you back to the jury room and ask that you not
10 discuss this matter among yourselves. You've still not
11 heard all of the evidence that has to be presented and
12 we'll take up any issues relating to the document at that
13 time.

14 So if you'll retire to the jury room, we'll bring you
15 back shortly.

16 (Whereupon, the jury retires to the jury room at
17 4:39 PM.)

18 **MR. GARFIELD:** I'm prepared to take this up when
19 Your Honor's situated.

20 **THE COURT:** I'm ready any time you are.

21 **MR. GARFIELD:** Okay. And I apologize for the pilot
22 error on this. This predated me. This was Justin Bagwell
23 and Will Davidson.

24 **THE COURT:** I'm sorry. Ms. Miles?

25 **MS. MILES:** Yes.

1 **THE COURT:** Mr. Garfield is telling you when it was
2 sent.

3 **MR. GARFIELD:** Yes, ma'am. And I'll have to go off
4 this computer. This was produced by way of Defendant's
5 responses to the Plaintiff's interrogatories and request
6 to produce on June 3, 2005 {sic}. Response Number 1,
7 Alvin S. Glenn Detention Center -- I'm sorry, let me go
8 backwards. The Defendant's are in possession of the
9 following materials responsive to this request, copies
10 of which are being produced herewith, A, Alvin S. Glenn
11 Detention Center investigative file regarding allegations
12 made by the Plaintiff, Bates numbered 9553-A-1 through 9 --
13 this is a scrivener's error, 9553-A-16, and this two-page
14 report that's contained within these Bates numbers is
15 9553-A-7 and 9553-A-8. That was produced June 3, 2005.

16 **MS. MILES:** June 3rd --

17 **MR. GARFIELD:** Excuse me, June 3, 2015. I'm getting
18 old. And it was -- we take the position that we're
19 able to not only question this witness if he can lay a
20 foundation that this was kept in the regular, you know,
21 conducted business activities, that it would be a business
22 record exception to this. And plus Ms. Miles has already
23 made reference to this report and asked him to reference
24 this. I had not mentioned the report, I mentioned his
25 investigation, but since this is now an issue in front of

1 the jury we'd like to -- if he's able to lay foundation,
2 we'd like to go ahead and have him testify to it and, if
3 applicable, admit it into evidence.

4 **BAILIFF:** May I approach, Your Honor?

5 **MR. GARFIELD:** Again, Your Honor, just one more note
6 on this. I found the certificate of service. I'm happy
7 to put that as a Court's exhibit or however. I just have
8 these electronically. I can substitute the record or
9 however the Court prefers.

10 **THE COURT:** Anything, Ms. Miles?

11 **MS. MILES:** I still stipulate that I never received
12 this, Your Honor, although that is something in which that
13 they said that they sent to me and I know that I never --
14 this is the first time I've seen this.

15 **MR. GARFIELD:** This was -- to be more specific,
16 this was, as they say, pre me. This is a certificate
17 of service that outlines what I just -- what I represented
18 to the Court and it was mailed to Ms. Miles, according to
19 this certificate of service, on June 3, 2015, addressed to
20 Mary P. Miles, Esquire, and it appears to be her correct
21 law firm information, and it is signed by Justin Bagwell,
22 who at the time was an associate in our firm who was
23 primarily handling this case and actually conducted the
24 deposition of the Plaintiff.

25 **MS. MILES:** What address?

1 **MR. GARFIELD:** Yes, ma'am. The Law Firm of Mary P.
2 Miles, 810 Dutch Square Center, Suite 206, Columbia, South
3 Carolina, 29210, and then he has signed this and this
4 refers to Defendant's responses to Plaintiff's first set
5 of interrogatories. And not only did he respond in the
6 interrogatories referencing this exact document with a
7 Bates number that he references again in the responses to
8 the request to produce, I don't see where Ms. Miles ever
9 notified us that she was not in receipt of discovery
10 responses. We don't have a Rule 11 that I see that we
11 did not comply. If she did, this is, again, before my
12 involvement in the case. She'll certainly correct me, but
13 there's no indication she did not receive these and she
14 went forward with the handling of discovery.

15 **MS. MILES:** Your Honor, rather than belabor our time,
16 this case has taken longer than we anticipated, Your Honor,
17 but can we move forward?

18 **THE COURT:** Yes, ma'am, we can. I will tell you
19 that I received a note while you-all were looking up
20 information. There is a juror that has a class at USC at
21 5:40 and so I just need to bring that to your attention.

22 **MR. GARFIELD:** Yes, ma'am.

23 **THE COURT:** So are we prepared to go forward with this
24 particular witness and finish this witness?

25 **MR. GARFIELD:** Today? Yes, ma'am.

1 **THE COURT:** Ms. Miles, are you prepared?

2 **MS. MILES:** Yes, Your Honor. If it's going to be
3 introduced into evidence, like I said, I have it on the
4 record that I never saw this before. But, anyway, we want
5 to go forward, Your Honor.

6 **THE COURT:** All right. If we can go forward and
7 finish this witness and then I'll excuse the jury and then
8 we can close and charge in the morning.

9 **MR. GARFIELD:** Yes, Your Honor.

10 **MS. MILES:** Your Honor, may I ask in reference to if
11 Mr. Garfield has any more documents, any more information
12 that he's planning on producing, at least we know about it
13 beforehand.

14 **THE COURT:** Yeah, I think he said he didn't intend to
15 introduce the exhibit until it came up during the course
16 of -- until it was mentioned as a report and so --

17 **MS. MILES:** Well, he said that on the record that he
18 investigated and he did a report and I just followed up in
19 terms of asking him did he do -- did he look at a report.
20 He said he did a report on the record.

21 **MR. GARFIELD:** I don't recall that, but I don't -- I
22 didn't ask him that question, Your Honor.

23 **MS. MILES:** But he -- he said it.

24 **THE COURT:** Yeah, I don't think he was planning on
25 introducing the report, which is -- which if you are trying

1 to figure out whether there are going to be additional
2 documents to be introduced as exhibits, that's different
3 from otherwise producing, so I assume you don't have any
4 additional documents that you intend to mark as exhibits
5 and introduce?

6 **MR. GARFIELD:** No, ma'am, I do not.

7 **THE COURT:** Anything else?

8 **MS. MILES:** (Shakes head.)

9 **THE COURT:** You can ask the jury to come back in.
10 (Whereupon, the jury returns to the courtroom at
11 4:51 PM.)

12 **BAILIFF:** The jury is seated, Your Honor.

13 **THE COURT:** We're still on redirect.

14 **MR. GARFIELD:** Yes, Your Honor. And for housekeeping
15 purposes, we'd like to go ahead and move Defendant's
16 Exhibit Number 1 for identification purposes as an exhibit
17 in this case.

18 **MS. MILES:** Your Honor, I reiterate my objection.

19 **THE COURT:** Okay. Exhibit Number 1 was the contract
20 -- the standard contract that the inmate workers sign.

21 **MR. GARFIELD:** That's correct.

22 **THE COURT:** So, Ms. Miles, are you objecting to that
23 particular document? That's a different one from the one
24 we've been discussing.

25 Exhibit Number 1 was the inmate -- the contract for

1 inmate workers.

2 **MS. MILES:** I have no objection.

3 **THE COURT:** Okay. That will be admitted.

4 (Defendant's Exhibit Number 1, a Contract for Inmate
5 Workers, was admitted into evidence.)

6 BY MR. GARFIELD:

7 Q. And before our break, Mr. Smith, I've marked another
8 document, it's a two-page document, and that's been stamped
9 Defendant's exhibit for identification purposes Number 2.

10 Are you familiar with that document?

11 A. Yes, sir.

12 Q. And can you identify that for the jury?

13 A. This is the incident report that I used to generate
14 the information from the incident that -- the alleged
15 incident that happened on the 26th of March of 2013, and
16 this was done on 3-28 on my return to the facility. This
17 is standard procedure for us to investigate.

18 Q. So standard procedure for you to investigate. Would
19 you say that this document was prepared in the ordinary
20 scope of the business of the detention center?

21 A. Yes, sir.

22 Q. And in your capacity as the facility services manager?

23 A. It was.

24 Q. And how is this document stored after it's prepared?

25 A. This is stored on -- of course, it's stored on my

1 database and then I electronically send these documents to
2 our director, our assistant director and the head of our
3 security department.

4 Q. And that's the -- would I suffice to say that's your
5 chain of command within the detention center?

6 A. Yes, sir.

7 Q. And you send to that superiors?

8 A. Yes, sir. And not only does a copy go to them, but
9 also a copy goes to the contractor, CCS, and anyone else
10 involved in the chain at the time. If it's -- this was
11 related to an alleged injury, so it was sent to the CCS
12 medical director.

13 Q. Is it, Mr. Smith, a regular part of your business to
14 keep and maintain reports and records of this type?

15 A. Yes, sir.

16 Q. And are these documents the type that would be kept
17 under your custody and control?

18 A. Yes, sir.

19 Q. All right.

20 **MR. GARFIELD:** At this time, Your Honor, we'd like to
21 go ahead and move Exhibit Number 2 for ID purposes as a
22 Defendant's exhibit.

23 **MS. MILES:** Objection as stated.

24 **THE COURT:** And subject to the objection, I'll
25 overrule the objection and admit it.

1 (Defendant's Exhibit Number 2, an Incident Report,
2 was admitted into evidence.)

3 **MR. GARFIELD:** That report is now admitted into
4 evidence, so that's for the jury to look at. I don't
5 have any more questions for you. Thank you very much.
6 I appreciate it.

7 **THE COURT:** Anything further on recross?

8 **MS. MILES:** Thank you.

9 **THE COURT:** Hold on.

10 **MS. MILES:** If it please the Court, Your Honor,
11 Counsel?

12 **RE CROSS EXAMINATION**

13 **BY MS. MILES:**

14 Q. Mr. Smith, isn't it true that you actually threatened
15 these inmates in order for them to say that they did not
16 witness any accident that occurred on March the 23rd, 2013?

17 A. That is not true.

18 Q. Isn't it a fact that you also threatened Mr. Keith
19 Montgomery?

20 A. That is not true.

21 Q. Okay. And also in your investigation, where do you
22 investigate -- where do you have the opportunity to have
23 this conversation, in the cell or where is it done?

24 A. It was done in my office.

25 Q. In your office. So --

1 A. In the maintenance complex.

2 Q. Isn't it true that inmates get time -- they're granted
3 time when they go out to work on the work program?

4 A. You'll have to -- I don't understand your question.

5 Q. Okay. If someone got ninety days and they're a
6 trustee and they're out there working, don't they have
7 time that is cut off as far as the time that they will be
8 there incarcerated?

9 A. Let me go on record as saying that I have absolutely
10 nothing to do with the work time good credit. That is
11 done through security through our classifications office.
12 I have -- by design I have no input into whether they get
13 good time credit or they do not get it.

14 Q. Okay. So, therefore, you have nothing to do with
15 these inmates as far as whether or not they will say that
16 they saw something, an accident, without being jeopardized?

17 A. I don't quite understand your question again.

18 Q. Well, if they're -- if there are three inmates and
19 according to what you have here on this report you
20 investigated Witness 1, which was Brandon Walsh, Witness 2,
21 which was Charles Bethea, and Witness 3, which was Keith
22 Montgomery?

23 A. Yes, ma'am.

24 Q. And you have no knowledge where these inmates were
25 standing on March the 26th, 2013?

1 A. That's exactly -- that is a true statement. I do
2 not.

3 Q. Okay. So, therefore, why would they tell you that
4 they did not know anything about Mr. Montgomery being
5 struck?

6 A. I cannot answer --

7 **MR. GARFIELD:** Excuse me, sir. I'm sorry.

8 Your Honor, I object. It calls for speculation. He
9 couldn't read the minds of why someone else was motivated
10 to say certain things.

11 **THE COURT:** Rephrase the question.

12 BY MS. MILES:

13 Q. Did they tell you -- how long before you actually
14 start talking with these inmates that they told you that
15 they didn't know anything about this accident?

16 A. I have no recollection of exactly what time I talked
17 to each individual. I can only say that it was on the
18 morning, the AM, of Thursday the 28th.

19 Q. Okay. And it wasn't the day of because you weren't
20 here?

21 A. As I stated earlier, yes, ma'am.

22 Q. Okay. Now you also stated in this report that you
23 talked to Mr. Johnson. Was Mr. Johnson there on March
24 the 26th, 2013?

25 A. He was not -- he was not on the facility, he was on

1 vacation on 26th and the 25th.

2 Q. Isn't it true that the supervisor, Mr. Johnson, was
3 suspended?

4 A. I don't know if that's true or not. I don't know.

5 Q. Okay. But he wasn't there?

6 A. He was not there on Monday the 25th or the 26th.

7 Q. Okay. And then you have -- here you say on Wednesday,
8 March 27, 2013, Inmate Montgomery stated to Mr. Johnson,
9 the SS supervisor, that he had been injured on Tuesday.

10 A. I was told that on Thursday by Mr. Johnson that
11 Mr. Montgomery had came to him and told him that he was
12 injured on Tuesday. Mr. Johnson was not present on
13 Tuesday, I was not present on Tuesday, I was not present
14 on Wednesday. When I returned to the facility, Mr. Johnson
15 was present and he came and told me what the inmate told
16 him, ma'am.

17 Q. Okay. Now on the -- I think the Defendant's Exhibit
18 Number 1 in which that you brought as far as what the
19 grievance process would be for the inmate and I believe
20 as I read one of them was that they was immediately --
21 excuse me just a moment. All injuries to be reported to
22 immediate supervisor. Isn't the immediate supervisor at
23 that time would have been Mr. Johnson?

24 A. It would have been Mr. Taylor on-site on the 26th if
25 that's what you're talking about, ma'am.

1 Q. Well, Mr. Johnson wasn't -- Mr. Taylor was the first
2 -- this is the first time that Mr. Taylor actually took
3 out the inmates and it was always Mr. Johnson?

4 A. I can't answer that because I can't say that's the
5 first time of anything. All of our people work different
6 positions. There's no designated -- they work everywhere.
7 We're very multicraft.

8 Q. Okay. But if -- if Mr. Johnson was there on the 26th,
9 would he have been the supervisor over the work program?

10 A. I can't say that for a fact. I can say that he
11 probably would have been, yes, ma'am.

12 Q. Okay. So, therefore, if he -- if he was not there and
13 it says the immediate supervisor will document properly as
14 soon as injury occurs, well, how could Mr. Montgomery thus
15 report directly to Mr. Johnson if Mr. Johnson wasn't there?

16 A. If I may read it to you, ma'am, it says all injuries
17 must be reported to immediate supervisor, and an S in
18 brackets, supervisors, and will be documented properly. It
19 does not specify any one supervisor.

20 Q. Okay. But you have no idea or no comment to be able
21 to tell this jury that Mr. Montgomery actually did not?

22 A. And I have not stated -- only that he told me that it
23 had not been reported. Or it was reported to me by all
24 the witnesses that I said that there was not an incident.
25 That's what I'm --

1 Q. Now according to what you wrote here, you said
2 Witness 3, Inmate Keith Montgomery, according to this
3 witness he was struck by the Connex door when it was
4 bumped by the trailer. Witness Inmate Montgomery states
5 that he told Mr. Taylor.

6 A. Well --

7 Q. That's what you wrote.

8 A. Yes.

9 Q. And he said --

10 A. Where are you reading at, ma'am?

11 Q. And he said hey, man, you almost killed me.

12 A. Where are you reading at, ma'am?

13 Q. Right down to the bottom of the first page.

14 A. Yes, ma'am. Okay. I agree. I have to reference to
15 my notes, too, because this has been five years ago, so I
16 have to -- so that's a true statement. Yes, ma'am. That's
17 how I recorded it, yes, ma'am.

18 Q. Okay.

19 **MS. MILES:** Thank you.

20 **MR. GARFIELD:** Nothing further. Thank you, Your
21 Honor.

22 **THE COURT:** You may step down. Thank you.

23 (Witness excused.)

24 **THE COURT:** Any further witnesses?

25 **MR. GARFIELD:** No, Your Honor. That would conclude

1 the case on behalf of Richland County.

2 **THE COURT:** Anything from the Plaintiff in terms of
3 rebuttal?

4 **MS. MILES:** What was the question, Your Honor?

5 **THE COURT:** Anything further in terms of rebuttal
6 witnesses?

7 **MS. MILES:** No. Oh, yes, Your Honor. I would like
8 to just for a few seconds. I know that because of -- I
9 would like to recall Mr. Montgomery.

10 **THE COURT:** All right. Mr. Montgomery, I'll bring
11 you back. I'll remind you that you're still under oath to
12 tell the truth in this matter.

13 **THE WITNESS:** Yes, ma'am.

14 **THE COURT:** Yes, ma'am.

15 **MS. MILES:** Thank you, Your Honor. If it please the
16 Court, Counsel?

17 KEITH L. MONTGOMERY,

18 having been previously sworn, testified as follows:

19 REBUTTAL DIRECT EXAMINATION

20 BY MS. MILES:

21 Q. Mr. Montgomery, do you recall being interviewed by
22 Mr. Smith on the 27th?

23 A. Yes, ma'am.

24 Q. On March 27, 2013?

25 A. Yes.

1 Q. And could you tell us briefly whether or not you told
2 Mr. Smith that you were injured?

3 A. Yes, I did.

4 Q. Okay. And were you in the -- in there when he
5 interviewed the two other witnesses?

6 A. No, I was not.

7 Q. Okay. Do you know anything about time added on or
8 taken away from inmates?

9 A. Yes, ma'am.

10 Q. Could you tell us how that works?

11 A. You get a day for a day on good behavior. Like I
12 said, I had six months, but since I was on good behavior
13 I did ninety days. People with ninety days would do
14 forty-five days. You do half of your sentence. That's
15 how they work down there.

16 Q. Were you threatened by Mr. Smith?

17 A. Yes, I was.

18 Q. Can you tell us -- tell the Court -- tell the jury
19 exactly what was said.

20 A. He was threatening me that he would take my time away
21 from me and he told me if I was lying and he asked me would
22 I take a lie detector test, I told him I was not lying and,
23 yes, I was willing to do it and he was like if I send you
24 to the infirmary and there's nothing wrong with you, we're
25 gonna take your time away from you and you do all your

1 days. That's how he was threatening me.

2 Q. And did you have a chance to talk to -- although you
3 would not be able to let us know exactly what Mr. Walsh and
4 Mr. Bethea said, but did you talk with them after this?

5 A. Yes.

6 Q. Do you have any knowledge of whether or not the same
7 threat was given to them?

8 A. Charles Bethea had said he had threatened, but I
9 didn't have no knowledge that he had threatened Brandon
10 Walsh. I have no knowledge of that.

11 **MS. MILES:** All right. Thank you so much.

12 **THE COURT:** Any cross?

13 **MR. GARFIELD:** No cross. Thank you.

14 **THE COURT:** You may step down. Thank you.

15 (Witness excused.)

16 **THE COURT:** Ladies and gentlemen, at this time you've
17 now heard all of the evidence that has been presented in
18 this matter. I am sorry that we will not be able to
19 conclude this case today. I will need for you to return
20 tomorrow morning so that we can continue on with the trial
21 in the matter in the form of closing arguments and my
22 instructions to you as to the law and then you may begin
23 your deliberations at that particular time.

24 Please remember all of the instructions that I've
25 given to you; that is, not to begin to discuss this matter

1 among yourselves. Even though you have now heard all of
2 the evidence, you are still not in a position to be able
3 to make a decision in this case until you've heard my
4 instructions to you as to the law to be applied based upon
5 the facts that you will determine at the appropriate time.
6 So I ask that you not begin to discuss it among yourselves
7 until it's time for you to begin your deliberations
8 tomorrow.

9 Please also remember as you come and go from the
10 courthouse not to allow anyone to approach you to discuss
11 this matter with anyone. Again, if someone attempts to
12 do that, please tell them that you are a juror and you
13 cannot discuss it and I ask that you report it as soon as
14 possible.

15 Additionally, please do not listen to conversations
16 in the hallways, again, for the reasons that you have now
17 heard all of the evidence that has to be presented and you
18 will have the ability to be able to determine the facts
19 based strictly upon that evidence that's been presented
20 here. It should not be based upon conversations that you
21 may overhear as you come and go, so I ask that you simply
22 not listen to any those discussions.

23 Ladies and gentlemen, I'm gonna ask that you report
24 to the same jury room where you reported today at 9:30
25 tomorrow morning and when you report at that time we'll

1 be ready to continue on with the trial in the form of the
2 closing arguments and the instructions to you.

3 Please also overnight -- I know your family and
4 friends will want to know what you're doing on jury duty.
5 Besides whatever other things that you'd like to tell them
6 about the day, I ask that you not discuss what you've heard
7 or seen throughout the course of this trial with them.
8 Even though they are not strangers, when you talk to them
9 they have the potential to influence how you think about
10 the evidence because they may make comments to you, they
11 may ask you questions about the evidence which may cause
12 you to think about the evidence in a different light.

13 Additionally, I would like for you to save that
14 opportunity for your fellow jurors when they hear exactly
15 what you consider to be important because instinctively
16 you choose to talk about the things that you consider to
17 be most important to you, so I ask that you tell your
18 family and friends that I've asked you not to discuss it
19 with them; that tomorrow when you have reached your
20 verdict, then you can tell them anything and everything
21 that you want to tell them about this case, but until we
22 get to that particular point, please tell them I've asked
23 you not to discuss it.

24 I will see you tomorrow morning at 9:30 in the same
25 jury room. Have a good evening. I appreciate your

1 patience with us and we'll see you tomorrow morning at
2 9:30.

3 (Whereupon, the jury was excused for the evening at
4 5:10 PM.)

5 **THE COURT:** Are there any additional motions at this
6 time before we end for the day?

7 **MS. MILES:** Nothing from the Plaintiff, Your Honor.

8 **MR. GARFIELD:** Just very briefly, and I'm trying to
9 put this together properly, Your Honor. There is by way
10 of Mr. Smith's testimony in which he testified that the
11 inner operations and the inner workings of medical unit
12 personnel that are assigned to the detention center that
13 they act separate and apart from Richland County business
14 and mutually exclusive of Alvin S. Glenn Detention Center,
15 you know, their official business. I would ask that any --
16 any references in the Plaintiff's complaint be stricken
17 with respect to any type of indifference -- deliberate
18 indifference on the part of detention center officials when
19 the allegations center on whether they conformed to any
20 type of medical standards.

21 For instance, the complaint alleges that -- I think
22 that he requested, for instance, a second mattress for his
23 back and that request was denied from medical. Well, if
24 that were, in fact, true medical would fall under CCS and
25 that is a contracted entity, that is not a Richland County

1 entity. There is no evidence to submit to the jury that
2 there was any sort of undertaking by County officials
3 that involved the treatment, the care, the diagnoses,
4 administration of medications, either honoring requests
5 for, you know, things like mattresses and things, all
6 those things would come from medical, and we would ask
7 that either that be stricken and in addition to have some
8 curative instruction at the appropriate time.

9 This case would basically be, and Your Honor will --
10 you know, to the extent you're amenable, we put this
11 together on my end right now, but this case is about gross
12 negligence with respect to the detention center officials
13 and this is not a medically-related case. There's no
14 evidence -- Ms. Miles is unable to tie in any type of
15 connection between the act or omission of the medical unit
16 to the County employees and if that needs to be in the
17 form of a directed verdict, then so be it, but I just
18 wanted that position noted.

19 And other than that we would renew our previous
20 grounds for a directed verdict, which we already addressed
21 and Your Honor's ruled upon.

22 **THE COURT:** I don't think there's been testimony
23 about medical personnel failing to do what was asked of
24 them or failing to attempt to treat Mr. Montgomery while
25 he was within the detention center. I certainly think

1 that if those allegations have been made there would have
2 been a motion long before now about -- to the extent that
3 there's a claim for medical malpractice that the wrong
4 parties would be involved or they would have -- there
5 needed to be a notice of intent to some other -- so I'm
6 not sure that -- well, obviously the complaint does not
7 go to the jury.

8 **MR. GARFIELD:** Yes, ma'am.

9 **THE COURT:** But, you know, I see this and I think
10 what I've heard is simply that it is a matter of negligence
11 on the part of the employees of the County, you know, that
12 caused injury to Mr. Montgomery, and I think -- I think
13 that's the only thing that's being claimed; is that
14 correct?

15 **MS. MILES:** Yes, Your Honor.

16 **MR. GARFIELD:** And I'll defer to Your Honor. Your
17 Honor takes copious notes much better than I do, so that
18 was just a concern. I thought there was some reference
19 along the way.

20 **THE COURT:** I think there might have been a question
21 that was asked about whether or not he sought additional
22 medical care while he was there and his response was that
23 he had an appointment for April the 17th and he was
24 discharged on that day.

25 **MS. MILES:** Correct.

1 **MR. GARFIELD:** Okay.

2 **THE COURT:** And as it relates to your directed verdict
3 on the gross negligence, I'll deny that. I think that's a
4 jury question.

5 **MR. GARFIELD:** Yes, ma'am. Thank you.

6 **THE COURT:** Do we want to talk about jury charge now?

7 **MS. MILES:** Yes, Your Honor.

8 **THE COURT:** Okay. I will tell you what I will charge
9 and you tell me if I have left out something in particular.
10 I will charge them on that they have to determine the facts
11 based upon the evidence. I will talk to them and tell them
12 that pleadings were read to them and that information and
13 the documents are now evidence that can be considered by
14 them along with all of the other evidence in the case. I
15 will charge them that they have to determine the facts
16 based upon the evidence. In order to do that they have to
17 judge the credibility of the witnesses. I will charge
18 them the burden of proof.

19 I will charge them on the elements of the negligence
20 claim. In this particular case, the Plaintiff has to prove
21 that the Defendant was grossly negligent in its conduct.
22 He also has to prove he was injured and he has to prove
23 that the gross negligence of the Defendant was a proximate
24 cause of the injuries. I will define gross negligence as
25 the failure to exercise a slight degree of care, a person

1 who is so indifferent to the consequences of his conduct
2 as to not give slight care as to what he's doing acts with
3 gross negligence. I'll also instruct them that simple
4 negligence -- that unlike -- that simple negligence is
5 just that someone was careless or failed to do something
6 that an ordinary and reasonable and prudent person would
7 have done under same or similar circumstances, but that
8 gross negligence is a different standard than that, and it
9 is the absence of exercising a slight degree of care.

10 I will also charge them on proximate cause. That is
11 that the Plaintiff has to prove -- that the proximate cause
12 is something that brings about the -- produces a chain of
13 events which in the end brings about the injury and is a
14 direct cause of the injury. The fact that physical
15 problems occurred after the incident is not sufficient by
16 itself to show that the incident caused the physical
17 problems. The Plaintiff has to establish a natural and
18 obvious relationship between the incident and the physical
19 problems and that the injuries resulted from the
20 Defendant's gross negligence. The Plaintiff has to prove
21 that -- causation is proven by showing that the injury
22 would not have occurred but for the Defendant's gross
23 negligence.

24 Plaintiff also has to prove a legal cause which is
25 proved by showing foreseeability. It doesn't mean that

1 the Plaintiff has to prove the precise manner in which the
2 injury occurred was foreseeable, it's sufficient that the
3 Defendant should have been aware that the negligence --
4 gross negligence would probably cause injury to someone or
5 some thing.

6 I'll charge them on the damages, which would include
7 physical and mental pain and suffering, as well as mental
8 anguish, impairment of health or physical condition. That
9 would include reasonableness of medical treatment and any
10 other loss of enjoyment of life and any other losses that
11 are reflected by the character of the injury itself. That
12 they have the authority to make a decision as to pain and
13 suffering. That the law simply requires that when they
14 exercise that authority that they do so with common
15 rational judgment. The same for mental anguish. That
16 would include psychological trauma, distress, upset.
17 That's a proper element of damages. And, again, they have
18 the authority to make that decision and they should do so
19 with calm and rational judgment. That loss of enjoyment
20 of life is separate from pain and suffering and the loss
21 of enjoyment of life compensates the Plaintiff for the
22 limitations that are place upon the ability to participate
23 and derive pleasure from the normal activities of life and
24 for an inability to pursue any talents, recreational
25 interest or hobby.

1 I'll charge them on reasonable and necessary medical
2 expenses. I'll charge them on the fact that the Plaintiff
3 has to prove the damages by a greater weight or the
4 preponderance of the evidence, but that doesn't mean that
5 he has to prove them to a precise mathematical certainty.
6 That all the law requires is that he has to put forth
7 enough evidence to allow the jury to be able to determine
8 an amount that is fair and just and reasonable.

9 On my verdict form, I have we, the jury, unanimously
10 find for the Plaintiff actual damages or we find for the
11 Defendant.

12 Are there other things that I need to discuss that I
13 have not mentioned, Ms. Miles?

14 **MS. MILES:** Yes, Your Honor. What about future
15 medicals? He did testify to that.

16 **THE COURT:** And those are injuries -- damages which
17 would arise from injury based upon their likelihood to
18 occur in the future.

19 Are we talking about a life expectancy table or are we
20 talking about pain and suffering?

21 **MS. MILES:** Pain and suffering, Your Honor.

22 **THE COURT:** So we're not trying to indicate that
23 there's -- there will be damages for a set period of years
24 for the rest of his life?

25 **MS. MILES:** No, Your Honor.

1 **THE COURT:** And I don't -- I don't have any problem
2 with that. And they have to be damages that were
3 proximately caused by the Defendant's conduct that are
4 likely to occur in the future. I'll charge them on that.
5 That's not a problem.

6 Anything further, Ms. Miles?

7 **MS. MILES:** That's it, Your Honor.

8 **THE COURT:** Anything further, Mr. Garfield?

9 **MR. GARFIELD:** Not off the top of my head. If you
10 would allow me to just check some things tonight. I know
11 you don't have a law clerk. If it's not too difficult, I
12 could send an e-mail around if I find something this
13 evening.

14 **THE COURT:** If you send it this evening because I'll
15 be in in the morning to be able to see it.

16 Janie, would you -- this is a copy of the verdict
17 form that I propose. It just a simple verdict form. If
18 you'd please just take a look at it and if there's anything
19 I need to change or amend, if you could let me know. And
20 you can let me know tomorrow morning.

21 Okay. Anything else?

22 **MR. GARFIELD:** Not at this time, Judge. Thank you
23 very much.

24 **MS. MILES:** Your Honor, let me see if I understand
25 this verdict form because actual damages, you're only

1 talking about for Dr. Z?

2 **THE COURT:** No, actual damages would include pain and
3 suffering, the loss of enjoyment of life, mental anguish.
4 It includes everything.

5 **MS. MILES:** I was just wondering whether that
6 confuses the -- I know when I usually talk about damages,
7 the actual, I just put what the expenses were and, see, I
8 was confused when I see this actual --

9 **THE COURT:** Those are damages for reasonable and
10 necessary medical expenses, so that's just a part of the
11 actual damages which I charge them and I tell them that
12 the damages include pain and suffering, mental anguish,
13 loss of enjoyment of life, reasonable and necessary
14 medical expenses and any future damages which they
15 determine are likely to occur based upon the Defendant's
16 conduct.

17 **MS. MILES:** Thank you, Your Honor.

18 **THE COURT:** So all of that is just lumped together.
19 While there's a finite number on the medicals, the rest of
20 it is stuff that they have to determine based upon the
21 evidence.

22 **MS. MILES:** All right. Yes, Your Honor. Thank you.

23 **THE COURT:** Anything else?

24 **MR. GARFIELD:** No, ma'am.

25 **THE COURT:** We'll see you-all tomorrow then. Thank

1 you.

2 **MS. MILES:** Thank you, Your Honor. Have a good night.

3 **THE COURT:** You do the same. ,

4 **MR. GARFIELD:** Thank you.

5 (Whereupon, the proceedings were concluded for
6 April 4, 2018, at 5:25 PM.)

7 (The following proceedings were held April 5, 2018,
8 beginning at 9:37 AM.)

9 **BAILIFF:** Court come to order. All rise.

10 **THE COURT:** Good morning, everyone. Thank you. Be
11 seated. Everybody's doing okay?

12 **MS. MILES:** Yes, Your Honor.

13 **THE COURT:** Good.

14 **MR. GARFIELD:** Judge, I don't know if this is a good
15 thing. There were really just a couple of questions about
16 the charge that they weren't necessarily new submissions.
17 I just wanted to make sure I understood what you intend to
18 charge and make sure I was on the same page. Because I
19 don't have a copy of your charge, but I've heard it many
20 times.

21 Were you going to say something -- just the normal
22 boilerplate language that -- something to the effect that
23 the damages need to be proven by a preponderance of the
24 evidence? They cannot be left to speculation, surmise --

25 **THE COURT:** Yes.

1 **MR. GARFIELD:** -- conjecture, that kind of thing?

2 **THE COURT:** Yes.

3 **MR. GARFIELD:** And then there's language here, and
4 you may have said it yesterday and I glossed over it, but
5 I have these in three different requests to charge. But
6 I know it's just stylistic kind of things. It basically
7 says no inference of negligence arises from the mere fact
8 that an accident occurs. There needs to be something
9 more.

10 **THE COURT:** I do say that under the -- that's usually
11 under the proximate cause. The mere fact that physical
12 problems occurred after the incident is not sufficient
13 by itself to show that the incident caused physical
14 problems. The Plaintiff must establish a natural and
15 obvious relationship between the incident and physical
16 problems and that the injuries resulted from the incident.

17 **MR. GARFIELD:** That's what I was looking for.

18 Okay. Thank you very much.

19 **THE COURT:** Is there anything else we need to take up
20 before they come in?

21 **MS. MILES:** Not from the Plaintiff, Your Honor.

22 **MR. GARFIELD:** Not from the Defendant, Judge. Thank
23 you.

24 **THE COURT:** You may ask the jury to come in.

25 (Whereupon, the jury enters the courtroom at

1 9:41 AM.)

2 **BAILIFF:** The jurors are seated, Your Honor.

3 **THE COURT:** Thank you.

4 Good morning, ladies and gentlemen. At this time
5 we are now ready to hear the closing arguments of the
6 attorneys. As I told you yesterday, the closing arguments
7 are not evidence, but what they'll do is they'll pick
8 out portions of the evidence that you've heard and make
9 arguments to you in an effort to try to sway you to find
10 the facts in accordance with their version of what
11 occurred, so I ask that you listen carefully to those
12 closing arguments. Sometimes those arguments may cause
13 you to think about the evidence in a different light or
14 they may raise questions that you'll want to discuss
15 among yourselves when it's time for you-all to begin your
16 deliberations.

17 Once they've made those closing arguments, then I
18 will instruct you on the law that's to be applied and then
19 you may begin your deliberations at that particular time.

20 Ms. Miles.

21 **MS. MILES:** Thank you, Your Honor. If it please the
22 Court?

23 Ladies and gentlemen, good morning. And due to
24 technical difficulties, I will be looking at my mobile
25 phone based on the fact that, you know, I don't care how

1 prepared you try to be, but I couldn't print my closing
2 statement, so I will let -- we've always got to be ready
3 regardless.

4 So here I am now and I'm going to try to give you a
5 little excerpt of what happened, but I'm not gonna bore
6 you at all because you were so dignified in listening to
7 all that was said yesterday. We had hoped that we would
8 have been through with this yesterday, but unfortunately
9 sometimes you just don't know what may happen when you go
10 to trial.

11 Ladies and gentlemen, again, justice must not be
12 denied in this case for my client, as we introduced you
13 yesterday to Keith, Keith Montgomery. And this case is
14 one in which that Keith was injured at Alvin Glenn.
15 Richland County is the person -- is the entity in which
16 that we filed the action against because Alvin Glenn comes
17 under Richland County, so Richland County is actually the
18 Defendant in this case. I pray that you'll be guided by
19 the spirit to do the right thing by Keith by granting him
20 a favorable decision.

21 I'm not going to, as I said earlier, to rehash all
22 that was said yesterday. It's just too much. I believe
23 that you will make your minds up by just recalling what
24 you heard. There are facts in which that are not in
25 dispute; is that Mr. Montgomery, Keith, was actually

1 injured on March the 26th, 2013, when he was an inmate at
2 Alvin Glenn. I hope you will find that as a result of
3 Mr. Taylor being grossly negligent, he was the proximate
4 and the direct cause of Keith's injuries.

5 Now there should be no doubt, but if you have some
6 doubts let me assure you that when you come into the court
7 there are many tests that you have to come up against and
8 the burden of proof is always on the Plaintiff. In this
9 case, the burden of proof was on us. Now some may say
10 they measure this by the number of witnesses that you have,
11 but that's not true. Because you can have five, ten
12 witnesses and the witnesses are not credible and then you
13 can have one witness that actually is credible and telling
14 the truth. So in the court of law in civil courts we have
15 what is called a preponderance of the evidence.

16 Now Judge Lee is gonna tell you the legal term of
17 what that means, but the preponderance of the evidence
18 is like a scale and on that scale what you, as the jury,
19 would be doing is weighing what you heard on -- yesterday.
20 On that scale, you will have a weight, so what you will be
21 weighing is whether or not the facts that we told you,
22 what Mr. Keith told you, and weighing what the defense put
23 up yesterday, and that scale, if it tilts more towards the
24 Plaintiff, I will ask you to bring a verdict on behalf of
25 Keith. Now if that scale tilts for the Defendant, which

1 is Richland County, then quite naturally you will not
2 bring a favorable decision for Keith. But I pray that you
3 will look at what Keith -- listen to what Keith said and
4 weigh what he said in reference to how that accident
5 occurred.

6 The diagram in which that he drew yesterday showed
7 that Mr. Taylor did not have any conscience at all as far
8 as the consequences of whether or not he was going to hit
9 someone or cause some injury or cause some damage. He
10 wasn't paying any attention. He was on the walkie-talkie
11 not paying attention to there were three inmates. He
12 could have killed someone. Fortunately, it didn't happen
13 because I don't know whether you have seen any of these
14 long trailers, eighteen-wheeler trailers behind a truck.
15 I see a lot of men are here, maybe you're familiar with
16 them, but when that trailer swings and slammed into that
17 steel door, it hit the head and the shoulders that caused
18 Keith to not only have injury to his head and his
19 shoulders, but also his back.

20 Now this is something that bothers me and it bugs me.
21 It's -- you know, when people deny something, you can have
22 a different opinion about things, but when they cover it
23 up, that's what bothers me because yesterday that's what
24 that was all about with Mr. Smith's testimony. It was a
25 coverup. The coverup was none of the witnesses, these two

1 inmates, said that they didn't see anything. They were
2 right there. Now all of a sudden we can't locate them,
3 those witnesses. That's a coverup. And so I ask you
4 sincerely to use your knowledge. Don't be persuaded by a
5 lot of coverup and a lot of words because after I sit down,
6 then the defense counsel is gonna come up and he's going
7 to try to muddle the water and he'll try to get you to
8 think on other things that is insignificant and forget
9 about the real issue here. The issue here is whether or
10 not you believe that Keith was injured at Alvin Glenn
11 Detention Center and whether or not Mr. Taylor was grossly
12 negligent.

13 What is grossly negligent? And Judge Lee is gonna
14 give you the definition, but I say that he failed because
15 he could have corrected easily on keeping Mr. Keith from
16 being injured. A little slight attention. That if he
17 would have just looked this accident would not have
18 occurred. But for Mr. Taylor's negligence here this man
19 is still hurting.

20 Can you imagine a steel door coming on your head?
21 This is serious. This is nothing to play with. Keith
22 looks nice today and all of you look nice today, but no
23 one knows what's going on inside. Looks is deceiving
24 sometimes. That's why they say you can't judge the book
25 by looking at the cover. Why would he have to go to all

1 of these appointments if he wasn't injured?

2 Now I'm sure that their counsel will come up and say
3 it wasn't necessary for him to see the -- Dr. Z and it
4 wasn't necessary for him to have a \$7,414.28 bill. Of
5 course, they're gonna say that. But this is a situation
6 of Goliath and David. Here we are going up against a big
7 county, Richland County, and they don't want to open the
8 flood door as they say because if they'll come back -- if
9 y'all come back with a favorable decision for Keith, then
10 other inmates will come after, but that is not the issue in
11 this situation. You've got to look at one case at a time
12 and the only case of merit today is the case of Keith
13 Montgomery versus Richland County. This case. Not the
14 case that's coming up tomorrow or the next time, but that's
15 how Richland County thinks about inmates.

16 Now just because you're an inmate doesn't mean that
17 you don't have rights, that you don't have feelings, that
18 you can't be hurt. And everyone knows that all of us have
19 some problems, so why wouldn't you think that Richland
20 County Detention Center employees can be wrong? Just
21 because they wear a uniform? Just because you wear a
22 uniform doesn't mean that you must be right all the time.
23 Keith's injuries was his back, his head and his shoulders.

24 Now also to try to just be brief so you can start
25 your deliberations, I just want you to consider what Judge

1 Lee is gonna tell you about damages. In this case, of
2 course, we would like for you to bring a verdict for the
3 actual medical expenses, which was \$7,414.28, but Keith
4 deserves more than that and it's gonna be left up to you
5 to come up with that figure. Keith suffered from pain
6 and is suffering as a result of Richland County employee
7 Mr. Taylor's gross negligence. Because the only thing he
8 needed to do was the slight attention to what he was doing
9 and this accident would not have occurred. But for his
10 negligence, his gross negligence, he injured Keith. Not
11 only that Keith deserves for his pain and suffering, but
12 also his mental distress. Can't you imagine you're
13 hurting, no job, no money, no insurance, but you need
14 medical attention. When they sent him back to the dorm,
15 the only thing that he could do was lie there and when he
16 got out he had to try to find medical attention. We're
17 fortunate now that we do have medical insurance for a lot
18 of people now, but at that time he didn't have any. Can
19 you imagine the stress, the depression that he went
20 through? I don't know whether you've been ill or sick and
21 couldn't go to a doctor, but think about it.

22 And not only that, let's look at the loss of enjoyment
23 of his life. He told you about his two children, and I
24 know that counsel's gonna come up and try to muddle the
25 water and make that the issue rather than why we are here.

1 We're not here about his child support, so don't be
2 suckered into that issue. We're here because Keith was
3 injured by Richland County's employee. That's why we're
4 here. We're not here about how many times that he was in
5 or was charged or whatever or he was there at Richland
6 County. That's not the issue. That's not the issue. Do
7 not get suckered into thinking about that. You're looking
8 at whether or not Keith told you the truth and can you
9 believe him. So don't let anyone tell you that you're not
10 smart enough to distinguish what the issues are and what
11 the issues is not. Because he's gonna be doing his job.
12 He's representing big Richland County, so he's going to
13 tell you some things that are insignificant. Keep your
14 eye on the issue.

15 Also there are other damages that you need to
16 consider. Keith testified that he's still having migraine
17 headaches. I don't know whether you've ever had a
18 headache. My son, who is an attorney also, and an
19 electrical engineer, suffers with migraine headaches, and
20 those are terrible things, and he is suffering with that
21 as a result of that accident, so we are asking you to think
22 about that. He's gonna have to have future medical
23 attention, so I would hope that you would consider also
24 bringing or granting him compensation for his damages.

25 I know that sometimes we can take too long as

1 attorneys and go and beat things to death, and I wrote a
2 lot, but because y'all have been so studious and so
3 attentive I'm not going to go further.

4 Now after Mr. Garfield says what he has to say, I'll
5 get back up and say a few other words, but it wouldn't be
6 long. But remember keep your eyes on the prize as they say
7 and the prize are the issues here, not all that garbage,
8 but on the issue.

9 Thank you very much.

10 **THE COURT:** Mr. Garfield.

11 **MR. GARFIELD:** The fox. The fox always condemns the
12 trap, not himself. What's the trap here in this case?
13 The trap is anyone who wants to find out what really
14 happened, what the truth was. That's the trap. One
15 person who set out to find the truth was Captain Mike
16 Smith with the detention center. Now Ms. Miles just came
17 up here and said that I was gonna insult your intelligence
18 and insinuate that you weren't smart enough. You are
19 twelve individuals that are absolutely smart enough and we
20 picked you to serve as factfinders of this jury and I'm
21 going to ask you to help me find what the truth is, every
22 one of you, and we're gonna talk about this. This isn't
23 my spin, this isn't me trying to sell you something. We're
24 all going to think and talk about what the evidence was in
25 this trial.

1 Captain Smith came back to town on Thursday,
2 March 28th. He had been at a work conference at Myrtle
3 Beach. He came back in on Thursday morning. The very
4 first think he did I think he testified at 8:00 in the
5 morning is that he saw an issue on his desk and in his job
6 as facility services manager, what did he need to do? He
7 needed to conduct an investigation, and that's what he
8 did.

9 So he interviewed everyone at the scene. He talked
10 to the witnesses. What did the witnesses say? Well, the
11 witnesses said they didn't see anything. Didn't see
12 anything. Okay. That doesn't necessarily mean anything.
13 They just weren't helpful. They also didn't hear
14 Mr. Montgomery complain to his immediate supervisor,
15 Mr. Taylor, but they all heard one thing. Just think about
16 this. They heard him say "Man, what are you trying to do,
17 are you trying to kill me?". They all heard that. Okay.
18 Fair enough.

19 So Mr. Smith, Captain Smith, he's a civilian working
20 in that capacity, talks to Mr. Montgomery, and what does
21 Mr. Montgomery tell him? He said I didn't report this
22 immediately to my supervisor, Mr. Taylor, the one driving
23 the truck. Then Captain Smith asked well, why didn't you,
24 and he didn't have a good reason, so he put that down in
25 the report. Does that say one thing or the other? Not

1 necessarily, but he put it down in the report.

2 So what on Earth does Captain Smith have to do with
3 that information? What's he supposed to do with it?
4 What's any of us supposed to do with it? Well, so he
5 looked a little further. An inspection was made to the
6 container and the trailer. There was no physical damage.
7 He went back and check on the Plaintiff. He had
8 subjective complaints of pain to his head and to his
9 shoulder and to his back. Subjective. He said these
10 things are hurting me. Okay. He seemed okay.

11 He's back at work all day on Tuesday, he's working
12 all day on Wednesday. He's not forming any opinions. He
13 just can't quite figure out what to make all of it. And
14 what's more, one of the witnesses, and I think it was
15 Mr. Walsh, the one who was actually in the container truck,
16 came back and when interviewed again told Captain Smith a
17 completely different story. The first time he said he
18 didn't see anything, but the next story he said it matched
19 up absolutely with Mr. Montgomery's version, which was oh,
20 I saw it and he got hurt. Well, that's curious. Captain
21 Smith doesn't know what to do with that information either.
22 I'm not quite sure he ever found the truth. He didn't sit
23 here and testify that Mr. Montgomery was lying. He wasn't
24 trying to sell him out. He was just trying to find out
25 what the facts were and he generated a report.

1 But what Mr. Montgomery would tell you was that
2 Captain Smith was corrupt. He said don't listen to
3 anything that Captain Smith said, don't look at the report,
4 don't look at anything that was in writing from two days
5 after the event. He's just corrupt. Discount his entire
6 testimony. Okay.

7 Factfinders, let's try to find the truth.
8 Mr. Montgomery filed a lawsuit. Back in 2014 he files a
9 piece of paper with this court, it's called a summons and
10 complaint, and that's when he sets forth allegations in
11 this courthouse filed with the clerk's office saying
12 certain things. His lawyer filed it in his behalf and it
13 says a completely different story.

14 There are two types of doors. One type of doors is,
15 like he said, is like a barn door that kind of goes out,
16 swings out. What he said in his complaint back in 2014
17 was that it was a rollup door like you see in a storage
18 unit sometimes. I guess you pull it up with a string and
19 it rolls up and down. They're both steel doors, but that's
20 like a garage door.

21 When he filed the lawsuit, he alleged that it was a
22 roll-down door that struck him violently in his head and
23 his upper back area and it fell on him causing him to fall
24 down. Yesterday he said something completely different on
25 the stand. This isn't something that fell down and came

1 crashing on him. This was something completely different.
2 It's something that struck him in the back and propelled
3 him outward horizontally. They had three and a half years
4 to correct the mistake. They had three and a half years
5 to set the record straight and tell the truth. Well, I
6 guess he told us yesterday. Is that the truth? I don't
7 know whether that's the truth or not either. We're just
8 still trying to find out what the truth is.

9 Well, let's -- let's talk about his own recollections
10 of the event. In 2015 when he was deposed in this matter,
11 he swore under oath, he said when the trailer hit the
12 storage unit, if you remember this, he said it made no
13 noise, I heard nothing, but yesterday that story evolves
14 into saying it was a loud crash. Well, he's also telling
15 you well, gosh, don't -- don't consider what I said closer
16 to the event, consider what I'm saying now because we all
17 have faulty memories. Well, gosh knows I have a faulty
18 memory, but I'm not even quite sure we're getting the
19 truth from him either from the sworn testimony. So let's
20 try to look at the evidence together. What is the evidence
21 in this particular case? Maybe you will find the truth.
22 Maybe not.

23 Ms. Miles said her client's injured, so he's entitled
24 to money damages. Maybe. Maybe. But if it happened the
25 way Mr. Montgomery would have you believe, certain things

1 would have had to have happened. Had to. The Plaintiff,
2 let's take the version he told yesterday, was violently
3 struck without warning, violently struck by a heavy
4 industrial steel container door. Ouch. There's no
5 question. It struck him with such impact that it basically
6 sent him airborne. That's another ouch. Not just
7 airborne, ladies and gentlemen. If you recall, he's
8 talking to his lawyer, he's sitting here, and he said it
9 made me -- I don't want to put words -- airborne or fly or
10 propel -- it sent me in this direction airborne, Ms. Miles,
11 from me to you. Well, the podium was about right here.
12 He said six feet. That's maybe more like twelve feet,
13 whatever. Let's go with six feet. I'm six feet tall, so.
14 I'm thinking maybe even closer.

15 It sent him airborne. The force was so great that
16 he not only had injuries five years ago, but he's had
17 injuries every day for five years, including today, and
18 he's alleging that he's going to have future injuries and
19 medicals from here on out. That's how bad of a force that
20 that door hit him. That's painful. That's -- that is
21 definitely something that would warrant certain things
22 that had to have happened if what he said is true. These
23 things would have had to have happened. They would have
24 had to have happened, had do, to have some objective signs
25 of injury.

1 Well, what at least would be possible? Well, broken
2 bones, torn ligaments, internal bleeding, damages,
3 internal damage, a concussion that's just a brain bruise.
4 Definitely being airborne six to twelve feet, lacerations,
5 cuts, contusions, bruises had to have happened, and
6 there's no evidence of any of this. No pictures, no
7 medical documentation.

8 If it happened the way he wanted you to believe, then
9 clearly, clearly, surely one of these two other fellas
10 right here, at least one would have to come down here and
11 tell the truth. They said they couldn't find them, I get
12 it, but they've had five years to just get one of them just
13 to say what happened. One of them would have had to have
14 seen it. Had to have seen it. Him being airborne like he
15 was, being struck as violent as he was, they had to have
16 seen it. If it happened the way he says it would have
17 happened, then there's other things that had to have
18 happened.

19 I can't get my head around this. I sat and listened
20 to this. The trailer itself -- and he said -- he changed
21 his story, too. It wasn't an eighteen-wheeler, it was
22 another vehicle, it was a smaller container. But, okay,
23 let's say it's an eighteen-wheeler, it doesn't make a
24 difference, that this storage unit would have been on.
25 We're talking about a small pick-up truck with a trailer

1 carrying lawnmowers, this part, and he said that it was
2 backing up. If he's backing up into this area, if this
3 happened the way he says it happened and the side of the
4 trailer caught the outside of the door and caused it to
5 swing, okay, this is exactly the way he testified, you
6 could see he is on the inside of the door. He's on the
7 inside of the door. If it caught it -- caught it by
8 hitting the door, it would have pushed the door inward.
9 And if it did it with such impact to hurt him as bad as
10 he said, it would have had to have caused it to go inward
11 with such a force.

12 Folks, the laws of motion don't work the way he would
13 have you believe because if it struck him with such force,
14 it would have actually propelled him back into the storage
15 container because it would hit and force him in. He said
16 that it forced him out. That didn't quite add up for me.

17 What could have helped was another witness. We don't
18 have that. But that's the one thing that I could not get
19 my head around. Maybe even corrected me. I said did you
20 go out this way or this way, he said he went out flying
21 this way although the door hit him closing it, so I don't
22 quite get that. If it happened the way he said it was
23 supposed to, he would have been unable to work. He worked
24 both days.

25 Also what would have had to have happened is the

1 medical unit would have had to have been summoned. That's
2 what they're there for. He certainly saw the medical
3 people. He would have complained when it happened and he
4 would have requested to be seen by medical. Instead, he
5 has an excuse for everything. Listen to what he said.
6 The medical unit wasn't summoned because Mr. Taylor didn't
7 care about me and nobody gave me a form because even the
8 detention officers just kind of let me be and writhe in
9 pain. They didn't care. Nobody cared about him. He
10 didn't submit a written report that day because they
11 shrugged it off and didn't have any forms handy.

12 How about Captain Smith? He testified what he did was
13 he brought the inmates into his office. When she asked him
14 oh, but were they detained, were they locked up, did they
15 feel like they had to tell you something, he's like no, I
16 bring them into my office and I just want to find out what
17 they had to say, wanted to make them feel comfortable. Oh,
18 but did you separate them? Absolutely I did.

19 Now think about that. Why do you think he would
20 separate them? So that they wouldn't feel influenced and
21 pressured by other inmates that they have to go back and
22 live with throughout the day and work with throughout the
23 day and interact with, so that they could maybe tell him
24 the truth. But instead of leaving that alone, they tried
25 to destroy Captain Smith by saying oh, you tried to

1 intimidate, didn't you? When you brought these witnesses
2 in, you tried to deprive them of their good time, take
3 their good days away from them that they've earned.

4 Now Captain Smith, who's the facility services manager
5 at the detention center, okay, he's not a detention
6 officer, he's the head of support services, and he was
7 trying to find what happened. He stuck his hand in the
8 air, do y'all remember this, and he said I have no control
9 over administrative or classification. Whether they have
10 good days that they earn or lose, that is not me, nor do I
11 really want to do that. That's not his job. But instead
12 they said oh, that you were the man to take this away.
13 There's no evidence of that.

14 When she said I'm trying to muddle the waters, I
15 don't understand that. I don't know another example of
16 the Plaintiff trying to muddle the waters. Here's what we
17 have on his testimony. When y'all go back to deliberate
18 on this case, please look at this incident report. This
19 incident report that was produced in discovery and the
20 witness that generated this testified before you as to
21 what all went into this thing. If you look at this he's
22 not trying to reward anyone, he's not trying to punish
23 anyone. He was just putting down the facts as he knew it.
24 He said there was no facts to sustain things one way or
25 the other. He wasn't saying anyone was basically lying.

1 The only point he said was, and I noted, Mr. Walsh who
2 came back with the second story that matched up with
3 the Plaintiff said this witness's testimony has two
4 conflicting events and is not credible. All right. Well,
5 that's fair enough. I'm not quite sure that's credible
6 and you keep changing your story. That's all he said.
7 But he was trying to find the truth somewhere, but they
8 tell you not to look at this report because this report
9 doesn't mean anything because it comes from someone that
10 had an axe to grind against him. You can see he talked
11 to witnesses, he talked to Mr. Taylor, he talked to
12 Mr. Taylor's supervisor. That's what he did with this
13 report. He put everything down in there. Nothing would
14 show that he was actually just trying to throw an inmate
15 under the bus. There's just no evidence of that.

16 You know, so just one other thought here. What would
17 Captain Smith gain from giving false testimony? This is
18 the other thing I was thinking of when Ms. Miles was
19 cross-examining him. Y'all think about that for a minute.
20 It wouldn't just be that he made a mistake or was careless
21 in his investigation. Think of the things that had to
22 have happened. He would have had to have made up a lie
23 and then he'd have to threaten inmates and then he'd have
24 to falsify a report, a report that he knew was going to
25 his superiors, put his job and his reputation on the line.

1 This is what they would have you believe. Not only sending
2 the report up to the chain of command, then he would have
3 to come down here five years later, sit in this chair and
4 look all of y'all in they eye and lie under oath about
5 doing all of those things. Wow. What kind of person
6 would do something like that? What motivation would he
7 have to lie? What satisfaction or what pleasure would he
8 derive from coming down here and telling you a lie when
9 he knew in his heart that wasn't the truth? There's just
10 simply no motivation for it. Does it make any sense to
11 you? And, again, he's not saying anything in the report
12 that's that damaging. He's just sort of reporting the
13 news as he saw it. He wasn't even there at the time. He
14 just talked to the folks afterwards. It doesn't make
15 sense.

16 Plaintiff, on the other hand, Mr. Montgomery,
17 testified as a witness for himself. And, yes, he's the
18 only witness. He has the most to gain from your verdict
19 in this case. Not the County, not Captain Smith. He has
20 the most to gain I would submit and you need to decide
21 whether he's telling the truth. That's what I'd like to
22 talk about for a moment.

23 Was he believable? We don't have a video camera. We
24 only have the testimony from the Plaintiff. There's no
25 litmus test to decide whether someone's telling you the

1 truth or not. We don't have that. We have what I call
2 an instinctive, intuitive lie detector, and that's your
3 common sense. You know, we -- we don't leave our common
4 sense at the door when we come in every room. We have it
5 with us all the time, we use it every day. We use it on
6 our coworkers, our kids, our grand kids, our friends, our
7 strangers. This is what we use to decide whether
8 someone's telling you the truth or not. It's no different
9 with y'all in the jury box. And I even believe part of
10 Her Honor's charge talks about using your common sense, so
11 use this to decide whether Mr. Montgomery lied to you and
12 when you consider this testimony just remember a few
13 things.

14 You know, Ms. Miles said I was gonna come up and tell
15 you -- and try to destroy his character and talk about
16 child support. Absolutely Ms. Miles misses the point on
17 that. This is not about child support and it's not about
18 him being in jail for child support. What this is about
19 when deciding whether he's telling you the truth and
20 whether he's credible, he testified that he had no ill will
21 at all against the Richland County Detention Center, the
22 Alvin S. Glenn Detention Center. Okay. He said he didn't
23 -- didn't have any hard feelings. Does that ring true to
24 you when he has been booked eight separate times? I'm not
25 talking about when he --

1 **MS. MILES:** Your Honor, I'll object to the -- bringing
2 this up on closing, Your Honor.

3 **MR. GARFIELD:** It was just part of the evidence. Just
4 mentioning the times that he was booked, Your Honor.

5 **THE COURT:** It was part of the evidence that was
6 presented and the arguments can raise inferences, as well
7 as discuss -- bring inferences from the evidence, as well
8 as discuss the evidence, and just make sure that your
9 closing continues to conform with that.

10 **MR. GARFIELD:** Yes, ma'am.

11 Although he insists he has no ill will, consider the
12 fact that he's booked -- been booked on eight separate
13 occasions. That's all in evidence. And when he told you
14 that he flew six to eight to ten feet in the air and that
15 he reported to his supervisor right away and he talked
16 about all the -- the nagging injuries that he's had based
17 on this event, maybe not just based on all of us just
18 getting a little older over the years, myself included,
19 and he talks about all his injuries, his severe injuries,
20 and present injuries and future injuries, he wants you
21 to award him money damages on those points. When he
22 testified to that, your common sense, did you have that
23 warm feeling that's associated with hearing the truth come
24 from him? Or did you think and believe and feel that that
25 was designed to manipulate you, to try to persuade you to

1 believe something that you know in your heart that does
2 not have that warm ring of truth? Testimony that's
3 designed to manipulate you.

4 When he changed his story and said he didn't hear a
5 crash to now it's to -- didn't hear anything to now
6 hearing a crash and when he gets up there and says that I
7 have been to the doctor fifteen times, fifteen times --

8 **MS. MILES:** Again, Your Honor, I would like to object
9 because of the fact that this is a -- Keith corrected that.
10 That is not what was said.

11 **THE COURT:** And you can raise those points on
12 rebuttal.

13 **MS. MILES:** Thank you, Your Honor.

14 **MR. GARFIELD:** When he got up and said he saw the
15 doctor fifteen times -- and there's a saying that
16 cross-examination can be a great friend of the truth and
17 you can get a little truth out of it, and when I asked him
18 on cross-examination how many times did you really go to
19 the doctor, we'd like the truth, he said I don't know, and
20 I had to take him through it. With all due respect to
21 Mr. Montgomery, I wouldn't remember when I went to the
22 doctor, but this isn't just me going to the doctor five
23 years ago. He's bringing this in a court of law. He'd
24 only been five times on five occasions. Oh, well, I just
25 -- I couldn't keep it together. I don't remember. When

1 you conclude that his story is not credible or reasonable,
2 that's your good old-fashioned common sense talking to
3 you.

4 His answers sort of remind me of an old quote from
5 Mark Twain, not a recent reference, an old reference, that
6 if you speak the truth you just don't have to remember
7 what you said. It just kind of comes naturally. You
8 speak from your heart and things that you actually
9 experienced that were real.

10 So can he meet the burden in this case? If the
11 event didn't occur and he was not injured as a result,
12 absolutely they don't meet their burden, but let's assume
13 some things. Let's assume he actually was hurt. Let's
14 assume the door hit him and he was hurt. He still has to
15 prove gross negligence.

16 Let's take his story. Unfortunately, we don't have
17 a story from Mr. Taylor, we don't have his testimony.
18 That's extremely unfortunate. The testimony is he's
19 retired, both from the military and the detention center,
20 and he's onto greener pastures. We only have the
21 Plaintiff. Five years ago he claims there was an accident,
22 the trailer backing in, Mr. Taylor on his handheld radio,
23 he was evidently not paying close enough attention, and
24 the trailer made an impact with the door. Those are the
25 facts. That's it. He didn't say Mr. Taylor was drinking

1 alcohol on duty or laughing at him or saying I'm gonna try
2 to hurt you. He wasn't driving recklessly. You know,
3 wasn't, you know, looking in the wrong direction. He said
4 he was distracted. That's what he said.

5 Negligence, ordinary negligence, Her Honor will
6 charge you is the failure to exercise due care. Due care.
7 That's regular negligence. If Mr. Taylor did that,
8 certainly he'd be failing to exercise due care. I'm the
9 first one to say that would be absolutely true. If any
10 one of us were distracted while driving, picking up the
11 phone when someone calls us, texting someone, answering a
12 text, taking your child to school and being distracted
13 with something they said or looking away, all of that's
14 negligence if there's an accident. I get it. That's not
15 exercising due care because that happens every day.

16 This case isn't about negligence. Your job is to
17 determine if Mr. Taylor had been grossly negligent. That
18 is a much higher standard. Your job is to find out whether
19 Mr. Taylor failed to exercise even the slightest care.
20 She will say oh, yeah. Her Honor will charge you that
21 gross negligence involves an intentional, conscious failure
22 to act appropriately and one is guilty of gross negligence
23 if he is so indifferent to the consequences of his conduct
24 to not even give slight care of what he's doing. Gross
25 negligence may not be presumed and the happening of an

1 accident when someone gets injured or hurt or the happening
2 of an incident when someone gets hurt does not establish
3 gross negligence.

4 So was there evidence of it? Where's the evidence
5 that Mr. Taylor did anything other than -- taking
6 everything he says as true now, we're not quite sure about
7 it, but let's just say everything he says is true, where's
8 the evidence that he acted grossly negligent? That he
9 acted in a conscious and indifferent way other than saying
10 something -- oops, I shouldn't have done that, failure to
11 exercise due care. She would have to show that he failed
12 to exercise even the slightest care. And I know what
13 Mr. Montgomery is saying because if I was the victim of
14 an accident, I would be -- I'm thinking -- I'm putting
15 myself in his shoes, I'd be shocked and scared maybe, and
16 particularly even if I was in a jail setting that may be
17 even more scary to me, there's an unknown, and I know I
18 didn't do anything wrong and this person clearly did
19 something wrong, there's a lot of emotion to that. Clearly
20 he feels like that this person was grossly negligent.
21 Clearly that's the way it looks in his mind. That's human
22 nature. I get it. And some of his testimony sounds like
23 that. I get it. But that doesn't establish gross
24 negligence. Where's the actual proof? Where's the proof
25 by a greater weight of the evidence -- by a greater weight

1 or a preponderance of the evidence? That's the standard.
2 Do you remember Ms. Miles with the scale? Where's the
3 tilting of the scale in his favor that there was gross
4 negligence, something greater than ordinary negligence?

5 And then finally, and I know you've -- y'all have
6 been very patient with me, but I just really wanted to
7 make these points and this is my only time to speak with
8 y'all. Ms. Miles will have a second opportunity to come
9 speak with you again, and this is the last few points I
10 wanted to make, so this comes down to damages.

11 Can Mr. Montgomery prove his damages? In order for
12 him to recover and Her Honor, again, will tell you what
13 the law is and what your job will be based on how the law
14 reads, is to prove that the injury itself was the proximate
15 cause or the proximate result of the gross negligent
16 conduct of the Defendant. The "but for" the proximate
17 cause. If he does not meet his burden, you have to find
18 for the Defendant. You're not saying anything ugly to
19 him, you're not even calling him a liar or discrediting
20 him. He's got the burden. He's got to show you. That's
21 all this is. This isn't personal.

22 She will instruct you on all the things she instructs
23 you, but there is one very important point in the law that
24 Her Honor will just -- will charge you on. That damages
25 must be proven by a preponderance of the evidence and they

1 cannot be left to surmise or conjecture or speculation.
2 Cannot be. It has to be proven by a preponderance of the
3 evidence. This shouldn't be based on sympathy, it
4 shouldn't be based on you guessing what probably happened.
5 Gosh, it sure doesn't pass the smell test, it must be this.
6 You can't speculate. Her Honor will charge you.

7 He's asking for actual damages. Just think about
8 this. He had five years to line up a doctor, ladies and
9 gentlemen, to line up any doctor to say the injury was
10 real, to say that the injury was proximately caused by the
11 event at the detention center. He got up and Ms. Miles
12 asked him do you say that these bills are reasonable and
13 necessary. He said yes, these bills are reasonable and
14 necessary. Folks, that's not the standard. I know he
15 feels these were reasonable and necessary. He needs to
16 put someone up other than himself, a doctor, a nurse, a
17 medical professional.

18 **MS. MILES:** Your Honor, I'll object to that reason of
19 argument. Your Honor, this is a legal standing in which
20 that he's arguing and assuming in which that something in
21 which that you will be -- have the right as the judge to
22 say what are the legal standards, not Mr. Garfield. And,
23 Your Honor, he has just, I think, outrageously said things,
24 and I know I have an opportunity to say what -- to
25 contradict what he's saying, but there are some things that

1 need to be addressed now in his closing.

2 **MR. GARFIELD:** Your Honor, this is closing. She'll
3 have an opportunity.

4 **THE COURT:** It's closing and you -- you have the
5 opportunity to discuss what you think is appropriate. Of
6 course, I instruct them on the law and so I don't go into
7 details to where the evidence comes from. That's not --
8 that's not my duty or my role here.

9 **MR. GARFIELD:** He had five years to line up someone
10 to say that these bills were reasonable and necessary.
11 Now he says he has future medicals. This is gonna be a
12 whole other list coming down after we all don't see each
13 other again. All we have is just his word. There's no
14 medical testimony here in court, there's no expert
15 opinions. We don't have any diagnosis, we don't hear
16 from a particular doctor, we don't hear why he went to a
17 particular doctor, how he got referred, we don't know
18 what that doctor considered. He says I haven't played
19 basketball in a certain number of years. Well, all those
20 things could be what the doctor could tell us. And we
21 don't have medical records. There's nothing to give you
22 a background to educate us about who he is and what he
23 told the doctor and what his treatment was. He's asking
24 for damages about loss of enjoyment of life over five
25 years. What's reasonable to you? Loss of enjoyment of

1 life. To me, that's the worst. If I hear that I couldn't
2 live my life and couldn't be with my -- my family and my
3 children, that would be the worst. Where's his friends
4 and family and coworkers? And if he attends church, where
5 are his parishioners? Where are the people in his life
6 that tells you I can't enjoy him anymore? I'm not even
7 suggesting his children one way or the other. I don't
8 even know how old they are. But where are the people in
9 his life that could speak from the heart and say this
10 person really went through this? We just have his word.

11 So what do we have? We've got his word, of course,
12 and we have some medical bills. It's simply not enough
13 for Mr. Montgomery to throw out possibilities and innuendos
14 and maybes. It's his burden to bring you in court hard,
15 trustworthy, greater weight of the evidence. That's what
16 his -- the burden is. That's the burden of proof. He's
17 unable to meet this burden and your job as jurors is simply
18 to make a determination based on proof and the evidence
19 because anything outside the evidence, anything you may be
20 feeling, sympathize, anything that he says, well, it
21 doesn't make sense, there has to be something out there.
22 Like these inmate witnesses, if they were here, then they
23 would say this. Anything outside of the evidence is
24 prohibited from your consideration. As jurors you're
25 simply not allowed and permitted to guess or speculate

1 about things that don't come out in this courtroom.

2 And maybe we still don't know what exactly happened
3 out there that day after being here for, gosh, longer than
4 any of us probably planned, we still don't know, but all
5 we have is the testimony and the evidence that may -- and
6 you as factfinders could find a little bit of the truth,
7 not necessarily the truth of what happened, but as
8 factfinders to determine what you have the capacity to do,
9 which is look at Mr. Montgomery's case and decide whether
10 he met the burden, the burden, the preponderance or the
11 greater weight of the evidence, that my client is grossly
12 negligent. And with all due respect to Mr. Montgomery and
13 just to however way this trial went, he's not made that
14 burden.

15 And I thank you for your attention and you will now
16 hear from Ms. Miles and I appreciate your service. Thank
17 you.

18 **THE COURT:** Ms. Miles.

19 **MS. MILES:** Thank you, Your Honor.

20 Again, ladies and gentlemen, I'm not gonna be long,
21 but you can tell why this case dragged out for five years.
22 You can tell why. I tried to bring a simple case and here
23 we are going into the second day. Now we're still talking
24 about who wasn't here and who should have been here rather
25 than dealing with the issue. The issue, as I told you

1 before, is not the number of witnesses. It's the facts.

2 Now just because we couldn't find those inmates,
3 trying to make that an issue, but they're not making an
4 issue that Mr. Taylor is retired, as they said. Why isn't
5 he here? They're not making that a big issue. And, you
6 know, some of these things in which that Mr. Garfield was
7 saying -- and he's doing his job now. He's doing his job.
8 He's actually representing Richland County.

9 But he brought up some things that just irks me, and
10 I don't have time to go from one to the next, but, first
11 of all, a complaint is not written by the Plaintiff in
12 this case. It was written by the law office and the law
13 office gave a general idea based on what the client said.
14 Now quite naturally it's called interpretation when the
15 client says that a steel door fell on him and the attorney
16 interprets that as it was imaginary looking at a steel
17 door of a storage, it comes down, but that was not what
18 Mr. Keith was talking about. Now he said that we had
19 five years to change that, but the complaint is not into
20 evidence. We had discovery at my office and Keith told,
21 it's not surprising, what Keith said here today. He said
22 the same thing.

23 **MR. GARFIELD:** Objection, Your Honor. This is
24 completely outside of the evidence in this particular case
25 as to what -- the particulars in the deposition because I

1 don't have the deposition in front of me. That was not
2 brought out into evidence either way.

3 **MS. MILES:** He brought up the deposition.

4 **THE COURT:** I think the deposition was at least
5 opened and I think this is rebuttal. She's entitled to
6 her rebuttal.

7 **MR. GARFIELD:** Yes, ma'am. Absolutely. I defer to
8 everyone's else memory. Thank you.

9 **MS. MILES:** At the deposition, at that deposition,
10 it wasn't surprising. What he said on -- yesterday was
11 the same thing he said in the deposition, so it wasn't
12 surprising, but because he's trying to confuse you on --
13 don't -- don't penalize Keith for something that was filed
14 by the law office. He said the same thing. And the
15 complaint is not into evidence.

16 Now he said that Mr. Taylor was backing up. You
17 heard the testimony. Mr. Taylor wasn't backing up, he was
18 going forward and when he went forward, that trailer swung
19 into that steel door. There's so many things that I just
20 cannot go through all of the things that was said, but I
21 just want you to know that I really appreciate your taking
22 the time and listening to what really happened. And he
23 said that Richland County has nothing to gain, when he said
24 that Mr. Keith has all to gain, but Richland County had a
25 lot to gain. This is another one that they knocked down

1 and you are the ones, you, the jury, you're the ones to
2 stop this madness. When someone is wrong, they're wrong.

3 And he started talking about the standard in which
4 that we -- you have to look at in order to find gross
5 negligence. Judge Lee will give you the standard on that.
6 The slight -- slight attention. That's gross negligence.
7 And when you start talking about different entities and
8 then he started talking about a motor vehicle accident.
9 The standard for a motor vehicle accident is different.
10 That is just negligence. Someone had a duty to keep their
11 eyes on the road, but in this situation we're not dealing
12 with that. This is an entity that you have to show gross
13 negligence. That is the way -- how the law is. So don't
14 get the two mixed up when he tried to confuse you. We
15 proved that the employee, Mr. Taylor, was grossly
16 negligent.

17 Pay attention to the definition. The definition is
18 very clear what gross negligence is. We're not talking
19 about ordinary negligence here like someone hits someone
20 with a car. No, this is an entity here. This is an
21 institution in which that the standard is gross negligence.

22 Thank you again.

23 **THE COURT:** During this trial, ladies and gentlemen,
24 you and I have had certain duties to perform. As the trial
25 judge, it's my responsibility to preside over the trial of

1 this case and to rule upon and pass upon the admissibility
2 of evidence that's been presented throughout the course
3 of the trial and you are to consider only the competent
4 evidence which is before you. To any evidence to which
5 there is an objection sustained, you must not speculate as
6 to what the evidence might have been or the reasons for the
7 objection. You should only consider the evidence that's
8 been presented along with any of the exhibits that have
9 been made a part of the record in this case.

10 Now I have the additional duty and responsibility to
11 instruct you on the law that applies and as the trial judge
12 I'm the sole judge of the law that applies. If you have
13 any preconceived ideas as to what the law is or what the
14 law should be or your interpretation of the law or what
15 you think the law says, you must set all of that aside for
16 under your oath as jurors you are sworn to accept the law
17 as I instruct you. If by chance I make some error in my
18 instructions, then there's another court and another time
19 that can correct those errors of law. But for purposes of
20 this trial right now, this moment, you must accept the law
21 as I instruct you as being the correct statement of the
22 law.

23 Now in every case tried before a jury, you, the
24 jurors, become the sole and exclusive judges of the facts
25 of this case. No one can tell you what the facts of this

1 case are. And if I've done anything throughout the course
2 of this trial that's given you any impression that I'm
3 commenting on the facts, that I'm telling you what facts
4 to find or make any suggestion about the facts, you must
5 set all of that aside as well. I assure you I don't have
6 any opinion about the facts of this case. That's not my
7 job here. That's not my role. That's your duty, your
8 responsibility as jurors, to determine the facts of this
9 case.

10 Now in order to do that you have to analyze and
11 evaluate the evidence and determine what evidence convinces
12 you of its truth. In order to do that, you have to judge
13 the credibility or believability of the witnesses who have
14 testified, and in judging the credibility of the witnesses,
15 you may consider the following factors. What was the
16 manner and appearance of the witness who testified? Was
17 he or she hesitant or straightforward in answering the
18 questions? How did the witness come to know the facts that
19 he or she testified to? What was his or her ability to
20 know these facts? Is there some reason that a witness
21 would want to give testimony that would help or hurt one
22 side or the other? In other words, was the witness's
23 testimony biased or prejudiced and was the testimony of a
24 witness strengthened or weakened by other testimony or
25 other evidence.

1 Now in determining the credibility of the witnesses,
2 you may believe one witness against several witnesses or
3 you may believe several witnesses against one witness.
4 You may believe a portion of a witness's testimony and
5 disregard other portions of that same witness's testimony.
6 And if you have a good and sufficient reason for doing so,
7 you can accept the witness's testimony in its entirety or
8 you can reject it in its entirety. These factors you
9 should not exercise arbitrarily, but if in your good
10 judgment there's reason for you to consider these factors,
11 then you should do so. Your objective, ladies and
12 gentlemen, is to seek the truth whether it comes from
13 a witness or witnesses from the Plaintiff or a witness or
14 witnesses for the Defendant. You don't determine the
15 truthfulness of the testimony by counting the number of
16 witnesses who testified for one side or the other. The
17 truth isn't determined by counting witnesses. What the
18 law requires is that when you exercise your mental
19 processes in coming up with what you consider to be
20 truthful evidence, you should use your good common sense,
21 your sense of logic and reasoning, use your experiences in
22 life, and you then apply these attributes to the evidence
23 and determine what you, the jury, consider to be truthful
24 evidence and then to those true statements of fact as
25 determined by you, you apply the law as I will instruct

1 you.

2 You may also consider whether a witness's testimony
3 has been impeached or challenged by prior inconsistent
4 statements and if you determine that the witness's
5 testimony has been impeached, then you may give any or all
6 of the witness's present or prior testimony the weight
7 that you think that it deserves. And as I've stated,
8 ladies and gentlemen, your objective is to seek the truth
9 and whether it comes from one side or the other, again,
10 the truth is not determined by counting the witnesses. ,

11 You're -- when you arrive at your verdict after you
12 have determined the facts and applied the law as I've
13 instructed you, then you will have done your duty and your
14 responsibility as jurors and your verdict must simply speak
15 the truth. It must not be based upon sympathy, passion or
16 prejudice. By your verdict you have no friends to reward
17 and you have no enemies to punish. Again, it should be
18 simply based upon the truth.

19 Now in every case brought before a jury in trial, the
20 Plaintiff, the person bringing the case -- the lawsuit, has
21 the burden of proving each and every element of the claim
22 by what we call the greater weight or the preponderance of
23 the evidence. And as stated earlier, it is typically
24 illustrated by looking at a set of those old-fashioned
25 scales where at the beginning of the trial the scales are

1 even. Throughout the course of the trial, the scales pay
2 tip back and forth as the evidence and the testimony is
3 presented, but if after all of the evidence has been
4 presented the scales should remain even or they tip ever
5 so slightly in favor of the Defendant, then that means
6 that the Plaintiff did not satisfy the burden of proof and
7 your verdict must be for the Defendant. But if, on the
8 other hand, after all of the evidence has been presented
9 that the scales tip ever so slightly in the favor of the
10 Plaintiff, then that means that the Plaintiff did satisfy
11 the burden of proof and your verdict must be for the
12 Plaintiff.

13 Now there's no way to physically weigh the evidence,
14 it's entirely a mental process, and the evidence to which
15 you assign the most weight should be the evidence that
16 convinces you of its truth regardless of from whom or from
17 what source it comes.

18 Now in this case, this is a negligence case, and in
19 the typical negligence case, and actually in this case
20 as well, the Plaintiff has the burden of proving three
21 essential elements by the greater weight or preponderance
22 of the evidence. First, the Plaintiff in this case has to
23 prove that the Defendant was grossly negligent. Secondly,
24 he has to prove that he was injured. And, third, he has
25 to prove that the negligence of the Defendant was the

1 proximate cause of his injuries.

2 So let me define some of these terms for you. In a
3 simple negligence case, negligence means that a person did
4 not use the same amount of care that a person of ordinary
5 reason and prudence would have used under the same or
6 similar circumstance. That's a lot of words just to say
7 that someone was careless. It can be said that a negligent
8 person has done something that a reasonably prudent person
9 would not have done if faced with the same circumstances
10 or perhaps the negligent person failed to do something
11 that a reasonably prudent person would have done in those
12 circumstances.

13 In cases involving governmental entities, the
14 Plaintiff has to prove that the Defendant was grossly
15 negligent. Gross negligence is the failure to exercise a
16 slight degree of care. A person who is so indifferent to
17 the consequences of his conduct as to not give slight care
18 as to what he is doing acts with gross negligence. If you
19 find that the Defendant has proven -- I'm sorry. If you
20 find that the Plaintiff has proven that the Defendant was
21 grossly negligent, then you would go on to consider whether
22 that negligence was the proximate cause of the injuries.
23 On the other hand, if you find that the Plaintiff failed to
24 prove that the Defendant was grossly negligent, then your
25 verdict would be for the Defendant and you would stop

1 deliberating any further. Again, if the Plaintiff has
2 proven that the Defendant was grossly negligent, then you
3 would go on to consider proximate cause.

4 Proximate cause is something that produces a chain of
5 events which in the end brings about the injury. It is the
6 direct cause of the injury. The mere fact that physical
7 problems occurred after the incident is not sufficient by
8 itself to establish that the incident cause the physical
9 problems. The Plaintiff much establish a natural and
10 obvious relationship between the incident and the physical
11 problems that occurred and that the injuries resulted from
12 the Defendant's gross negligence.

13 The Plaintiff has to prove that the Defendant's gross
14 negligence proximately caused his injuries. In order to do
15 this, the Plaintiff first has to prove causation in fact.
16 That's proven by showing that the injury would not have
17 occurred but for the Defendant's gross negligence. The
18 Plaintiff also has to prove legal cause. Legal cause is
19 proven by showing that the injury was foreseeable. That
20 doesn't mean that the Plaintiff has to prove that the
21 precise injury that occurred was foreseeable, it's
22 sufficient that the Plaintiff establish and prove that the
23 Defendant should have foreseen that his gross negligence
24 would probably injure someone or something.

25 Now if you find that the Plaintiff has failed to

1 prove that the gross negligence of the Defendant was the
2 proximate cause of the injuries, then you would find for
3 the Defendant. If, however, you find that the Plaintiff
4 has proven by the greater weight or preponderance of the
5 evidence that the Defendant's gross negligence was, in
6 fact, the proximate cause of his injuries, then you would
7 go on to consider damages. For someone who has been
8 personally injured, those damages would include pain and
9 suffering, both past and in the future, as well as mental
10 health -- mental anguish and impairment of health or
11 physical condition.

12 In determining the amount to compensate someone for
13 physical injuries, it's proper to take into consideration
14 both past and present aspects of that injury, and that
15 would include physical and mental pain and suffering, as
16 well as expenses incurred for necessary medical treatment,
17 the loss of enjoyment of life that suffered as a result of
18 the injury, and any other losses that are reflected by the
19 character of the injury itself. The Plaintiff would also
20 be able to recover future damages that are reasonably sure
21 to result from the injuries. And the reason we talk about
22 future damages is that there can only be one lawsuit and so
23 the Plaintiff -- if the Plaintiff is entitled to recover
24 damages for those personal -- those injuries, then you must
25 compensate him for all of the injuries that occurred, even

1 those that may occur in the future because they cannot come
2 back and bring another lawsuit. And damages are intended
3 to compensate the injured party, to put them in the same
4 position that they would have been in before the incident
5 occurred insofar as that can be done with money.

6 Again, some of the elements of damages for you to
7 consider would be pain and suffering. You and you alone
8 have the authority by which to make an award for pain and
9 suffering. The law does not describe a precise amount by
10 which to make such an award. The law simply requires that
11 when you determine to make an award for pain and suffering
12 that you should do so with calm and rational judgment and
13 that any award that you make must be reasonable in light
14 of all the evidence that's been presented in this case.

15 The same applies to a loss of enjoyment of life.
16 That's separate from pain and suffering. In other words,
17 the Plaintiff can recover for loss of enjoyment of life,
18 as well as pain and suffering, and the award for pain and
19 suffering compensates the Plaintiff for the physical
20 discomfort and the emotional response to the sensation of
21 pain that's caused by the injury. Where, on the other
22 hand, the loss of enjoyment of life is designed to
23 compensate the Plaintiff for any limitations that are put
24 on his ability to be able to enjoy and derive pleasure
25 from the normal activities of life and that would include

1 any opportunities or inabilities to pursue any recreational
2 interests or hobbies or any other talents that he may have.

3 You may also make an award for mental suffering. Just
4 as with pain and suffering, there is not a precise amount
5 by which to make an award for mental suffering. Mental
6 suffering would include apprehension, anxiety, shock or
7 fright, psychological trauma. Those are all proper
8 elements for you to consider in making an award for mental
9 suffering. Again, you must do so with calm and rational
10 judgment and any award should be reasonable in light of
11 all the evidence that's been presented in this case.

12 Additionally, if you decide to make an award to the
13 Plaintiff for damages, that would include any reasonable
14 and necessary medical expenses. That would be medical,
15 hospital or other healthcare costs. The Plaintiff can
16 only recover those amounts that you determine from the
17 evidence are both reasonable and necessary. While the
18 amount that's actually charged or paid may be considered
19 by you, you are not bound by that amount, but you must
20 find only such sum that is reasonably necessary to treat
21 any injuries that are directly and proximately caused by
22 the Defendant's conduct and the burden is on the Plaintiff
23 to show that the medical treatment that he received was
24 necessary for the proper treatment of his injuries and that
25 the charges were reasonable in amount. Evidence of the

1 amount that's charged for medical or hospital or other
2 healthcare expenses is not in and of itself evidence of
3 the reasonableness of those expenses.

4 And as with all damages, ladies and gentlemen, the
5 Plaintiff has the burden of proving those damages by the
6 greater weight or preponderance of the evidence, but that
7 doesn't mean that the Plaintiff has to prove them to a
8 precise mathematical certainty. What the law requires is
9 that the Plaintiff must put forth enough evidence that
10 would enable you, the jury, to determine an amount that's
11 based upon what's fair and reasonable. And damages must
12 not be speculative or it cannot be subject to guess or
13 conjecture. You must award only those damages that you
14 determine from the evidence is fair and just and
15 reasonable. And as to any future damages, those damages
16 have to be reasonably certain to occur in the future based
17 upon the injuries that were caused by the Defendant and
18 any award for future damages have to be reduced to their
19 present day value and you have to determine what that
20 might be.

21 Ladies and gentlemen, when you have considered all
22 of the evidence in this case and you have weighed that
23 evidence and determined the facts, then you will -- and
24 applied the law as I've instructed you, then you will be
25 able to arrive at your verdict and at that time it will be

1 time for your foreperson to complete the verdict form, and
2 I'll go over the form with you at this time.

3 It says we, the jury, unanimously find for, and
4 there's a space for the Plaintiff with a line for actual
5 damages, dollar sign, parentheses, or for the Defendant.
6 In filling out this form, your thought process should be
7 this. Did the Plaintiff prove by a greater weight or
8 preponderance of the evidence that the Defendant was
9 grossly negligent as I've defined that term for you? If
10 you find that the Plaintiff has failed to meet that burden,
11 then you would check for the Defendant. If, however, you
12 find that the Plaintiff did prove by the greater weight
13 or preponderance of the evidence that the Defendant was
14 grossly negligent, then you would go on to consider whether
15 that negligence was the proximate cause of the injuries.
16 If you find that the Defendant's gross negligence was not
17 the proximate cause of the injuries, then you would go on
18 to check for the Defendant. If, however, you find that
19 the Plaintiff has proven that the Defendant was grossly
20 negligent and that that gross negligence was the proximate
21 cause of his injuries, then you would go on to consider
22 damages as I've explained those to you. That would be
23 the pain and suffering, the mental anguish, the loss of
24 enjoyment of life, reasonable and necessary medical
25 expenses and any future damages you may determine.

1 Once you have determined that amount, and that would
2 be in a dollar form -- a dollar amount, then you would
3 check for the Plaintiff and you'd complete this like you
4 would a check. The words on the line with the numbers
5 behind the dollar sign.

6 No matter what your verdict is, when you have
7 completed the form, Madam Foreperson, if you would sign
8 your name and place today's date. Ladies and gentlemen,
9 your verdict must be unanimous. It must be the verdict
10 of all twelve of you. You have been sworn as fair and
11 impartial jurors to determine the facts of this case based
12 upon the evidence that's been presented throughout the
13 course of this trial and based upon my instructions to you
14 on the law. And once you have determined the facts and
15 applied them to the law as I've instructed you, then you
16 will have arrived at your verdict and no one will be able
17 to complain about the verdict that you've reached and you
18 would have fully discharged your duty and your
19 responsibility as jurors. Again, ladies and gentlemen,
20 your verdict should not be based upon sympathy, passion or
21 prejudice. Your verdict should simply speak the truth.

22 Now, ladies and gentlemen, I will tell you it's a
23 little bit after 11:00. If you decide that you wish to
24 have lunch, you will need to tell me so that I can order
25 lunch for you. It will take about an hour or so depending

1 on what time from the time that we order it for it to
2 arrive. I'll leave that up to you about whether that's
3 something that you want to do based upon your discussions
4 and your deliberations.

5 Madam Foreperson, before you begin your deliberations,
6 the law -- and actually for all of you, the law requires
7 that I must consult with the attorneys to make sure that I
8 have not omitted anything from my instructions. If I have
9 not omitted anything from my instructions, then the verdict
10 form, along with those exhibits, will be sent to you into
11 the jury room. If, Madam Foreperson, during the course of
12 your deliberations you have any questions that come up, we
13 will be happy to try to answer those questions. If you'd
14 write the question on a sheet of paper, sign your name,
15 knock on the door and give it to the bailiff, we'll try to
16 answer it. If you have no questions or if your questions
17 have been answered, when you have completed the verdict
18 form knock on the door at that time and tell them that you
19 have a verdict and we'll receive you back into the court
20 to receive your verdict.

21 So I'm gonna ask that you retire to the jury room at
22 this time, ladies and gentlemen, and wait until you receive
23 the verdict form and the exhibits before you begin your
24 deliberations.

25 (Whereupon, the jury retires to the jury room at

1 11:05 AM.)

2 **THE COURT:** Are there any exceptions to the charge
3 by the Plaintiff?

4 **MS. MILES:** None, Your Honor.

5 **THE COURT:** From the Defendant?

6 **MR. GARFIELD:** None, Your Honor. Thank you.

7 **THE COURT:** If you-all will come and look at the
8 verdict form once more and look at your exhibits and
9 make sure that they're proper in form, that there's
10 nothing on there that shouldn't be on there, for the jury
11 to consider.

12 (Pause in proceedings.)

13 **THE COURT:** You may tell the jury they may begin
14 their deliberations.

15 (Whereupon, the evidence and the verdict form was
16 submitted to the jury at 11:09 AM.)

17 **THE COURT:** Counsel, if you need to leave the
18 courtroom, if you can just -- I'll give a sheet of paper
19 for you to write your numbers down so I can call you if
20 there's any questions that come up so I can reach you and
21 get you back.

22 (Recess taken at 11:10 AM.)

23 (Back on the record at 12:21 PM.)

24 **BAILIFF:** Court come to order. All rise, please.

25 **THE COURT:** Be seated, please. Thank you.

1 **MS. MILES:** I apologize, Your Honor, for being late.

2 **THE COURT:** That's all right. That's why I get
3 telephone numbers.

4 I've got a note from the jurors that says "We would
5 like to have gross negligence defined for us again.". And
6 so I can either -- I have the one that I gave them, which
7 that's the only thing that's on the page. I can -- I can
8 give it to them or I can bring them back in and charge
9 them. It's your preference. If you want to see what I
10 have, this is what I read to them.

11 **MS. MILES:** I agree with what you read.

12 **THE COURT:** This is all -- this is what I read and
13 this is all that's on there, so it just gives them a
14 definition. Either way. I'm happy to bring them back in.
15 I usually bring them back in, but since I had it in a
16 separate document --

17 **MR. GARFIELD:** I don't mind just to --

18 **MS. MILES:** I have no problem doing that.

19 **MR. GARFIELD:** I mean, this is it. I don't know if
20 they were asking for the rest of it, but, yeah, that's
21 fine.

22 **THE COURT:** Okay. Ms. Miles, are you sure you don't
23 want to take a look at it?

24 **MS. MILES:** It's what you read, Your Honor.

25 **THE COURT:** It's what I read to them. It's gross

1 negligence is the failure to exercise a slight degree of
2 care. A person who is so indifferent to the consequences
3 of his conduct as to not give a slight care as to what he
4 is doing acts with gross negligence.

5 **MS. MILES:** That's it.

6 **THE COURT:** And I'll --

7 **MR. GARFIELD:** Would it be of a benefit -- I don't
8 -- what's their actual question? Just to define gross
9 negligence?

10 **THE COURT:** "We would like to have a gross negligent
11 defined for us again" is what says.

12 **MS. MILES:** And that's the definition, Judge.

13 **MR. GARFIELD:** Would it -- would it be of use to do
14 the part about ordinary negligence and then define it in
15 the terms of the contrast between the two? One second.
16 Once second. I'm sorry. I just --

17 **THE COURT:** Ms. Miles, do you hear what he's asking?

18 **MS. MILES:** No.

19 **THE COURT:** He's asking -- he's saying would it be
20 helpful to give them the definition of simple negligence
21 so they can contrast it with gross negligence.

22 **MS. MILES:** Your Honor, I don't want them -- they
23 just want to hear it again what you read, what you said
24 earlier. I think that's all that they need.

25 **MR. GARFIELD:** The reason why I suggested that is

1 conceptually I think it's a little difficult to see that
2 in a vacuum rather than to understand. It's kind of a
3 challenging concept even for lawyers. At least they
4 could see what ordinary negligence is and this is gross
5 negligence.

6 **THE COURT:** What I would do is I would just give them
7 what they've asked for. I can be happy to write at the
8 bottom here is the definition of gross negligence. If you
9 need, you know, additional information, please write me a
10 note.

11 **MR. GARFIELD:** That's fine. Yes, ma'am.

12 **THE COURT:** Yeah. And you can just ask Betty to copy
13 it in the --

14 **THE CLERK:** I'll go do it.

15 **THE COURT:** Yeah. I just don't -- I don't want to
16 give them my original.

17 (Pause in proceedings.)

18 **THE COURT:** Okay. Counsel, just so you know what I
19 wrote, it says "Sorry for the delay. Attached is the
20 definition of gross negligence as I instructed you. If
21 you need additional information, please write a note."
22 And I signed my name.

23 **MS. MILES:** Thank you, Your Honor.

24 **THE COURT:** And what I'm going to do is I'm going to
25 staple this together so they do not get separated and that

1 way you can -- and we'll just stand in recess.

2 **MR. GARFIELD:** Thank you.

3 (Court's Exhibit Number 2 was marked for
4 identification.)

5 (Recess taken at 12:27 PM.)

6 (Back on the record at 1:20 PM.)

7 **BAILIFF:** Court come to order. Please rise.

8 **THE COURT:** Thank you. Be seated, please.

9 I understand that the jury has reached a verdict.

10 Is there anything we need to take up before we bring
11 them in?

12 **MS. MILES:** Nothing from the Plaintiff, Your Honor.

13 **MR. GARFIELD:** No, ma'am. Thank you.

14 **THE COURT:** You may ask them to come in, please.

15 (Whereupon, the jury returns to the courtroom at
16 1:21 PM.)

17 **BAILIFF:** The jurors are seated, Your Honor.

18 **THE COURT:** Thank you.

19 Madam Foreperson, I understand that you've reached a
20 verdict; is that correct?

21 **FOREPERSON:** That's correct.

22 **THE COURT:** Would you, please, pass it to the
23 bailiff?

24 **THE FOREPERSON:** (Handing.)

25 **THE COURT:** Thank you.

1 Madam Clerk, if you would, please, publish the
2 verdict.

3 **THE CLERK:** Yes, ma'am. May it please the Court?

4 In the State of South Carolina, County of Richland,
5 in the Court of Common Pleas, Fifth Circuit, Keith L.
6 Montgomery, Plaintiff v. Richland County, Defendant, Civil
7 Action Number 2017-CP-40-00329.

8 Verdict. We, the jury, unanimously find for the
9 Plaintiff is checked. \$48,000 actual damages. Signed
10 Hiluv S. Johnson, Foreperson. April 5, 2018.

11 Madam Foreperson, is this your verdict and the verdict
12 of the entire panel?

13 **FOREPERSON:** It is?

14 **THE CLERK:** Thank you.

15 **THE COURT:** Do the parties wish to poll the jurors?

16 **MS. MILES:** Nothing from the Plaintiff, Your Honor.

17 **MR. GARFIELD:** Yes, ma'am, please.

18 **THE COURT:** Ladies and gentlemen, the Clerk will call
19 your name. She'll ask you two questions. Those questions
20 will be: Was this your verdict? and Is it still your
21 verdict? And I ask that you answer according to your
22 conscience.

23 **THE CLERK:** Hiluv Johnson, was this your verdict?

24 **FOREPERSON:** Yes.

25 **THE CLERK:** Is this still your verdict?

1 **FOREPERSON:** Yes.

2 **THE CLERK:** Robin Shirley, is this -- was this your
3 verdict?

4 **JUROR:** Yes.

5 **THE CLERK:** Is this still your verdict?

6 **JUROR:** Yes.

7 **THE CLERK:** Emily -- I'm sorry. Jay Cross, was this
8 your verdict?

9 **JUROR:** Yes.

10 **THE CLERK:** Is this still your verdict?

11 **JUROR:** Yes.

12 **THE CLERK:** Thank you.

13 Emily Grant, was this your verdict?

14 **JUROR:** Yes.

15 **THE CLERK:** Is this still your verdict?

16 **JUROR:** Yes.

17 **THE CLERK:** Thank you.

18 Cheryl Byrd?

19 **JUROR:** Yes.

20 **THE CLERK:** Was this your verdict?

21 **JUROR:** Yes.

22 **THE CLERK:** Is this still your verdict?

23 **JUROR:** Yes.

24 **THE CLERK:** Thank you.

25 Robert Coleman?

1 **JUROR:** Yes.

2 **THE CLERK:** Was this your verdict?

3 **JUROR:** Yes.

4 **THE CLERK:** Is this still your verdict?

5 **JUROR:** Yes.

6 **THE CLERK:** Thank you.

7 Ginna Shupper, was this your verdict?

8 **JUROR:** Yes.

9 **THE CLERK:** Is this still your verdict?

10 **JUROR:** Yes.

11 **THE CLERK:** Thank you.

12 Emmett Pugh, was this your verdict?

13 **JUROR:** Yes.

14 **THE CLERK:** Is this still your verdict?

15 **JUROR:** Yes.

16 **THE CLERK:** Thank you.

17 Devon Quattlebaum?

18 **JUROR:** Yes.

19 **THE CLERK:** Was this your verdict?

20 **JUROR:** Yes.

21 **THE CLERK:** Is this still your verdict?

22 **JUROR:** Yes.

23 **THE CLERK:** Thank you.

24 Shannon Olsen, was this your verdict?

25 **JUROR:** Yes.

1 **THE CLERK:** Is this still your verdict?

2 **JUROR:** Yes.

3 **THE CLERK:** Thank you.

4 Nashaun Burns, was this your verdict?

5 **JUROR:** Yes.

6 **THE CLERK:** Is this still your verdict?

7 **JUROR:** Yes.

8 **THE CLERK:** Thank you.

9 Virginia Winfrey?

10 **JUROR:** Yes.

11 **THE CLERK:** Was this your verdict?

12 **JUROR:** Yes.

13 **THE CLERK:** Is this still your verdict?

14 **JUROR:** Yes.

15 **THE CLERK:** Thank you.

16 **THE COURT:** Thank you.

17 Ladies and gentlemen, the Court is not concerned with
18 the verdict that you reached so much as I'm concerned with
19 the process by which you reached your verdict. You
20 listened to the evidence as it was presented throughout
21 the course of this trial and you also listened to my
22 instructions to you as to the law. You then determined the
23 facts in accordance with your view of what the evidence
24 showed and you applied the law as I instructed you and
25 having done so you arrived at your verdict and no one can

1 complain about the verdict that you've reached and you've
2 fully discharged your duty and your responsibility as
3 jurors here in Richland County and in this case.

4 On behalf of the County and the State, I'd like to
5 thank you very much for your service this week and your
6 willingness and patience after I told you on Monday it
7 was only going to be a one-day case and you had to come
8 back, but I hope you enjoyed lunch. I want to thank
9 you-all very much. If you will leave your plastic portion
10 of your badge, your white portion is the souvenir for
11 jury service, and your checks will be in the mail. If you
12 need any return to work forms, if you would just step back
13 into the jury room and gather your belongings we can give
14 you return to work forms and you can take them to your
15 employer.

16 (Whereupon, the jury was dismissed at 1:25 PM.)

17 **THE COURT:** Are there any post-trial motions at this
18 time?

19 **MS. MILES:** Nothing from the Plaintiff, Your Honor.

20 **MR. GARFIELD:** Judge, we would respectfully request
21 ten days to file post-trial motions.

22 **THE COURT:** Yes, sir. Do you want to give me a
23 little bit of a snippet or do you just want some time to
24 think about it?

25 **MR. GARFIELD:** Maybe a little time to -- yes, ma'am.

1 A little time to percolate, if possible.

2 **THE COURT:** I understand.

3 **MR. GARFIELD:** Thank you.

4 **THE COURT:** Then I will indicate that there was a
5 jury verdict for the Plaintiff in the amount of \$48,000
6 and that the post-trial motions will be filed within
7 ten days.

8 Thank you-all very much.

9 **MS. MILES:** Thank you, Your Honor.

10 (Whereupon, the proceedings were concluded at
11 1:27 PM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 4th-5th day of April, 2018.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor have an interest to any party hereto.

August 8, 2018

Is/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

ALVIN S. GLENN DETENTION CENTER INCIDENT REPORT

Incident Category: Reported Injury

Reported Date: 03/26/2013

(Follow up to: This is not the original incident report.)

Incident Time: Unknown

Incident Date: 03/26/2013 Incident Location: Connex Storage Trailers

Reporting Staff Member's Narrative and Inmates Involved

Subject: Medical- Inmate complaining of back pain.

03/28/2013

MONTGOMERY, KEITH INMN 88529

HOUSED TANGO 57

This inmate is reporting that he was injured on Tuesday morning while loading our lawn equipment on our trailer. I have interviewed (3) additional witnesses and none of them stated that they saw this inmate get struck by the door or any other type of injury.

I/M Montgomery is stating that the door of the Connex (Storage Trailer) struck him when the trailer pulled away from the front of the connex driven by Mr. Taylor (SS Supervisor).

All witnesses state that I/M Montgomery did state to Mr. Taylor (SS Supervisor), "*Hey man you almost killed me*" as the connex door did bump against the trailer when it pulled away.

All of the equipment was inspected and no damages were found.

All of the witnesses confirm that I/M Montgomery did not state he was injured to Mr. Taylor while they were in his presence. On Wednesday 03/27/13 I/M Montgomery stated to Mr. Johnson (SS Supervisor) that he had been injured on Tuesday.

When I/M Montgomery was asked why he did not report his injury he stated that he was told by the Tango Officer they did not have any medical request. I/M Montgomery stated that he tried again on Wednesday night and was told the same thing. According to Tango Officer on duty today, I/M Montgomery did not communicate to her that he was in need of immediate medical assistance.

I/M Montgomery have worked his shift on Wednesday and Thursday without issue.

Witness Interviews

Interviews with witnesses were conducted on 03/28/2013. (AM)

Witness #1: Inmate: Brandon Walsh

According to this witness he did not see I/m Montgomery being struck by any object nor did he witness any other type of injury. According to his testimony, he had his back to I/m Montgomery, as I/m Montgomery was behind him.

Witness did state that connex door did bump trailer and made a noise.

Witness states that I/M Montgomery did state to Mr. Taylor (SS Supervisor), "*Hey man you almost killed me*" as the connex door did bump against the trailer when it pulled away.

Witness confirmed that I/M Montgomery did not state he was injured to Mr. Taylor while they were in his presence.

Witness #2: Inmate: Charles Bethea

According to this witness he did not see I/m Montgomery being struck by any object nor did he witness any other type of injury. Witness did state that connex door did bump trailer and made a noise.

Witness states that I/M Montgomery did state to Mr. Taylor (SS Supervisor), "*Hey man you almost killed me*" or something to that effect, as the connex door did bump against the trailer when it pulled away.

Witness confirmed that I/M Montgomery did not state he was injured to Mr. Taylor while they were in his presence.

Witness #3: Inmate: Keith Montgomery

According to this witness (I/m Montgomery) he was struck by the connex door when it was bumped by the trailer.

Witness (I/M Montgomery) states that he told Mr. Taylor (SS Supervisor), "*Hey man you almost killed me*" as the connex door did bump against the trailer when it pulled away. He did not specify a reason for not reporting an injury.

Inmate is also stating that he has a written statement from Witness #1, Brandon Walsh stating that he witnessed the injury.

Witness #4: Johnnie Taylor (ASGDC Support Services staff)

According to this witness he did not see I/m Montgomery being struck by any object nor did he witness any other type of injury.

Witness states that I/M Montgomery did state to him, "Hey man you almost killed me" as the connex door did bump against the trailer when it pulled away.

Witness confirmed that I/M Montgomery did not state he was injured while they were in his presence.

A follow up inspection did not find any damage to the trailer or the connex door, and did not qualify for a incident report at the time.

Interviews with witnesses were conducted on 03/29/2013. (AM)

Witness #1: Inmate: Brandon Walsh

As a result of the testimony from witness #3, Witness #1 was interviewed for the second time. Witness #1 is now stating that he saw the door strike (I/m Montgomery) from the corner of his eye.

Action: This witnesses testimony has given (2) conflicting events and is not credible.

Reporting Staff Member's Signature: M. Smith _____ Report Completion Date: 3/29/2013
Other Staff Members Involved _____

Description: _____

Supervisor's Narrative

Description: Investigation currently in progress.

Description: Testimony presented on 03/28/2013 did not merit a incident report or a medical report as there was no evidence of an injury or equipment damage.

Actions: _____

Actions: _____

Impact: _____

Medical was notified today by phone at approximately 15:35 (Nurse Precious) has stated they have him on the schedule to be seen by the Doctor on Friday morning.

I was notified of this on Thursday morning on returning from a conference, and began my investigation. This was my first notification of this alleged injury.

Inmate was transported to Medical at approximately 0930am to wait his appointment.

Supervisor's Signature: M. Smith _____ Date: 3/29/2013

Watch Commander's Narrative

Description: _____

Watch Commander's Signature: _____ Date: _____

Incident Report Distribution

Medical: ☒ Maintenance ☒ Operations: ☐ Classification: ☐ Professional Standards: ☐ RCSI: ☐

Administration: ☐ Hearing Officer: ☐ Other Distribution: ☒ Security Staff

Division Manager's Review and Narrative

Description: _____

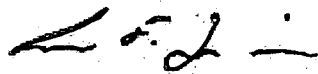
Division Manager's Signature: _____

Date: _____

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Record on Appeal contains all material proposed to be included by all parties and not any other material.

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Counsel for Appellant Richland County

December 13, 2018

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SC Court of Appeals

CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellant Richland County certifies that the Record on Appeal complies with the Supreme Court's Revised Order of April 15, 2014, regarding personal identifiers and sensitive information.

LINDEMANN, DAVIS & HUGHES P.A.

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December 13, 2018

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