



Total Trial Solutions

Scott [REDACTED]

Case # 101570-1

Bullet Point Biography by Andrew Brusio

Total Trial Solutions Biographer

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CONFIDENTIAL – ATTORNEY WORK PRODUCT

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General Background

- Scott ██████ was born at Good Samaritan Hospital in Troy, New York on February 17, 19█████
- Scott's parents separated when he was about five years old. From that point on he had very little contact with his father. His mother remarried, and for most of his youth Scott shared a home with his mother, his sister Shelley, and his new step-father and step-brother. He describes his upbringing as "typical."
- Scott went to school in Lansingburgh, NY. He dropped out of Lansingburgh High School, though he later earned his GED.
- Scott admits that after leaving school he was "getting in trouble, just running wild on the streets." At one point he was arrested and convicted of "five hundred dollars worth of possession of stolen property." He does not go into much detail about the crime, saying only that "somebody owed me some money, and they gave me some stuff instead." Scott was imprisoned from age 19 to age 23 – "I did 45 months on a five year bid," in his words. While Scott was in jail he says he resolved to refocus his life and work to become a better person. "I didn't want to go back, so I just straightened out."
- Upon his release from prison Scott moved to the Orlando, Florida area, where he met his first wife, Kimberly. They were wed in 1991. Scott says he "adopted" Kimberly's two children as if they were his own. Fatherhood had become a priority for Scott. "I always said I wanted to have a kid in my life," he says. Scott and Kimberly eventually had a child of their own, Justin ██████
- Kimberly and Scott remained together in Florida until 2004, when they divorced.¹ Initially, Justin stayed in Florida with his mother, and Scott returned to New York's capital district.
- "About seven months" after the divorce, Scott says, his son Justin came to spend Christmas with him. Justin decided he did not want to leave, and ended up living with his father for the remainder of his youth.
- Scott eventually rekindled an old high school romance with Sandra ██████ They began dating late in 2008, and as of early 2013 they are engaged to be married. Scott, Sandra, and Sandra's three-year-old daughter Sophia currently share a home at ██████ in Ballston Spa, New York. Sandra is employed part-time at a deli.



¹ Scott was on probation for domestic violence in 2002, but during our interview he declines to comment on this charge or related episodes.

Employment

- “I’ve always painted,” Scott says, introducing his employment history. He got his start as a teenager working with his uncle on the weekends. “My great grandfather was a painter, my grandfather was a painter, my uncle is a painter. I was the only grandson in the family – I became a painter.” Scott says simply that working as a painter is “in my blood [...] It’s easy for me, because I’ve done it so long. I guess this is all I know.”
- Scott earned his living in Florida painting houses, often for wealthy clients. He says he worked a number of huge homes for customers who desired complicated, distinctive work.
- From 1993 until 1998 Scott was employed by [REDACTED] Painting. At the end of his tenure there he incorporated his own business, Paradise Painting and Faux Finishing, which he owned and operated in Florida until 2003.
- In 2004, after his divorce and his move back to the Albany, NY area, Scott began working for Jeff [REDACTED] his sister Shelley’s husband. Jeff’s company, [REDACTED] Painting, primarily handles indoor painting jobs for “new apartment complexes that are going up,” Scott says.
- [REDACTED] operates on a contractual basis. For Scott, that means the work is not always consistent. When the company has active contracts, Scott typically works forty hour weeks.
- Scott’s son Justin recently joined him as a painter at [REDACTED]. Scott talks about the importance of using this opportunity to teach his son what he knows, just as his own father, uncle, and grandfather taught him what they could about the family business. “Not only do we work together, but I can spend time with him, too,” Scott says. He talks about how “every day” he tries to take time out to teach Justin something he can use.

Physical Wear and Tear

- As a painter, the jobs Scott has to perform at work include taping walls, operating a spray paint gun, and back rolling, the common technique wherein a roller is used to smooth out a coat of paint behind another painter operating a sprayer. Each of these requires Scott to repeatedly lift and lower his arms, and over the years, his shoulders in particular have endured constant pressure and stress.
- Scott says that prior to his accident he was essentially ambidextrous as a painter. “I could paint just as good with my left [hand] as I could with my right.” This allowed him to switch between hands while working and rest the muscles in each of his arms.
- Around 2007, however, Scott developed pain in his right shoulder that radiated down to his right hand. He states that he needs “rotator cuff surgery,” but he has not had that done to this date.
- The onset of the right shoulder problems caused Scott to rely more on his left arm. He says “I started spraying with my left hand instead of my right, to stop the wear in my right hand and my right shoulder.” This alleviated his right arm pain but also placed most of the stress of his work on his left arm.
- Additionally, Scott suffered a broken finger on his right hand while playing flag football in 2005 or 2006. He says that while the finger has mostly healed, he occasionally feels discomfort which inhibits him from doing certain things with his right hand.

Activities

- Scott has played football since he was a boy. His love of the game is rooted in the lessons it has taught him about being “a team player.”
- After his 2004 return to upstate New York, Scott joined a men’s flag football league, the ██████ District FFL. He played four years in the league (eight seasons, as the league holds games in the spring and the fall) before taking a break. Scott says he always intended to return to the game for another run, but after playing almost non-stop for four years he wanted to “dial it down” and let his body rest.
- Scott likes being outdoors and shares this interest with the people close to him. He and his son Justin enjoyed going “snow tubing” in the mountains, and he and Sandra try to spend time every year at a campsite Scott rents in Petersburg, New York. “It’s affordable and it gets us out of our house after being in all winter,” Scott says. “It’s our getaway [...] someplace where you could basically just relax for a weekend.” When Scott goes camping he does the vast majority of the physical work at his site, including chopping wood for fire, staking tents, and jacking and leveling his trailer.
- Scott is generally not very outspoken about his personality, but while talking about camping he opens up just enough to give a sense of what is important to him. He talks about feeling most comfortable away from social distractions, as when he says he always loved the fact that “our phones didn’t work out there, and nobody could get a hold of you unless they drove up. You’re isolated.” He admits to feeling like many of his social obligations are forced upon him by his job (“For five days out of the week I’m doing a lot of talking with the builders, with the GCs of the job. People are always calling me”), so his idea of a vacation is going somewhere that gives him a chance to “just shut it off” for a few days.

The Accident

- March 4, ██████ began as any other workday for Scott. He and a coworker were painting the interior of an apartment complex in a new development named ██████ Commons, being constructed on Route 9 in ██████ New York.
- That afternoon, Scott was working on the second floor. “I was up on a loft,” he explains, “overlooking the main part of the apartment.” Scott was painting the wall of the loft opposite the first floor living area, to which he had his back turned.

There was no guardrail or other obstruction between where Scott was standing and the opening overlooking the first floor.²



The second story loft from which Scott fell on March 4, 2011

² According to Jeff ██████ EBT statement, this space was open because it would later be the location of a staircase leading from the first floor to the loft. ██████ also testified that there had been a temporary hand-railing blocking the opening, but it had been removed by other on-site workers (not affiliated with ██████ Painting) at some point prior to the day of Scott’s fall.

- Scott lost his footing while he was working on the narrow loft. He says that “one foot went off the edge” behind him, and then “my other foot was pivoting my whole body” in an attempt to regain his balance. In fact, all this accomplished was to turn his body as he began to fall the roughly ten or twelve feet to the floor.
- Scott landed on his left side and broke his fall using his left hand and forearm. He states “I don’t even remember hitting the ground,” but maintains that he did not lose consciousness as a result of the fall. Scott says that Dean, his partner on the second floor of the apartment that day, was in another room at the time of the fall. Scott was wearing a respirator over his face, so Dean was not able to hear him shout.
- Scott sat up on the ground and immediately reached to hold his wrist, which was visibly deformed. “The bone wasn’t through the skin,” Scott explains, “but you could see it kind of sticking out.” He says he had never felt such severe pain in his life to that point.
- Another coworker, Brian [REDACTED], entered the unit and helped Scott get the respirator off of his face. Brian then helped Scott exit the unit and drove him in a [REDACTED] vehicle to the emergency room at [REDACTED] Hospital.

Medical Treatment

- At the hospital Scott had x-rays taken of his left wrist, and these revealed a fracture. He was given morphine and then underwent a closed reduction to reset the bone. Scott says this procedure, performed by Dr. William [REDACTED], caused “serious pain,” to the point that Scott briefly lost consciousness.



- When Scott came to, his injury was set in a short arm cast. He was given instructions for care, a sling for comfort, and a prescription for Percocet, and told to follow up with Dr. [REDACTED] the following week. He estimates that he was in the hospital for “probably a good six hours,” and continued experiencing severe pain well after his release. Scott remembers that as his fiancé Sandra was driving him home, he had to ask her to pull over so he could vomit.
- Scott followed up with Dr. [REDACTED] three times between March 10 and March 24, 2011. The doctor took new x-rays, prescribed painkilling medication, and showed Scott some motion exercises he could do with his fingers while he waited for the cast to come off. Scott states that around this time he got a “soap scum infection inside his cast,” which caused more pain and discomfort. On March 24 Dr. [REDACTED] changed Scott into a new cast.
- Scott saw Dr. [REDACTED] again on April 7, still complaining of pain and numbness. He was placed in a wrist splint and also scheduled for an EMG, which was performed by Dr. Justin [REDACTED] on April 19 and came back negative for neurologic causes of Scott’s symptoms.
- On April 28 Dr. [REDACTED] cleared Scott to begin physical therapy, but Scott says this was not a viable option for him because his insurance would not cover it.

- Scott returned to Dr. [REDACTED] on June 30, 2011 complaining of carpal tunnel-like symptoms. He had returned to work by this point in time, but was struggling with continuing pain in his wrist. Although Dr. [REDACTED] suggested options for treatment including physical therapy, steroidal injections, and carpal tunnel release surgery, Scott ultimately decided he was financially unable to pursue any further treatment if he would be required to pay for it himself, or if it would force him to take additional time away from work.

Physical Pain

- Scott states that when he was initially released from the hospital his pain level was “bearable,” thanks to the pain medication he was given.
- Even with the medication, however, he says “I wasn’t getting no sleep for the first three or four weeks” after the fall, due to the pain of his injury and the discomfort of his cast.
- Due to the skin infections that developed underneath his cast, Scott says “the last ten or twelve days [with the cast] were just as brutal as the first couple of weeks.” He describes the pain under his cast as being “like somebody was stabbing me,” or as a severe “burning” sensation. Scott says that after his cast was removed, he continued to treat his infection for about a week.
- Following the removal of the cast, Scott was given a brace to wear on his left wrist. He wears the brace only occasionally, he says, mostly when doing tasks around his home like shoveling or lawn mowing. He makes a point of mentioning that he does not like to wear the brace to work, because he does not want his coworkers to assume he is “dragging out” his injury.
- Scott’s pain is worst around his left wrist, although his accident has also caused a dull, consistent pain in his left elbow. He states that as of early 2013, both his wrist and elbow continue to cause him pain, and that during a recent visit to his doctor he was told he may be suffering from “golfer’s elbow.”



Conflict of Interest

- One of the unique elements of Scott’s situation, which has made almost every step of his recovery more difficult, has been the fact that his employer, [REDACTED] is also his sister Shelley’s husband. Ever since his injury Scott has struggled to make decisions related to treatment and care, as he often finds himself choosing between physical and financial relief and his relationship with his family.
- Despite his own pain and suffering, Scott has shown an impressive amount of understanding for the difficult position his injury put Jeff in. He states that the developer at Ellwood Commons fired [REDACTED] from that job after the lawsuit was initiated, and

refuses to hire ██████ for any new jobs.³ Scott clearly feels a great deal of guilt about his role in this conflict, despite his apparent innocence of any wrongdoing. “My boss, Jeff, my brother-in-law, he lost that job because of this lawsuit,” Scott says. “Because of me.” This outcome created a rift between Scott and Jeff and Shelley; Scott says his sister’s family began acting coldly toward him, “not really speaking to me,” around the same time ██████ lost the contract with Ellwood Commons.

- Scott states that he did not pursue workman’s compensation payments through ██████ while he was out of work, primarily because he did not want to further alienate his family members. This decision has had an adverse effect on his overall recovery, even if it alleviated some of the tension between him and Jeff.
- Scott soon found that his health insurer, Fidelis Care, would not to cover the cost of his physical therapy sessions because he had not gone to his workman’s compensation hearing. Without these payments, Scott says he was not able to undergo the physical therapy treatments his doctors recommended. “I’m not the type of person that just goes around charging up stuff that I can’t afford to pay,” he explains. Scott admits to feeling as though “my options were limited,” and ultimately he chose to do nothing, to wait for his injury to heal on its own.
- Scott estimates that about four or five months passed before he began to reconcile with Jeff and Shelley. Even since that time, Scott says the three of them have an unspoken agreement to avoid talking about his injury. “We pretend that it doesn’t even exist,” he says. “I think it’s better off not saying anything.”

Return to Work

- Despite not having made anything close to a full recovery, Scott, feeling financial pressure without any form of income, returned to work at ██████ the beginning of May 2011, “exactly eight weeks” after his fall.
- Scott did his work, but not without pain. Since his injury he had been dealing with problems with blood flow in his left forearm, which to this day causes his arm to fall asleep when he has to hold them above his head for long periods of time. Of course, the work of back rolling, sanding, spraying, taping, and many of the other activities of his profession require him to do exactly that.
- For about four years leading up to his injury Scott had painted primarily with his left arm, as he did not want to aggravate the right shoulder pain that set in around 2007. Since his injury, however, he says “there’s just not enough trigger finger in my left to be doing that no more.” As his current injury prevents him from maintaining operation of a spray gun with his left arm, he has had to go back to making primary use of his right, which has had the effect of “putting the stress back on the right shoulder.”
- Apart from the physical pain of coming back to work before he’d healed, Scott also struggled with the social aspect of his return. He says his coworkers were far from sympathetic to his injury, and that there was a consensus that his fall was directly related to the loss of the Ellwood contract. Scott says he had to deal with people talking behind his back about how “I was a ‘baby’ because I broke my wrist, and I shouldn’t be acting

³ Scott mentions that it was Brian ██████ the former coworker who drove him to the hospital on the day of the accident, who, upon leaving ██████ and starting his own business, was offered the contract to finish the painting at Ellwood Commons.

like this,” and how “I was the bad guy,” someone who had hurt the company and all of its employees by hurting himself⁴

- Scott says that a month or so after his return, he was feeling so alienated that “I did go get another job.” He stopped coming to work at ██████████ and worked for another contractor for a few days. Scott went back to work at ██████████ only when his brother-in-law Jeff reached out to him. “We just started texting back and forth” a couple days after Scott left ██████████, “and we kind of hashed things out from then on,” Scott says.
- Jeff not only welcomed Scott back to ██████████, but shortly thereafter gave him a promotion to a supervisory position. Scott began “running jobs” as a foreman, rather than just painting. He says this change was, for the most part, a positive one. It represented a kind of reconciliation between him, Jeff, and Shelley, which was important to Scott. It also put him in a situation where he could do less physical work and still earn a living, which took some pressure off of his still-recovering wrist.
- Unsurprisingly, Scott’s promotion did not help him with those of his coworkers who still bore a grudge against him for the circumstances of his injury; he indicates that there were some who felt he was clearly and undeservingly benefitting from his relationship with Jeff. However, Scott states that with the passage of time things have gotten better for him at work with his coworkers. For the most part, he has been able to earn their respect as a job supervisor.

Interruption of Life Activities

- Scott was injured at an inopportune time in his personal life, as he had been preparing to move into a new home with his fiancé Sandra.⁵ He says that he had to rely on friends and on his fiancé to help him move, and that “I was really no help” while everyone else worked. For Scott, who has always done the bulk of the physical jobs around his household, having to look on while other people did work he felt responsible for “was horrible.”
- Even after his move, Scott’s wrist injury has continued to make it harder for Scott to perform basic upkeep around his home. It is particularly uncomfortable for him to try to operate his lawnmower, which sends vibrations directly into his wrist. “I still put the brace on when I mow the lawn,” Scott says, and he claims even then he “can still feel the vibration for five to six hours” after he finishes.
- Scott also struggles with raking the leaves and pine needles in his yard. He thinks “I’ll probably pay the kid down the road this year,” rather than doing it himself. He has an easier time shoveling snow, but mentions that anytime he has to work in the cold “I usually buy hand warmers, and tape them on my wrist.” He states that his wrist does not respond well to cold weather: “it stiffens it right up.”
- Scott says that as a result of his injury he “missed a good opportunity” with his flag football team, which he had planned to rejoin in 2011, the year of his injury. “I couldn’t

⁴ Part of the problem, Scott admits, is that his personality is not very outgoing, and so he did not go out of his way to respond to the people who were talking about him. “I probably didn’t help the issue by not talking to anybody,” he explains.

⁵ In fact, Scott explains that he had been living in a piece of property owned by his brother-in-law / employer Jeff ██████████ at the time of his accident. Scott knew that Jeff wanted to sell and that he could only live there temporarily, but his injury and the rift it caused between him and Jeff essentially made it impossible for this living arrangement to continue.

be out there, grabbing flags and pushing people around, because it's full contact without equipment." It was more bitter than sweet for Scott to look on from the sidelines as his team won the league's Super Bowl that year, a feat none of his teams had pulled off before. "It would have been nice, after eight seasons, at 42, to go to a Super Bowl," he laments.

- His regular camping trips have been affected too. Scott states that he has "no strength" to do the wood chopping and other work that he had always done to make his outdoor getaways go smoothly.
- Scott admits to thinking that his fiancé Sandra "gets a little annoyed" with him when his injury prevents him from doing chores or activities with her. He comments that even with her, he is not the sort of person to be open about his pain or his deficiencies, and so he chooses instead to keep them to himself and work through them on his own.

Anxiety

- Scott reports experiencing a range of stressful thoughts and dreams related to his injury. He often has visions of himself in the moment of his accident. "I always see myself with my face up against the wall," as he was just before his fall, "and I hear the scratching on the wall." Additionally, Scott says that he has anxious dreams related to future events. "When the doctor said I needed surgery," he remembers, "that night I had a dream that they wanted to do it to me awake."
- These types of anxieties also extend to social situations related to his injury and his lawsuit. "When the depositions are coming up, I was just about having a dream every single night," Scott admits. He adds that even our biography interview, which occurs at his own dining room table and is comparatively low-stakes, caused him to feel "stressed out," in the days leading up to it.
- Scott describes feeling like there are times when he gets into a "deep thought" related to his injury, which causes him to disconnect from the world around him. "I don't know if I want to call it depression," he says, "but I'm not myself when I get into that deep thought." He says that his fiancé Sandra often tells him he's being "too quiet," but says "I don't want to let her know what I'm thinking about."
- Whether at work or in his personal life, Scott also feels like his injury and his effort to recover have caused him to feel like he has no control over other people's image of him. "It stresses me out wondering how people are perceiving me," he explains. "The word's out on the street that there's a lawsuit."

Future Outlook

- Scott returned to Dr. ██████████ on November 15, 2012 for reevaluation of his symptoms. Dr. ██████████ recommended a corrective osteotomy of the left wrist, which he noted would keep Scott out of work for at least three months. Again, Scott told him he would be unable to afford missing that much time from work.
- On January 8, 2013, Scott saw Dr. Justin ██████████ for a second opinion. Dr. ██████████ did not recommend an osteotomy, instead suggesting that Scott attempt hand therapy to improve his range of motion. Additionally, Dr. ██████████ treated Scott with a cortisone injection, and noted that if the injection gave him "some improvement but not complete, then I think we could expect him to improve significantly with a carpal tunnel release."

- Scott understands that at this point, he has likely healed to the fullest extent possible unless he changes his mind and opts for surgery. Two years removed from his accident, he says that overall there's been "a little bit" of improvement, "but not to where I'm looking to go join the flag football team" He states simply that "it isn't the same as what it was before."
- While Scott's job at [REDACTED] is secure for now, he expresses anxiety about what would happen if he were to lose his position, whether because of time missed due to injury or if the company were to fold. While his current position as foreman allows him to "excuse myself from spraying and back rolling" some of the time,⁶ he says "there's no guarantee I'm going to be a foreman at another job."
- Regardless of where he works, Scott believes that at 45 years of age, "I still have another 25-30 years out here working, doing the same thing I've been doing for the last 25 years." Given his age, education, and experience, he knows that he will need to be able to paint for years to come in order to obtain and protect the things in life that are important to him. To that end he is doing what he can to continue recovering from the fall that nearly cost him his livelihood.

⁶ Scott is quick to add that he still does the spraying, rolling, and other physical aspects of painting as a foreman – just not as much as he used to.